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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., *et al.*,

Defendant.

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

NOTICE OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Hearing
Date: June 29, 2023
Time: 2:00 p.m.
Courtroom: 2

Hon. Troy L. Nunley

TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on June 29, 2023, at 2:00 p.m., or as soon thereafter as this matter may be heard, Plaintiffs will and hereby do respectfully move the Court, in the courtroom of the Honorable Troy L. Nunley, Courtroom 2, 15th Floor of the United States District Court for the Eastern District of California, located at 501 I Street, Sacramento, CA 95814, for an order preliminarily approving the proposed class action settlement and approving the manner and form of class notice.

This motion is based on the notice of motion and motion for preliminary approval, the following memorandum of points and authorities, the attached declarations and exhibits, the arguments of counsel, and any other matters in the record or that properly come before the Court.

Dated: May 25, 2023

/s/ Nina Wasow

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN, Plaintiffs, v. THE ALIERA COMPANIES, INC., *et al.*, Defendant.	Case No. 2:20-CV-00867-TLN-KJN **PLAINTIFFS' MOTION FOR CERTIFICATION OF SETTLEMENT CLASS AND PRELIMINARY APPROVAL OF SETTLEMENT** Hearing Date: June 15, 2023 Time: 2:00 p.m. Courtroom: 2 Hon. Troy L. Nunley

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INTRODUCTION

This proposed class action, filed in April 2020, arises from allegations relating to Defendants The Aliera Companies, Inc. ("Aliera"); Trinity Healthshare, Inc.[1] ("Trinity"); and OneShare Health, LLC[2] ("OneShare"; collectively, "Defendants")). Plaintiffs Corlyn and Bruce Duncan ("Plaintiffs") allege that Defendants sold inherently unfair and deceptive health care plans and failed to provide purchasers with the coverage they believed they would receive. Defendants claimed the health care plans were not "insurance" and therefore were not subject to oversight by state insurance commissioners or the requirements of the Patient Protection and Affordable Care Act ("ACA"). Plaintiffs allege that Defendants deliberately designed the health care plans to look and feel like health insurance that would provide meaningful coverage for the purchasers' health care needs.

Nearly identical lawsuits were filed on behalf of individuals in Federal District Court in Colorado and Kentucky, styled *Rebecca Smith, et. al. v. The Aliera Companies, et al.,* No. 1:20-cv-02130-RBJ, in the United States District Court for the District of Colorado (the "Colorado Lawsuit"), and *Hanna Albina, et al. v. The Aliera Companies, Inc., et al,* Case No. 5:20-CV-00496-DCR, in the United States District Court for the Eastern District Kentucky (the "Kentucky Lawsuit"). The Plaintiffs in those cases —Rebecca White, f/k/a Rebecca Smith, Ellen Larson, Jaime Beard, Jared Beard, Hanna Albina, and Austin Willard, are named plaintiffs in the proposed Second Amended Complaint, and are referred to here as "Proposed Plaintiffs."

Defendants Trinity and Aliera are both in bankruptcy, and it is believed that recovery on behalf of the Plaintiffs and the class from those entities will be pursued in the bankruptcy court. The action against both Trinity and Aliera is stayed in this Court and will remain stayed pending the resolution of the bankruptcy matters. OneShare, however, is not in bankruptcy, and the proposed settlement is between OneShare and a nationwide class of OneShare

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[1] Trinity is the former name of Sharity Ministries, Inc.

[2] OneShare was formerly known as Unity Healthshare, LLC ("Unity") and Kingdom Healthshare Ministries, LLC.

members.

After over three years of litigation, including motion practice concerning Defendants' motions to dismiss, Plaintiffs and OneShare have negotiated a proposed nationwide class action settlement poised to resolve all of the Plaintiffs' claims against OneShare on terms that deliver meaningful relief to a wide swath of consumers. Through the settlement, OneShare agrees to make initial payments totaling $3 million into a Settlement Trust Account; assign its claims against and amounts due from Aliera in the Aliera bankruptcy litigation to the Class, including a principal sum of $3.75 million; and pay another $3 million to $7 million into the Settlement Trust Account. Among the other responsibilities, OneShare has agreed to reasonably cooperate in efforts to obtain further compensation for Class members from Aliera, third parties that assisted Aliera, and Aliera's insiders.

If approved, the settlement will be a major step forward in making Class members whole. Plaintiffs and their counsel are pleased to provide this recovery to the Class. Now, pursuant to Rule 23(e)(1)(B), they bring this motion as the first step in the process for approval of the proposed settlement. As discussed below, the record provides strong grounds for the Court to conclude that it will likely (1) be able to certify a class for settlement purposes and (2) approve the settlement. *See* Fed. R. Civ. P. 23(e)(1)(B)(i)–(ii). Plaintiffs thus request that the Court grant preliminary approval, direct that notice be disseminated to the proposed class, and set a schedule for final approval.

HISTORY OF THE LITIGATION

I. Factual Background

Defendants sold health care plans through a putative Health Care Sharing Ministry ("HCSM"), a type of entity excepted from the ACA's insurance-coverage mandate. 1st Am. Compl., ECF No. 19, ¶¶ 11–13. Plaintiffs allege that OneShare, then called Unity, and subsequently Defendant Trinity, did not meet the legal requirements of an HCSM. *Id.* ¶¶ 12–14. Plaintiffs allege that, while serving as the third-party administrator for Unity and then Trinity, Aliera sold what Plaintiffs allege were illegal health-insurance plans that did not comply with the minimum basic requirements for authorized health care plans under state or

federal law—even as Aliera kept over 83% of all payments from plan purchasers. *Id.* ¶ 15.

