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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

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

15 Plaintiffs,

16 v.

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

25 Defendants.

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

[Assigned to the Hon. Troy L. Nunley]

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO  
STRIKE**

[Action Filed: April 28, 2020]

26 Plaintiffs filed Notices of Supplemental Authority bringing to the attention of this Court two relevant decisions that were issued after the Motion to Dismiss in this case was fully briefed. Those decisions are: (1) the Final Order on Summary Judgment entered by the Office of the Insurance Commissioner of Washington State ("OIC Order"), concluding that Trinity plans Alieria sold were insurance (Dkt. 54); and (2) the Order denying Defendant Alieria's and Trinity's Motions to Compel or Dismiss entered by Federal District Court for the Western District of

1 Missouri (“Arbitration Denial Order”), holding the Trinity arbitration “agreement” lacked mutual  
2 assent (Dkt. 57).

3 Defendants have moved to strike the supplemental authority. Dkt. 58.<sup>1</sup> They argue that  
4 supplemental authority should be stricken because Plaintiffs did not first seek leave of court.  
5 Supplemental authority is, however, considered in this district, without seeking leave to file. *Polk*  
6 *v. Yee*, No. 2:18-cv-2900-KJM-KJN, 2020 U.S. Dist. LEXIS 153420, \*4 (E.D. Cal. Aug. 24,  
7 2020) (considering supplemental authority filed after briefing concluded); *H.W.J. Designs for*  
8 *Agribusiness, Inc. v. Rethceif Enters., LLC*, No. 1:17-cv-027-AWI-SKO, 2018 U.S. Dist. LEXIS  
9 22838, \*3, n. 1 (E.D. Cal. Feb. 12, 2018) (supplemental authority pointing to new decisions  
10 dealing with the legal issue at hand was considered, and motion to strike the supplemental filings  
11 was denied). The Court can consider the supplemental authority without requiring Plaintiffs to  
12 first file a motion for leave.

13 Defendants also seek to strike the two Orders as irrelevant. Defendants’ first objection to  
14 the OIC Order is that it goes to an issue – whether the health care plans are insurance – that they  
15 claim should be decided by an arbitrator. As Plaintiffs argue in their opposition to the Motion to  
16 Dismiss, that is an issue that this Court should decide. Dkt. 44, at 18-20. The Trinity plans the  
17 Washington OIC considered include the same health care plan Plaintiffs enrolled in, and its well-  
18 reasoned decision that the plans are insurance under Washington law is additional authority for  
19 the argument that Plaintiffs’ plan equally qualifies as insurance under California law.

20 Defendants’ argument that the OIC Order has “no preclusive effect” here is misplaced.  
21 Plaintiffs provided the OIC Order as supplemental authority, not that *res judicata* or collateral  
22 estoppel applies to prevent this court from considering whether the health care plans are insurance.

23 The Arbitration Denial Order is likewise relevant supplemental authority. The court there  
24 cited, at page 9 of its Order, the identical facts present here in concluding there was no agreement  
25

26 \_\_\_\_\_  
<sup>1</sup> Although their motion is styled as a “Response,” the relief they seek is that the Court strike both Notices.

1 to arbitrate: (1) The enrollment forms that are signed do not reference arbitration or contain an  
2 arbitration provision — or even mention arbitration — nor do they provide a link to any document  
3 that contains an arbitration provision. Dkt. 46-1, pp. 6-9 of 9; 50-1, p. 3 of 6. (2) The enrollment  
4 forms state that the document “is not a contract.” Dkt. 46-1, p. 8 of 9; 50-1, p. 3 of 6. (3) There is  
5 no evidence that plaintiffs received, reviewed, or acknowledged the terms of the Member Guide  
6 when they electronically signed the online forms to become a member. (4) The link to the  
7 Member Guide that does contain the arbitration provision is not provided until after the member  
8 has enrolled and paid. Dkt. 36-2, p. 5 of 6; 44, p. 13 of 39. The Arbitration Denial Order is  
9 consistent with California law. In *Ajamian v. CantorCO2e, L.P.*, 203 Cal. App. 4th 771, 805  
10 (2012), the court rejected the argument that by signing an employment agreement, plaintiff agreed  
11 to be governed by “policies then in effect,” including an arbitration agreement. The agreement  
12 she signed did not mention arbitration at all, and she never signed or agreed to the actual  
13 arbitration clause in the employee handbook. *Serafin v. Balco Properties Ltd., LLC*, 185 Cal.  
14 Rptr. 3d 151 (2015), does not support Defendants’ claim that under California law, Plaintiffs  
15 agreed to arbitrate because they received the arbitration clause hidden in the back of the Member  
16 Guide after they had enrolled and paid. In *Serafin*, the employee received the arbitration policy  
17 set out in an easy-to-read document headed “MANDATORY ARBITRATION POLICY,” and  
18 signed it.

19 The estoppel cases Defendants cite – *Montoya v. Comcast Corp.*, 2:15-cv-02573-TLN-  
20 DB, 2016 U.S. Dist. LEXIS 130806 (E.D. Cal. Sep. 23, 2016), and *Metalclad Corp. v. Ventana*  
21 *Env'tl. Organizational P'ship*, 109 Cal. App. 4th 1705 (2003) – are inapposite. The issue in those  
22 cases was whether a third-party stranger to the contract could be compelled to arbitrate. The  
23 Plaintiffs here were not third-party strangers. See, *Nguyen v. Barnes & Noble, Inc.*, 763 F.3d 1171,  
24 1179-80 (9th Cir. 2014) (benefits estoppel is intended to apply to third-parties, not to the primary  
25 party to the Terms of Use at issue).

1 Defendants' motion to strike should be denied, and the supplemental authority should be  
2 considered.

3 DATED: January 11, 2021.

4 s/ Eleanor Hamburger

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