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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,

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

[Assigned to the Hon. Troy L. Nunley]

15 Plaintiffs,

**PLAINTIFFS’ MOTION FOR LEAVE
TO FILE SUPPLEMENTAL
AUTHORITY; AND
PLAINTIFFS’ FOURTH NOTICE OF
ADDITIONAL SUPPLEMENTAL
AUTHORITY IN OPPOSITION TO
MOTIONS TO DISMISS**

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,

[Action Filed: April 28, 2020]

25 Defendants.

26 Plaintiffs Bruce and Corlyn Duncan move for leave to file supplemental authority,¹ and submit their fourth notice of supplemental authority of an Order from the Federal District Court for the District of Georgia in *LeCann, et al. v. The Alieria Companies, Inc.*, No. 1:20-CV-2429-

¹ Although supplemental authority may be considered without seeking leave to file, plaintiffs so move in an abundance of caution. *Polk v. Yee*, 2020 U.S. Dist. LEXIS 153420, *4 (E.D. Cal. Aug. 24, 2020); *H.W.J. Designs for Agribusiness, Inc. v. Rethceif Enters., LLC*, 2018 U.S. Dist. LEXIS 22838, *3, n. 1 (E.D. Cal. Feb. 12, 2018).

1 AT, dated June 22, 2021, and an Order from the Federal District Court of Montana dated June 30,
2 2021 in *Moeller et ux. v. The Alieria Companies, Inc., et al.*, No. CV 20-22-H-SHE. A copy of
3 each Order is attached as *Exhibits A* and *B*, respectively. Both Orders were entered after the
4 Motions to Compel or Dismiss in this case had been fully briefed.

5 The facts in both *LeCann* and *Moeller* are fundamentally the same as in this case.
6 Plaintiffs in *LeCann* filed an action against Alieria and in *Moeller* against Alieria and Trinity, two
7 of the same defendants as here. In both cases, the plaintiffs alleged that healthcare plans Alieria
8 sold them were illegal insurance. The *LeCann* and *Moeller* defendants moved to compel
9 arbitration, as they have done here, based on an arbitration clause found in a member guide. The
10 federal district courts held in both *LeCann* and *Moeller* that the health care plans sold by Alieria
11 were insurance, and under the relevant state law (Georgia and Montana), arbitration clauses in
12 insurance plans were illegal. Both the *LeCann* and *Moeller* courts rejected defendants' Motions
13 to Compel Arbitration on this basis. The *LeCann* court also held, at 34-44 of its Opinion, that it
14 is for the court, not an arbitrator to decide whether the member agreements constitute insurance
15 such that the arbitration provision is unenforceable.

16 Both decisions address the key substantive questions raised in the pending motions to
17 Compel or Dismiss here: whether the Defendants' health plans are insurance under the relevant
18 state law and whether the arbitration clauses Defendants seek to enforce violate the state's law
19 governing the disclosure and use of arbitration clauses in health insurance. *See* Dkt. No. 44,
20 pp. 14-20. The Court should have the benefit of considering how other federal courts have ruled,
21 during the pendency of this motion, on the same issues involving the same parties as this case.

1 DATED: July 2, 2021.

2 /s/ Eleanor Hamburger

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