Plaintiffs maintain that Defendants' representations that the insurance plans were HCSM plans and would provide members with meaningful coverage were fraudulent, misleading, unfair, or deceptive in violation of consumer-protection laws. *Id.* ¶ 16. Plaintiffs contend that at no relevant time did the Defendants' plans meet the requirements for HCSMs under federal law, meet the requirements of health insurance plans under federal or state law, or provide the coverage that was promised. *Id.* And Plaintiffs argue that Defendants have breached their fiduciary duties to class members and been unjustly enriched by taking unreasonable fees and commissions while arbitrarily and unreasonably refusing to pay claims. *Id.* ¶ 18.

As shown in the filings in this case, OneShare disputes Plaintiffs' allegations against it and has vigorously defended this case. OneShare also brought claims against Aliera in a Georgia state court in 2019 relating to Aliera's actions in administering the Unity plan, alleging that Aliera misappropriated the funds paid by and belonging to the Unity members. Aliera collected all plan payments of the Unity members and administered Unity's plans including deciding whether to provide payment to any medical providers or Unity members for incurred medical expenses. All communications and representations with Unity members came from Aliera.

Nonetheless, Aliera has filed bankruptcy which has complicated Plaintiffs' ability to recover from Aliera. In reaching this settlement, the parties have agreed to a resolution that benefits and serves the best interests of the Unity members, given the Aliera bankruptcy and the claims in this case.

II. Procedural Background

This case has been fiercely contested. After Plaintiffs filed their initial complaint in April 2020 (ECF No. 1), Defendants filed motions to dismiss or to compel arbitration (ECF Nos. 13, 14), renewing them after the Plaintiffs amended their complaint in June 2020. 1st Am. Compl., ECF No. 19; Aliera Mot. Dismiss, ECF No. 36; OneShare Mot. Dismiss, ECF No. 37; Trinity Mot. Dismiss, ECF No. 38. Plaintiffs opposed Defendants' efforts to compel arbitration or

dismiss. Resp. Mot. Dismiss, ECF No. 44. Defendants filed replies. (Aliera Reply Mot. Dismiss, ECF No. 46; OneShare Reply Mot. Dismiss, ECF No. 47; Trinity Reply Mot. Dismiss, ECF No. 48. Plaintiffs sought to file a sur-reply (ECF No. 50), Defendants opposed the request (ECF No. 51), and Plaintiffs filed a reply (ECF No. 52). As briefing on the motions to dismiss concluded, Defendants moved to stay the case pending the Court's resolution of those motions (ECF No. 45), which Plaintiffs opposed (ECF No. 53), and about which Defendants filed a reply (ECF No. 55). Similarly, the Proposed Plaintiffs also defended motions to dismiss, with similar onerous and hotly-contested briefing. See Declaration of Eleanor Hamburger, ¶¶ 3, 10.

The case took a turn when, as the Court put it:

> Prior to the Court ruling on those motions, Trinity filed a notice of bankruptcy on July 9, 2021. (ECF No. 76.) As such, the Court stayed the action as to Plaintiffs' claims against Trinity. (ECF No. 79.) The Court further noted "absent any argument to the contrary, the action may proceed against the other Defendants." (*Id.*) Aliera filed [a] motion to stay the case in its entirety on July 30, 2021. (ECF No. 80.) Unity did not join in the motion but instead consented to a stay. (*Id.* at 2 n.3.)

ECF No. 88, at 2; *see In re Sharity Ministries, Inc.*, No. 21-BK-11001 (Bankr. D. Del.).

The Court ordered the case stayed given the bankruptcy proceedings but allowed that "[t]he case may be reopened at the request of the parties." Order, ECF No. 88, at 5. The courts hearing the Colorado and Kentucky Lawsuits also stayed the proceedings before those courts. *See* ECF No. 88-1 and 88-2. Contemporaneously with this motion for preliminary approval, Plaintiffs are filing an unopposed motion to lift the stay. The Trinity bankruptcy proceedings are still pending.

Aliera is also in bankruptcy. Several parties who had obtained judgments against Aliera filed an involuntary bankruptcy petition against it in the District of Delaware. Notice, ECF No. 91. OneShare is also a creditor in those proceedings, which are pending. *See* Resp. at 2, *In re The Aliera Companies, Inc.*, No. 21-BK-11548 (Bankr. D. Del. July 19, 2022), ECF No. 286.

Meanwhile, Aliera's counsel moved to withdraw from this case on October 19, 2021 (ECF No. 89), which the Court granted on April 13, 2022 (ECF No. 93). The Court's order gave Aliera 45 days to acquire new counsel and file a notice of appearance, *id.*, but Aliera has not done so to date.

Although private litigants and state regulators have taken legal action against Aliera and Trinity in numerous jurisdictions, and less so OneShare, this case along with the Colorado and Kentucky Lawsuits are the only ones that have asserted class claims against Defendant OneShare.[3] This settlement will resolve Named Plaintiffs' claims against OneShare in this case and in the Colorado and Kentucky Lawsuits. *See* Appendix A, Settlement Agreement ("SA") Recitals ¶¶ 6, 10, §§ 1.1, 2.2, 6.

