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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,

vs.

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

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

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF MOTIONS TO DISMISS OR COMPEL ARBITRATION

HEALTHSHARE, LLC and as KINGDOM HEALTHSHARE MINISTRIES, LLC, Defendants.	Hon. Troy L. Nunley **Hearing** **Date: December 3, 2020** **Time: 2:00 p.m.** **Crtm: 2** Complaint Filed: April 28, 2020 Amended Complaint Filed: June 26, 2020

I. INTRODUCTION

Defendants OneShare Health, LLC ("OneShare"), The Aliera Companies Inc. ("Aliera"), and Trinity Healthshare, Inc. ("Trinity") file this Reply in support of their Motion to Stay this action pending resolution of Defendants' respective motions to dismiss or to compel arbitration, which are currently before the Court.[1] (ECF Nos. 36, 37, 38).

Plaintiffs ignore the elephant in the room: the injustice Defendants face if forced to litigate claims that are expressly subject to arbitration. As explained in Defendants' Motions, (ECF Nos. 36, 37, 38), Plaintiffs, who were members of OneShare's sharing program from November 2017 to May 2019 and then members of Trinity's sharing program from June 2019 to December 2019, entered into binding arbitration agreements that require them to individually arbitrate all of the claims that they assert in this litigation. By urging this Court to deny the stay, Plaintiffs attempt to undermine the purpose and intent of the parties' applicable arbitration provisions and take advantage of the litigation process. Proceeding in the defense of Plaintiffs' claims pursuant to the Federal Rules of Civil Procedure – which require participating in written discovery, depositions, class certification briefing, and all the other complex processes and procedures involved in litigation – negates the very purpose of the parties' arbitration provisions; that is, trying to resolve their dispute informally and in an expedited manner.

Instead of addressing these issues, Plaintiffs oppose a stay based on an inapplicable test and unsupported and speculative statements. Even so, Plaintiffs' speculation does not establish any prejudice to Plaintiffs that outweighs the prejudice to Defendants or justifies overriding Defendants' arbitration interests. Plaintiffs allege a parade of speculative harms they claim *might* occur to Plaintiffs, and, by imputation, a putative class of plaintiffs that does not yet exist. But the existence of other putative class members and the suitability of any claims for class action treatment are matters that *cannot* be assumed and relied upon for denying a stay -- particularly at

[1] OneShare and Aliera have both moved to compel arbitration of Plaintiffs' claims. (ECF Nos. 36 and 37). 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.*)

this stage, where class action litigation is what the parties sought to avoid by agreeing to individually arbitrate disputes and will only be avoided if a stay is granted.

Because Plaintiffs identify no cognizable harm that they will suffer by having this Court temporarily stay proceedings while it decides the fully-briefed and ripe motions to compel arbitration, Defendants respectfully request this Court to exercise its discretion and enter a stay to preserve Defendants' arbitration rights.

II. REPLY ARGUMENT

Defendants demonstrated that a stay is appropriate in their Motion to Stay Proceedings. (*See* ECF No. 45.) Instead of contending that Defendants do not meet the standard for granting a stay pending resolution of a dispositive motion, such as a motion to compel arbitration or a motion to dismiss, Plaintiffs cite to a district court opinion from the United States District Court for the Northern District of California, *Arviso v. Smartpay Leasing, Inc.*, to support their contention that a differing standard should be applied.[2] 2016 U.S. Dist. LEXIS 27504, at *4 (N.D. Cal. Mar. 3, 2016); (ECF No. 53 at 3). They also re-hash the same arguments they made in opposition to Defendants' Motions to Compel Arbitration. While Defendants disagree with Plaintiffs' assertions, even applying the *Arviso* standard that Plaintiffs recommend, this Court should grant the Motion to Stay.

Indeed, the *Arviso* decision actually supports ***granting*** Defendants' Motion to Stay. That court stated that district courts have the inherent power to stay discovery, and that it is "common practice for district courts to stay discovery while a motion to compel arbitration is pending:"

> District courts have the inherent power to stay discovery as a matter of controlling their own docket and calendar. *Little v. Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). Furthermore, the Federal Arbitration Act ("FAA") mandates stays of proceedings in district courts when an issue in the proceeding is arbitrable. 9 U.S.C. § 3. Indeed, it is ***a common practice*** for district courts to stay discovery while a motion to compel arbitration is pending.