At this stage, the parties have negotiated and prepared a formal settlement agreement, developed a notice and distribution plan, and prepared and finalized drafts of the settlement agreement's exhibits. Hamburger Decl. ¶ 16. The parties also retained the services of an experienced settlement administrator, BMC Group Inc. *Id.* ¶ 17. The parties have begun working with BMC to coordinate the commencement of class notice. *Id.*

[3] Many of these cases brought against Aliera have been previously brought to the Court's attention by the parties' notices of supplemental authority. *See, e.g.*, ECF No. 54 (citing Final Order, *In re Aliera Healthcare Inc.*, No. 19-0251 (Wash. Off. of the Ins. Comm'r Nov. 13, 2020)); ECF No. 57 (citing *Kelly v. Aliera Cos.*, No. 20-CV-05038, 2020 U.S. Dist. LEXIS 219472 (W.D. Mo. Nov. 23, 2020) (suit against Aliera and Trinity)); ECF No. 62 (citing *Harris v. Aliera Healthcare, Inc.*, No. 20-CV-492, 2021 U.S. Dist. LEXIS 36194 (E.D. Wis. Feb. 26, 2021) (individual suit against Aliera); ECF No. 74 (citing *LeCann v. Aliera Cos.*, No. 20-CV-2429, 2021 U.S. Dist. LEXIS 115827 (N.D. Ga. June 22, 2021) (putative class suit against Aliera only); *Moeller v. Aliera Cos.*, No. CV 20-22, 2021 U.S. Dist. LEXIS 122532 (D. Mont. June 30, 2021) (individual action).

OVERVIEW OF THE SETTLEMENT

I. The Proposed Settlement Class

The parties' settlement contemplates the certification of a class, for settlement purposes only, defined as follows:

> All individuals who purchased a plan from both Aliera Healthcare, Inc. and Unity Healthshare LLC at any time on or before August 10, 2018.

SA § 1.17; *see id.* § 2.1.

II. Relief for the Settlement Class

The settlement contemplates substantial monetary relief for the Settlement Class, which will substantially contribute to redressing their losses.

First, the settlement requires OneShare to pay a total of $3 million into a Settlement Trust Account by March 31, 2023. *Id.* § 3.1. And meeting that deadline, OneShare has already paid that sum in two installments, in December 2022 and March 2023.

Second, the settlement requires OneShare to assign to the Class all payments from Aliera to which OneShare is entitled and all of its rights to its claims in the *In re The Aliera Companies* bankruptcy litigation. *Id.* § 3.2. OneShare has filed a $3.75 million proof of claim in the Aliera bankruptcy, and OneShare and Named Plaintiffs believe that a substantial portion of that claim will be paid. Any payments or distributions associated with that claim will be placed into the Settlement Trust Account.

Third, the settlement establishes a schedule for another additional payment that OneShare must pay into the Settlement Trust Account. *Id.* § 3.3. The additional payment grows over time so that the longer OneShare takes to pay, the more the Class receives. *Id.* § 3.3.1. Specifically, if the amount is paid off by the end of 2024, the additional amount of $3 million will be paid into the Settlement Trust Account. The amount increases the longer OneShare takes to pay it off, such that an additional $7 million will be due if it is not paid in full by 2031. In other words, the settlement builds in a substantial incentive for early payment. *Id*. Until final payment is made, OneShare is obligated to pay at minimum $400,000 per year. *Id*., § 3.3.2.

Named Plaintiffs and their counsel believe that this payment structure will ensure both that Class members timely receive payments from OneShare and that the Settlement Trust Account will be sufficiently funded to meaningfully compensate Class members. The settlement also provides that any costs, expenses, and attorneys' fees will be paid from the settlement payments described above. *Id.* § 5.5.

III. Scope of Class members' release of claims

In exchange for the benefits provided under the settlement, Plaintiffs and Class members will release certain claims against OneShare. *Id.* §§ 6.1–6.4. The release is tailored to concern only claims that were or could have been brought in this case:

> any and all claims of any nature whatsoever that were brought, or that could have been brought, against the Releasees by the Named Plaintiffs on behalf of the Settlement Class Members relating in any way to their purchase, enrollment, or participation in any Unity or OneShare programs, including but not limited to claims for any and all refunds, benefits, sharing, losses, opportunity losses, damages, attorneys' fees, costs, expenses, costs of other coverage, contribution, indemnification, or any other type of legal or equitable relief; provided, however, that the release will not extend to claims arising out of medical sharing or reimbursement disputes for health care costs incurred in non-Unity OneShare plans after August 10, 2018.

Id. § 1.19. Should the Court grant final approval to the settlement, and after any appeal periods expire, Named Plaintiffs' counsel will move for dismissal of their claims against OneShare in this case, and in the Colorado and Kentucky Lawsuits. *Id.* § 2.2. Notably, Class members remain free to pursue separate claims in the *In re The Aliera Companies* bankruptcy litigation and against individual Aliera insiders.

The release will not extinguish any claims against OneShare other than those that were (or could have been) pleaded based on the facts Named Plaintiffs alleged during the litigation. "[F]ederal district courts properly release[] claims not alleged in the underlying complaint where those claims depended on the same set of facts as the claims that gave rise to the settlement." *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010). The settlement's claims-release is tailored and appropriate.

IV. Attorney's fees and costs; service awards

Named Plaintiffs' counsel have yet to be compensated for litigating this case on behalf of the Settlement Class. Named Plaintiffs' counsel will file a motion at final approval requesting that the Court approve an award of up to 28% of the settlement fund for attorney's fees and their actual litigation costs, both to be paid from the settlement fund. SA § 13.1. Plaintiffs will provide additional detail, consistent with Federal Rule of Civil Procedure 23(h), when they file their formal fee motion. In that motion, Plaintiffs' counsel will more thoroughly describe their efforts during the litigation, their litigation costs, and authority for the reasonableness of the requested payment. Named Plaintiffs also intend to ask the Court to award them service awards of $10,000 each for the time and effort they spent advancing claims for the class. SA § 13.2.

THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT AND DIRECT NOTICE TO THE SETTLEMENT CLASS

District courts assess proposed class action settlements in two phases, commonly referred to as "preliminary approval" and "final approval." At preliminary approval, courts "direct notice [of the proposed settlement] in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). "Preliminary approval of a settlement and notice to the proposed class is appropriate: '[i]f [1] the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to class representatives or segments of the class, and [4] falls within the range of possible approval.'" *Mishra v. Cognizant Tech. Sols. U.S. Corp.*, No. 17-cv-01785, 2020 U.S. Dist. LEXIS 95828, at *22–23 (E.D. Cal. June 1, 2020) (Nunley, J.) (alterations in original) (quoting *Collins v. Cargill Meat Sols. Corp.*, 274 F.R.D. 294, 301 (E.D. Cal. 2011)).

Below, Plaintiffs detail why this motion should be granted and notice sent to the class. In short, the settlement is poised to achieve a positive outcome for Class members harmed by

Defendants. It provides a significant amount of money for compensating people who were led to enroll in illegal, woefully inadequate health-insurance plans by Aliera's false representations. The parties negotiated it in a serious, informed, and noncollusive manner. And it grants no preferential treatment to any particular Class members. The settlement thus falls within the range of possible approval by this Court. Certification of the Class for settlement purposes is appropriate under both Rule 23(a) and Rule 23(b)(3).

I. The proposed settlement merits approval.

"The decision to give notice of a proposed settlement to the class is an important event. It should be based on a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object." Fed. R. Civ. P. 23(e)(1) advisory committee's note to 2018 amendments. When, as here, the settlement was negotiated before certification of a litigation class, the court "employ[s] extra caution and more rigorous scrutiny." *Roes v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1049 (9th Cir. 2019). The court scrutinizes the negotiated settlement not only for explicit collusion, but also for more "subtle signs" that class representatives and their counsel have not benefited at the expense of class members. *Id.*

Rule 23(e)(2) provides a checklist of factors to consider when assessing whether a proposed settlement is fair, reasonable, and adequate. Below, Plaintiffs analyze each factor in turn, bearing in mind the Ninth Circuit's admonition that the "underlying question remains this: Is the settlement fair?" *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018). Here, the settlement is fair, and the Rule 23(e)(2) factors weigh in favor of approving it.

a. Named Plaintiffs and their counsel have adequately represented the class.

The first factor to consider under Rule 23(e)(2)(A) is the adequacy of representation by the class representatives and attorneys. This includes "the nature and amount of discovery" undertaken in the litigation. Fed. R. Civ. P. 23(e)(2)(A) advisory committee's note to 2018 amendments.

Here, the Named Plaintiffs diligently represented the class. They actively aided in investigation of the case by providing documents and information to Plaintiffs' counsel. They actively participated in opposing the motions to dismiss in their various cases and provided substantial declarations in opposition to those motions. They participated in the settlement negotiations and provided input throughout. They have remained in regular contact with Named Plaintiffs' counsel and acted with the best interests of the class in mind. Hamburger Decl. ¶ 27.

Named Plaintiffs' counsel have also adequately represented the class. *Id.* ¶¶ 9-20, 26. They vigorously prosecuted this case, investigating the case before suing, briefing three dispositive motions, engaging in protracted discovery, and reviewing and analyzing tens of thousands of pages of documents. *Id.* They have also spent many hours in the last year in preparing for mediation with the Honorable Thomas B. Griffith, a retired federal court judge, directly negotiating with OneShare's attorneys, and arriving at the final, hard-fought, fully executed Settlement Agreement. *Id.*

Finally, Plaintiffs' counsel have successfully litigated many prior class actions involving consumer protection and contract claims and have brought that experience and knowledge to bear on behalf of the class. Hamburger Decl. ¶¶ 6-8; Varellas Decl. ¶¶ 4, 8; Wasow Decl. ¶¶ 3-4; Myers Decl. ¶¶ 3-4; Prather Decl. ¶¶ 4-7; Mehri Decl. ¶¶ 2-3; Anderson Decl. ¶¶ 3, 5, 9. *See Bailey v. Romanoff Floor Covering, Inc.*, No. 17-CV-00685, 2020 U.S. Dist. LEXIS 125694, at *13 (E.D. Cal. July 15, 2020) (Nunley, J.) (noting that "Class Counsel is experienced in this area of law and believes the terms of the Agreement are fair and reasonable, which further weighs in favor of preliminary approval").

b. The proposed settlement is the product of serious, informed, and noncollusive negotiations.

The second Rule 23(e)(2) factor asks the Court to confirm that the proposed settlement was negotiated at arm's length. Fed. R. Civ. P. 23(e)(2)(B); *see Mishra*, 2020 U.S. Dist. LEXIS 95828, at *22–23. As with the preceding factor, this can be "described as [a] 'procedural' concern[], looking to the conduct of the litigation and of the negotiations leading up to the

proposed settlement." Fed. R. Civ. P. 23(e)(2)(A)–(B) advisory committee's note to 2018 amendments.