[2] Plaintiffs' assertion is contrary to the two factor standard used in the Eastern District, including by this own Court. *See* (ECF No. 45 at 8 (citing cases)); *On v. Stephen Vannucci, M.D. Inc.*, No. 2:14-cv-02714-TLN-CMK (E.D. Cal. Aug. 17, 2017) (ECF No. 38) (Nunley, J) (citing *Mlejnecky v. Olympus Imaging Am., Inc.*, No. 2:10-CV-02630-JAM-KJN, 2011 WL 489743, at *6 (E.D. Cal. Feb. 7, 2011) for "two-part test district courts frequently use to evaluate motions to stay discovery pending resolution of a dispositive motion")).

Id. at *2 (citations omitted) (emphasis added). Thus, while the FAA mandates a stay of proceedings when an issue is arbitrable, it is "common practice" in the Ninth Circuit to stay discovery while the district court considers whether to grant a motion to compel arbitration. *See also* (ECF No. 45) at 7 (citing cases).

Moreover, *Arviso* ***prevented*** merits discovery and only allowed limited discovery to proceed as to whether there was an agreement to arbitration in the first place. *Arviso*, 2016 U.S. Dist. LEXIS 27504 at *5 ("This ruling should not be construed to allow Plaintiff to embark on a fishing expedition. ***The Court reiterates that there will be no merits discovery***." (emphasis added)). Of course, Plaintiffs are attempting to do in this action exactly what the court prohibited in *Arviso*—engage in broad merits discovery (such as whether Defendants' sharing programs are "insurance"). Even applying the standard that Plaintiffs urge this Court to use, Defendants' Motion to Stay nonetheless is due to be granted.

First, as demonstrated in Defendants' Motions to Compel Arbitration, (ECF Nos. 36, 37, 38), and Replies in further support, (ECF Nos. 46, 47, 48), Defendants are likely to succeed in their Motion to Compel Plaintiffs to arbitration, and as a result the similarly situated individuals they seek to represent, to arbitrate their claims against Defendants. Plaintiffs overreach by arguing that the Court may only grant a stay if it is "convinced" that the Motions to Compel Arbitration will be granted.[3] (ECF No. 53) at 3. Rather, the standard is only that a court be "satisfied that the argument has merit" and that the motion "is potentially dispositive of the entire case." *See Spearman v. I Play, Inc.*, No. 217CV01563TLNKJN, 2018 WL 1382349, at *2 (E.D. Cal. Mar. 19, 2018).

Defendants' Motions to Compel Arbitration certainly have merit and are potentially dispositive of the entire case. That arbitration agreements are contained in each of the Member

[3] *B. R. S. Land Inv'rs v. United States*, 596 F.2d 353 (9th Cir. 1979) did not hold that a "court must be 'convinced' that the pending motion will be granted before ordering a stay." Rather, in affirming the district court's denial of discovery after appellants' original complaint was dismissed with leave to amend, the court merely recognized that it was not error because "[a] district court may properly exercise its discretion to deny discovery where, as here, it is convinced that the plaintiff will be unable to state a claim upon which relief can be granted." *Id.*, 596 F.2d at 355.

Guides that Plaintiffs attached to their Amended Complaint and have heavily relied upon in this lawsuit. *See, e.g.,* (ECF No. 19) at ¶¶ 37, 43, 50-52, 57, 86 (Am. Compl.); (ECF No. 19-5 (OneShare Member Guide); (ECF No. 19-4 (Trinity Member Guide)). Plaintiffs acknowledge that they received the Member Guides, (ECF No. 19) at ¶¶ 70, 73, and they even now contend that the guides are enforceable contracts between the parties that OneShare and Trinity somehow breached. The evidence the Defendants have submitted further establishes that the arbitration agreements are valid and enforceable because Plaintiffs expressly agreed to the terms of the Member Guides at the time they applied for membership in each HCSM, and they assented to the guides' terms many times over by participating in (and making payments to) each HCSM month after month after joining (specifically, fifteen months for OneShare and six months for Trinity). *See, e.g.,* (ECF No. 37) at 10-12; (ECF No. 38) at 8-12. Plaintiffs also agreed to delegate issues of arbitrability to the arbitrator, and therefore, Plaintiffs' challenges to the arbitration agreement should be decided by an arbitrator.