There are multiple indicia here of the arm's-length nature of the negotiations. First, the parties did not begin negotiations until after the case had been pending for over a year and a half. Hamburger Decl. ¶ 14. By the time they reached agreement, the parties had engaged in significant motion practice. *Id.* In other words, when the parties entered settlement discussions, they well understood the strengths and weaknesses of their respective positions, counseling in favor of preliminary approval. *See Modica v. Iron Mt. Info. Mgmt. Servs.*, No. 19-CV-00370, 2020 U.S. Dist. LEXIS 150364, at *12 (E.D. Cal. Aug. 18, 2020) (Nunley, J.) (granting preliminary approval when there was "no evidence of collusion between the parties and the Settlement Agreement appear[ed] to have been entered into only after substantial investigation that enabled the parties to make a reasoned and informed decision regarding settlement").

Second, Plaintiffs and OneShare reached their agreement with the assistance of Judge Thomas B. Griffith (Ret.). Hamburger Decl. ¶15. Judge Griffith, who served on the United States Court of Appeals for the D.C. Circuit for fifteen years, facilitated the parties' negotiations. "[T]he involvement of a neutral . . . mediator or facilitator in [the parties'] negotiations may bear on whether they were conducted in a manner that would protect and further the class interests." Fed. R. Civ. P. 23(e)(2)(B) advisory committee's note to 2018 amendments; *accord In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (noting that the presence of a neutral mediator, while not dispositive, is "a factor weighing in favor of a finding of non-collusiveness"). Accordingly, courts regularly note with approval the use of a mediator when granting preliminary approval. *See, e.g.*, *Modica*, 2020 U.S. Dist. LEXIS 150364, at *11–12 (granting preliminary approval after noting that "[t]he Settlement Agreement terms were reached after negotiation and mediation before a neutral mediator").

Moreover, two key potential warning signs for collusion are absent here: the requested attorney's fees will likely be lower than the lodestar generated, and no unclaimed funds will revert to OneShare. Hamburger Decl. ¶ 26; SA § 13.1; *see also, e.g.*, *Bailey*, 2020 U.S. Dist. LEXIS

125694, at *13 (finding no collusion when "the Settlement Agreement [did] not give any improper preferential treatment to Plaintiffs, their counsel, or a particular segment of the settlement class").

In sum, the Court can be confident of the arm's-length nature of the process that resulted in the settlement pending approval before this Court.

c. The quality of relief to the class weighs in favor of approval.

The third factor to be considered is whether "the relief provided for the class is adequate, taking in to account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Under this factor, the relief "to class members is a central concern." Fed. R. Civ. P. 23(e)(2)(C) advisory committee's note to 2018 amendments.

i. The settlement provides strong relief for the class.

Plaintiffs believe the relief delivered here is strong and weighs in favor of settlement approval. Here, there is no "failure to include meaningful monetary relief in a settlement" that could be "a subtle sign that class counsel bargained away something valuable to benefit themselves." *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1126 (9th Cir. 2020).

Thousands of Class members will receive substantial sums from the settlement fund meant to compensate them for harms suffered as a result of Defendants' conduct. The millions of dollars that OneShare must pay, and the possibility of later additions to the settlement fund resulting from OneShare's claims in the bankruptcy litigation, constitute meaningful monetary relief. This negotiated relief readily satisfies the Rule 23 standard of fair, reasonable, and adequate. This settlement will return significant relief to the Class in a heavily contested case with a risk of obtaining no relief for the Class. Under these circumstances, Plaintiffs and their counsel wholeheartedly endorse the negotiated resolution of this action. Hamburger Decl. ¶ 25; Varellas Decl. ¶¶ 9-10; Wasow Decl. ¶ 9; Myers Decl. ¶ 7; Prather Decl. ¶¶ 12-13; Mehri Decl. ¶ 9; Anderson Decl. ¶ 10.

ii. Continued litigation would entail substantial cost, risk, and delay.

Almost all class actions entail high costs, litigation risks, and lengthy durations, supporting the Ninth Circuit's "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (citation omitted). Here, had the parties not settled, the litigation would have been even more costly, risky, and protracted than it already is.

Many obstacles to a successful prosecution existed.

First and foremost, absent this class settlement, Plaintiffs would have needed to achieve success on the merits of their claims. They would have asked the Court to resolve not only the issues raised in the pending motions to dismiss or to compel arbitration, but each of the questions of fact and law detailed in the complaint. *See* 1st Am. Compl., ECF No. 19, ¶ 21. Thorny questions of federal and state insurance regulation, federal and state consumer-protection law, damages calculation, and several other topics would become ripe for the Court's consideration in turn. Plaintiffs believe they could have demonstrated that Defendants sold inherently unfair and deceptive health care plans and failed to provide purchasers with the coverage they believed they would receive. Hamburger Decl. ¶ 19. But Plaintiffs' counsel recognize, based on their experience in similar class actions and on the record in this litigation, that the case faced real challenges. *Id.* Plaintiffs believe they had reasonably strong prospects of overcoming Defendants' arguments and defenses, but there can be little doubt that the foregoing issues presented the possibility that the Class would recover nothing. *Id.*

Moreover, this case's present procedural posture poses significant difficulties. The Court's rulings on the motions to dismiss or to compel arbitration are pending, given the stay in place. If the Court were to deny Defendants' motions, Defendants would likely have taken an interlocutory appeal under Section 16(a) of the Federal Arbitration Act. Then, the parties would have briefed class certification (and possibly a petition for an interlocutory appeal after the Court's certification ruling), summary judgment, motions in limine, a possible decertification motion, and then proceeded to trial. *Id.* ¶ 20. Each stage would have added risk and imposed delay before relief could be provided to the Class. *Id.*

Additionally, as discussed above, Aliera collected the payments made by the Unity members and made all of the decisions relating to whether to pay a Unity member's medical expenses. Further, all of the communications and representations made to Unity members were from Aliera. If this case were litigated, OneShare would likely seek to show Aliera's active role in orchestrating, administering, and taking possession of the Unity members' funds, creating risk that any verdict against OneShare would be compromised. Originally, Aliera was a co-defendant, but its bankruptcy has changed that.

Aliera's bankruptcy would have further complicated the discovery process. Aliera is the holder of many of the documents necessary for Named Plaintiffs to prove their claims. Bankruptcy counsel for Aliera and for the Unsecured Creditors' Committee in the Aliera bankruptcy proceeding have indicated that they would not readily make documents available until a plan is confirmed. *Id.* ¶ 21. Moreover, Aliera's principals have made blanket objections to a subpoena to them directly, citing, inter alia, their Fifth Amendment rights. *Id.* Aliera no longer has any employees so Named Plaintiffs' counsel face the daunting task of deposing former employees with limited access to Aliera documents and fading memories. Discovery in this case promised to be time-consuming and expensive. *Id.*

Absent the class settlement, recovery in this case could not occur for several years. If the Court denies the motion to compel arbitration, there is an automatic appeal. Even if that is successful, Plaintiffs will face another significant challenge in certifying a class in a consumer fraud case, which is never easy, but if successful, there is a good chance of another appeal, this time pursuant to Fed. R. Civ. P. 23(f). Any class trial would only come after all of this is completed. Then, the final judgment may be appealed. At best, class recovery would come by perhaps 2026, and possibly much later, all with slim prospects for any greater recovery than what is embodied in the proposed settlement.

Moreover, a potential verdict in excess of this class settlement might be difficult, if not impossible, to collect. While Plaintiffs in no way opine on OneShare's financial status or suggest that OneShare is currently at acute risk of insolvency, it is reasonable for Plaintiffs to be concerned about the collectability of a large judgment in excess of this class settlement.

Plaintiffs have been prejudiced by the bankruptcies of Aliera and Trinity and any recovery Plaintiffs may obtain against Aliera and Trinity will only come through the bankruptcy proceedings. These bankruptcies have made it far more difficult for Class members to obtain complete relief against all of the Defendants. This class settlement with OneShare makes it much more likely that the Class Members will maximize their recovery and eliminates any possibility that the Class Members would recover nothing.

Each of these considerations favor settlement. The class will receive meaningful relief now—not some relief (or none at all) years down the road.

iii. The settlement agreement provides for an effective distribution of proceeds to the class.

The settlement contemplates an efficient and effective distribution process. Class members will have the opportunity to submit claims that are either (a) the total recorded amount of the monthly payments made to Aliera and Unity during the class period as identified by the Claims Processor; or (b) the total unpaid medical expenses for hospitals or medical providers during the time in which the Class member was enrolled with Aliera and Unity during the class period. *See* SA Ex. 1 at 1.

If a Class member opts to submit a claim for total unpaid medical expenses, she will be required to authorize Plaintiffs' counsel to investigate the claims. *Id.* At no cost to the Class member, if it appears necessary and appropriate, Plaintiffs' counsel or their agent will then represent the Class member in negotiating with the hospital or medical provider to reduce the amount of the debt owed and/or to resolve issues with debt collection related to the medical expenses. *Id.* If the debt has already been paid, the claim amount will be based on the amount the Class member paid. *Id.* To facilitate this process, Class members must agree to cooperate with Plaintiffs' counsel, including by authorizing the release of HIPAA-protected information. *Id.* If Class members decide not to do so, they may still submit claims for the monthly payments they made to Aliera. *Id.*

Plaintiffs' counsel has delineated a series of deadlines for the claims process. All claim amounts for unpaid medical expenses are to be finalized by December 31, 2024. *Id.* If all claims

cannot be paid in full, they will be paid on a pro rata basis after all claims for unpaid medical expenses are finalized. *Id.* at 2. Class counsel will report to the Court on the claims for unpaid medical expenses by no later than January 31, 2025, and will propose a timeline for disbursement of the settlement fund at that time. *Id.*

Plaintiffs' counsel look forward to facilitating the rapid and efficient disbursal of the settlement funds to Class members. *See* SA § 2.2 ("Time is of the essence in this agreement, and the parties will work together so as to confer the benefits of this Settlement on the members of the Settlement Class as quickly as possible."). To that end, the settlement agreement calls for OneShare to not oppose this distribution plan. SA § 9.1.

iv. The terms of the proposed award of attorney's fees, including timing of payment, also support settlement approval.

At this stage, courts "must balance the 'proposed award of attorney's fees' vis-à-vis the 'relief provided for the class.'" *Briseño v. Henderson*, 998 F.3d 1014, 1024 (9th Cir. 2021) (quoting Fed. R. Civ. P. 23(e)(2)(C)(iii)). This inquiry is particularly salient when class cases settle before certification due to the risk that "plaintiffs' counsel may collude with the defendant to strike a quick settlement without devoting substantial resources to the case." *Id.* Three signs of such collusion, the "so-called *Bluetooth* factors," are: (i) fees as a disproportionate distribution of the settlement, (ii) a "kicker" provision reverting unawarded fees to the defendant, and (iii) a clear-sailing agreement under which a defendant agrees not to challenge a fee request. *Id.* at 1023. By contrast, when plaintiffs' counsel have "devot[ed] substantial time and resources to the case," they have "skin in the game, guaranteeing his or her interest in maximizing" class members' settlement recovery. *Id.* at 1025; *see Bluetooth*, 654 F.3d at 947.