Plaintiffs also point to a recent agency decision of the Office of the Insurance Commission of Washington State against Aliera to reassert their "disclosure" argument.[4] Aside from the fact that the agency's decision is subject to immediate appeal by Aliera, neither OneShare ***nor Trinity*** were parties to or participated in that agency proceeding and the decision of Washington State is thus not binding on either HCSM. Moreover, despite being a merits issue that has not yet been litigated and should be resolved by the arbitrator, the limited "evidence" in the record demonstrates neither sharing program is "insurance" under *California* law, which requires a "contract for indemnity." *See, e.g.,* (ECF No. 37) at 18-20; (ECF No. 38) at 4-5. There has been no final agency finding by the California Insurance Commissioner ("CIC") that Trinity is acting as an "unauthorized insurer." *See* (ECF No. 48) at 5. And OneShare has never been deemed "insurance" or been subject to any regulatory proceeding by the CIC or any other California regulatory agency. *See* (ECF No. 37) at 18-19.

[4] As established in Defendants' Motions to Compel Arbitration, Plaintiffs' contention that California Insurance Code § 10123.19(a) prohibits enforcement of the arbitration agreement must be decided by an arbitrator and does not apply here in any event. *See, e.g.,* (ECF No. 37) at 18-20; (ECF No. 38) at 20-21; (ECF No. 48) at 6.

Likewise, Trinity's argument that Plaintiffs lack standing to sue Trinity also has merit and is potentially dispositive of the entire case against Trinity. The only "injury-in-fact" that Plaintiffs allege in the Amended Complaint is for the failure of *OneShare* to fully share in the medical expenses that Ms. Duncan incurred in March 2018, more than a year before Plaintiffs joined Trinity's HCSM. *See* (ECF No. 19) ¶¶ 77-80. Plaintiffs concede that they enrolled in OneShare's HCSM in November 2017, *id.*, ¶ 69, and did not begin their relationship with Trinity until, at the earliest, May 2019, *id.*, ¶ 72. *See also* (ECF No. 38-1) ¶¶ 15-16, Ex. 2. Because the only specific injury that Plaintiffs allege they suffered is for expenses incurred in March 2018, none of that alleged injury is fairly traceable to the conduct of Trinity or establishes a "case or controversy" with Trinity. Plaintiffs failed attempt to distort language on their authorization form that historical information would track from the prior relationship to the new relationship for convenience does not equate to an assumption of liability, and certainly not an assumption of any obligations for medical expenses that were incurred more than a year prior to when the relationship even began. *See* (ECF No. 48) at 2-3. Plaintiffs thus lack standing to sue *Trinity* for any of their claims.

Second, Plaintiffs fail to establish that there are any "genuine issues of fact" to be resolved concerning formation of the arbitration agreements. Simply because Plaintiffs dispute whether the evidence shows that an agreement existed does not mean that there is a "fact" issue requiring further discovery. Plaintiffs do not identify any dispute concerning the authenticity or content of any of the applicable documents or communications. Indeed, Plaintiffs do not identify a factual dispute in their Opposition at all. Plaintiffs merely assert that they now want discovery, for example, "on the availability of refunds." *See* (ECF No. 53) at 5. But this type of tangential discovery is not necessary to resolve Defendants' Motions to Compel Arbitration and Plaintiffs fail to show how it would be.

And contrary to Plaintiffs' footnote argument, the similar case brought by Plaintiffs' counsel against Aliera and Trinity in the Western District of Washington is not "inapposite." (ECF No. 53) at 4, n. 1. Under similar submitted evidence concerning the formation and existence of an arbitration agreement, the Washington district court *twice* applied the law of the Ninth Circuit to grant defendants' motions to compel arbitration without discovery. *Jackson v. Aliera Cos.* No.