Here, as will be fully detailed at the final approval and fee motion stage of the proceedings, the requested attorney's fees are reasonable. The requested fees should not be viewed as inappropriately large, particularly given that over 60,000 Class members are eligible to receive substantial relief from the settlement. Hamburger Decl. ¶ 24; *see In re Google Inc. St. View Elec. Commc'ns. Litig.*, 21 F.4th 1102, 1121 (9th Cir. 2021) ("Certainly, a district court must consider a settlement's benefit to the class in determining appropriate attorneys' fees, and

thus, attorneys' fees are not solely a function of the size of a settlement fund."). Class counsel is not "get[ting] paid simply for working," but rather "for obtaining results." *Id.* (quoting *In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1182 (9th Cir. 2013)).

Furthermore, Plaintiffs' counsel anticipate the ultimate fees will represent a negative multiplier given the amount of time they have devoted to this litigation. *See* Hamburger Decl. ¶ 26. Had the fee amount been litigated rather than negotiated, a multiplier could have been awarded for substantially higher fees. *See Jackson v. Fastenal Co.*, No. 20-CV-00345, 2022 U.S. Dist. LEXIS 190852, at *54 (E.D. Cal. Oct. 18, 2022) (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002)) ("[M]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied."), *vacated on other grounds by Jackson v. Fastenal Co.*, 2023 U.S. Dist. LEXIS 87675 (E.D. Cal. May 18, 2023). By contrast, under the settlement, Plaintiffs' counsel will likely receive lower than their lodestar fees instead of a positive multiplier. Hamburger Decl. ¶ 26. That result counsels in favor of approval. *See Kinney v. Nat'l Express Transit Servs. Corp.*, No. 14-CV-01615, 2018 U.S. Dist. LEXIS 10808, at *11–12 (E.D. Cal. Jan. 22, 2018) (Nunley, J.) ("The fact that the requested fee award results in a 'negative multiplier' supports a finding that the requested percentage of the fund is reasonable and fair.").

Neither of the other two *Bluetooth* factors insinuate collusion. The settlement contains neither a kicker provision nor a clear-sailing agreement. *See* SA § 13.1. The proposed fee award is thus preliminarily appropriate, which Plaintiffs will detail further when they move for attorney's fees, costs, and service payments.

v. The parties have no other agreements pertaining to the settlement.

The Court also must evaluate any agreement made in connection with the proposed settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, the settlement agreement before the Court is the only extant agreement. Hamburger Decl. ¶ 23.

vi. The settlement treats all settlement class members equitably, giving preferential treatment to none.

The final Rule 23(e)(2) factor is whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D); *see also Mishra*, 2020 U.S. Dist. LEXIS 95828, at *23. "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e)(2)(D) advisory committee's note to 2018 amendments. The plan "need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Andrews v. Plains All Am. Pipeline, L.P.*, No. 2:15-cv-04113, 2022 U.S. Dist. LEXIS 172158, at *13 (C.D. Cal. Sept. 20, 2022) (quoting *Jenson v. First Tr. Corp.*, No. CV 05-3124, 2008 WL 11338161, at *9 (C.D. Cal. June 9, 2008)).

Here, the settlement is reasonable, rational, and treats all members of the Class the same. *See* SA §§ 1.17, 2.2.1, 15.3; Ex. 1 at 2. The claims release is identical for all class members. *See* SA §§ 6.1–6.4. The distribution plan permits all Class members the same choice of whether to submit claims for unpaid medical expenses or for monthly payments they made. SA Ex. 1 at 1. The distribution plan also contemplates that the funds obtained as a result of the settlement are insufficient to pay all claims in full, they will be paid on a pro rata basis without differentiating between Class members. *Id.* at 2. "Distribution methods such as these are regularly approved as fair and reasonable." *Gutierrez v. Amplify Energy Corp.*, No. 21-CV-01628, 2023 U.S. Dist. LEXIS 72838, at *16–17 (C.D. Cal. Apr. 24, 2023) (collecting cases); *see also, e.g.*, *Erguera v. CMG Cit Acquisition, LLC*, No. 1:20-cv-01744, 2022 U.S. Dist. LEXIS 203340, at *31 (E.D. Cal. Nov. 8, 2022) (granting preliminary approval when the settlement provided for pro rata distribution to class members). Therefore, the Court can readily conclude that the settlement treats all Class members equitably relative to each other.

Finally, though the named Plaintiffs will receive additional money in the form of service awards, the extra payments recognize the service they performed on behalf of the Class. They located and submitted documents to counsel, provided declarations, repeatedly spoke with

counsel during the investigation and settlement phase of the case, and generally acted in the Class's best interests. Service awards for this work are "fairly typical" in class action cases. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). Therefore, Plaintiffs' counsel ask the Court to preliminarily approve these service awards. *See* SA § 13.2 (preserving the Court's supervisory authority to determine the appropriateness of any service awards).

For all these reasons, the proposed settlement merits preliminary approval.

II. Certification of the proposed settlement Class is appropriate.

The second prerequisite for directing notice of the settlement to the class is a determination that the class is likely to meet the requirements for certification for settlement purposes. Fed. R. Civ. P. 23(e)(1)(B)(ii). Certification requires that all four elements of Rule 23(a) and at least one prong under Rule 23(b) be satisfied. In addition, the Court must assure itself that the proposed forms of notice to the class are the "best notice that is practicable under the circumstances." *Id.* (c)(2)(B).