19-cv-01281-BJR, 2020 WL 4787990 at *2-5 (W.D. Wash. Aug. 18, 2020) ; *id.*, 2020 WL 5909959 at *1-3, 7 (W.D. Wash. Oct. 6, 2020) (re-entered Nov. 20, 2020 on limited remand from the Ninth Circuit). Those decisions further support that discovery is unnecessary to resolve the pending, dispositive arbitration motions.

There are also no genuine "fact" issues concerning Plaintiffs' lack of standing to sue Trinity that require resolution. Plaintiffs now claim that they need discovery to determine if the order issued by the Georgia Court (which was attached to Plaintiffs Amended Complaint as Appendix A) directing that OneShare funds and claims be segregated and put under oversight of a receiver was followed. (ECF No. 53) at 5-6. But the prospect that the Georgia Court's order was never followed is merely speculation and Plaintiffs point to no evidence to support their new hypothetical assertion. Unsupported conjecture is not sufficient to overcome Plaintiffs' admissions and the undisputed evidence that Plaintiffs lack standing to sue Trinity.

Third, Defendants will be irreparably injured absent a stay because the arbitration provisions with Plaintiffs and the similarly situated *absent* class individuals will be undermined, as Defendants will lose the benefits of arbitration. The Ninth Circuit has recognized that if parties were required to proceed with discovery and other pre-trial obligations while the enforceability of an arbitration provision is still pending, "the advantages of arbitration—speed and economy—are lost forever," a consequence it describes as "serious, perhaps, irreparable." *Alascom, Inc. v. ITT N. Elec. Co.*, 727 F.2d 1419, 1422 (9th Cir. 1984) (citations omitted); *see also Arviso*, 2016 U.S. Dist. LEXIS 27504, at *4 (cited by Plaintiffs and citing *Winig v. Cingular Wireless, LLC*, 2006 WL 3201047, at *2 (N.D. Cal. Nov. 6, 2006) for proposition that the advantages of arbitration "are lost forever" when discovery is permitted).

Defendants will be irreparably harmed if they are forced to proceed with discovery and class certification proceedings while their Motions are pending. The parties in this matter agreed to follow the Christian Conciliation's (OneShare) and the AAA's (Trinity) arbitration rules and procedures for resolving "any dispute" among them. *See* (ECF No. 37) at 12; (ECF No. 38) at 12. By (a) filing their claims in court, and (b) seeking to proceed with costly, broad, and time-consuming discovery and class certification proceedings, Plaintiffs have violated their agreements

and are prejudicing Defendants. Proceeding with discovery under the Federal Rules of Civil Procedure needlessly invokes litigation machinery for claims that are subject to arbitration. Defendants seek solely to preserve their arbitration rights with a limited stay.

Defendants will also be prejudiced because class arbitration, and therefore class discovery, is not available in this case. *See Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1417 (2019) ("Neither silence nor ambiguity provides a sufficient basis for concluding that parties [agreed to class arbitration]."). Requiring a party to engage in discovery that would not be available in arbitration while a motion to compel arbitration is pending is inherently prejudicial. "This prejudice cannot be undone if the disputes are later found to be arbitrable." *In re CenturyLink Sales Practices & Sec. Litig., No. MDL172795mjdkmm*, 2018 WL 2122869, at *2 (D. Minn. May 8, 2018); *Mundi v. Union Sec. Life Ins. Co.*, No. CV-F-06-1493 OWW/TAG, 2007 WL 2385069 at 6 (E.D. Cal., Aug. 15, 2007) (parties "should not be required to endure the expense of discovery that ultimately would not be allowed in arbitration"). The governing agreements make clear that Plaintiffs agreed to resolve their disputes individually, and Defendants should not be forced to undertake the immense burden of defending class certification while the correct forum is decided.

Plaintiffs' argument that Defendants have already produced evidence in "other proceedings" is also unconvincing and fails to demonstrate any lack of prejudice. Initially, OneShare is not a party to any of the referenced civil proceedings in Washington or Georgia and has not "already produced" any evidence in those proceedings. As to Trinity and Aliera, among other reasons, the named plaintiffs and putative class members in those civil matters are wholly unrelated to Plaintiffs and residents of different states and, further, because a confidentiality order entered in the (now stayed) Washington case precludes most of such use. And whether or not the Defendants have purportedly produced (unidentified) documents to (unidentified) "various insurance regulators," is irrelevant as any discovery related to whether OneShare's or Trinity's sharing programs are purportedly "insurance" or something else is a decision reserved for the arbitrator. *See, e.g., Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 449 (2006). But, more to the point, *any* discovery in this case is prejudicial and wasteful because Defendants should not have to defend themselves in this lawsuit while Plaintiffs ignore their agreements to arbitrate.

Fourth, Plaintiffs will not be substantially injured by a stay. Without any support, Plaintiffs merely allege speculative harms they claim ***might*** occur if litigation is stayed, such as purported "memory loss." Plaintiffs even go so far as to assert, without citation to any evidence in the record, that they "are increasingly concerned that Defendants may be siphoning off assets that would be available to pay a judgment." (ECF No. 53) at 7. This is pure speculation and should be rejected out-of-hand.

Plaintiffs' assertions that they "will have to start from square one in commencing discovery" and a "stay will only serve to delay class certification and the ultimate resolution of this case" also fail to show substantial prejudice. There is no right to class discovery here as Plaintiffs agreed to resolve their disputes individually. And Plaintiffs can show no prejudice for any delay when they created that consequence themselves by pursuing litigation instead of arbitration in accordance with their written agreements. *See, e.g., Martin v. Yasuda*, 829 F.3d 1118, 1126 (9th Cir. 2016) ("To prove prejudice, plaintiffs must show more than "self-inflicted" wounds that they incurred as a direct result of suing in federal court contrary to the provisions of an arbitration agreement.").

Regardless, Defendants do not seek an extensive stay that could potentially give rise to the speculative harm of which Plaintiffs warn. To the contrary, Defendants seek a stay pending only a decision on their already fully briefed Motions to Compel Arbitration. As district courts in this Circuit have noted, temporary stays under these circumstances "advance the efficiency for the Court and the litigants by avoiding the burden of discovery costs until [the jurisdictional question is resolved]." *Bosh v. United States*, No. C19-5616 BHS, 2019 WL 5684162, at *1 (W.D. Wash. Nov. 1, 2019). Plaintiffs will not suffer harm while the Court decides in which forum this case will proceed.

Finally, the public interest supports granting Defendants' Motion to Stay. The Supreme Court has held the Federal Arbitration Act sets forth a "congressional declaration of a liberal federal policy favoring arbitration agreements." *See Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983). Consequently, a temporary stay would advance the public interest in arbitration by ensuring that Defendants are not required to litigate

the instant action while this Court is considering Defendants' Motions to Compel Arbitration. And if the Court grants Defendants' Motions to Compel Arbitration, the FAA mandates a stay pending arbitration. *See* 9 U.S.C. § 3.

Plaintiffs' single sentence "argument" that "the Duncans, like other potential class members, have significant unpaid medical bills hanging over their heads, and their claims should be resolved expeditiously," (ECF. No. 53 at 7), does not support a contrary conclusion. Again, there is no right to class discovery here as Plaintiffs agreed to resolve their disputes individually. And, again, any delay and consequence in resolving Plaintiffs' individual claims is of their own-making. Indeed, the concerns raised by Plaintiffs are likely to be adjudicated far more efficiently in individual arbitration than class litigation. Plaintiffs terminated their membership in OneShare's sharing program in May 2019, *see* (ECF No. 19) at ¶ 72; (ECF No. 19-9), and terminated their membership in Trinity's sharing program almost a year ago in December 2019. *See* (ECF No. 19) at ¶ 1 (membership terminated as of December 31, 2019). Plaintiffs could have already "expeditiously" resolved their alleged claims if they had pursued arbitration in accordance with their written agreements instead of litigation.

III. CONCLUSION

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

DATED: November 25, 2020

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CERTIFICATE OF SERVICE

I certify that on November 25, 2020, I caused a copy of this **Defendants' Reply in Support of Motion to Stay Proceedings Pending Resolution of Motions to Dismiss or Compel Arbitration** to be served on all counsel of record via the Court's Electronic Filing system.

Dated: November 25, 2020

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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: November 25, 2020

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