The criteria for class certification are applied differently in litigation classes and settlement classes. *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (en banc). For example, when deciding to certify a settlement class, "manageability is not a concern" because the settlement will eliminate the need for a trial. *Id.* at 556–57. On the other hand, other aspects of certification require "heightened attention." *Id.* at 557. "[T]he aspects of Rule 23(a) and (b) that are important to certifying a settlement class are 'those designed to protect absent[] [class members] by blocking unwarranted or overbroad class definitions.'" *Id.* at 558 (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997)). "The focus is 'on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives.'" *Id.* (quoting *Amchem*, 521 U.S. at 621).

Here, the Settlement Class is composed of "[a]ll individuals who purchased a program from both Aliera Healthcare, Inc. and Unity Healthshare LLC at any time on or before August 10, 2018." SA § 1.17. Contemporaneous with this Motion, Named Plaintiffs are filing a motion to amend the complaint, which will incorporate this Class definition. *Id.* § 2.2.1.

The Settlement Class is narrower than the class proposed in the Complaint, because it covers only those members who had purchased a plan while Aliera was selling Unity plans, i.e., on or before August 10, 2018, but is broader in that it includes a nationwide class of purchasers of the Aliera/Unity plans rather than only California purchasers. (ECF No. 19, ¶ 19.) The Settlement Class definition is neither unwarranted nor overbroad. It is not unwarranted because litigation involving similar issues and the same Defendants is ongoing in other courts, and the settlement will resolve claims against OneShare in those actions and nationwide on terms as favorable for consumers outside of California as those in California. Counsel for those Named Plaintiffs in the Colorado and Kentucky Lawsuits are either already counsel in this lawsuit or are seeking their pro hac vice admission here as signatories to this motion, ensuring that this settlement appropriately reflects those cases' class members' interests. A nationwide settlement Class is appropriate because the claims brought in this case, and in the Colorado and Kentucky Lawsuits, are of the same nature as those which could have asserted and with similar possible relief obtainable.

Additionally, the settlement Class is not overbroad because it narrows the scope of the Class to persons who purchased programs from Aliera and Unity only, not Aliera and Trinity, and shortens the date range of program purchases included in the Class. The Settlement Class appropriately encompasses a "cohesive group of individuals [who] suffered the same harm in the same way because of [OneShare's] alleged conduct" and does not extend beyond that limit. *Hyundai & Kia*, 926 F.3d at 559. And no conflicts of interest exist between the Settlement Class's members. *See Hesse*, 598 F.3d at 589.

Moreover, any potential Class member who was not already on notice of this litigation will, like all Class members, be able to opt out of or object to the settlement. SA § 2.2.2. The settlement therefore respects the due-process rights of Class members who were not previously included in the proposed classes in this case, or the Colorado or Kentucky Lawsuits. *See Hyundai & Kia*, 926 F.3d at 564–66; *Hesse*, 598 F.3d at 588–89. The settlement further protects those Class members by providing them relief when the applicable statutes of limitations might preclude them from seeking relief through new, independent lawsuits. That

is particularly so when considering claims under the laws of states not covered in this case, or the Colorado or Kentucky Lawsuits. The settlement provides for tolling the various applicable statutes of limitations, providing these (and all) Class members with relief and thereby safeguarding their interests.

There is thus no risk that this settlement unduly expands the scope of the class, and the proposed class definition should be deemed a satisfactory delineation of the contours of the settlement class. It is appropriate given the scope of the litigation in this District and in others. For the reasons below, the proposed settlement Class satisfies the requirements of Rule 23(a) and (b)(3).

a. The settlement class satisfies the requirements of Rule 23(a).

i. The class members are too numerous to be joined in one action.

The first Rule 23(a) requirement is that the proposed class be so numerous that joinder of all members is impracticable. See Fed. R. Civ. P. 23(a)(1). Classes of more than 40 members are presumed to meet this requirement. *Cruz v. MM 879, Inc.*, 329 F.R.D. 639, 644 (E.D. Cal. 2019) (Nunley, J.). Here, the parties estimate that the Class consists of over 60,000 members. Hamburger Decl. ¶ 24. The numerosity requirement is therefore satisfied.

ii. The action involves common questions of law or fact.

Under Rule 23(a)(2), there must be "questions of law or fact common to the class," meaning the class's claims "must depend upon a common contention" such that "determination of [their] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). This case poses several overarching questions common to Class members, including whether the Unity healthcare products that were sold to class members met the legal requirements of an HCSM under 26 U.S.C. § 5000A; Defendants' health care plans satisfied the requirements of federal law; whether Class members are entitled to rescission of the plans, refunds, and/or reformation of the plans to comply with federal law; and whether Defendants owed a fiduciary duty to Class members and breached it. (*See* Proposed SAC, ¶ 38). For settlement purposes, the commonality requirement is thus satisfied; the "circumstances of each

particular class member . . . retain a common core of factual or legal issues with the rest of the class." *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (quoting *Parra v. Bashas', Inc.*, 536 F.3d 975, 978–79 (9th Cir. 2008)).

iii. Plaintiffs' claims are typical of the class.

Rule 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." "[T]he typicality requirement is 'permissive' and requires only that the representative's claims are 'reasonably co-extensive with those of absent class members; they need not be substantially identical.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). Plaintiffs have alleged the same or highly similar claims as those that any other Class members could pursue, arising from conduct that was uniform across the United States. This common course of conduct gives rise to the same reasonably co-extensive claims for all class members for settlement purposes.

iv. Plaintiffs and their counsel have, and will continue to, fairly and adequately protect the interests of the class.

The final Rule 23(a) requirement demands that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This adequacy requirement involves two questions: "(a) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1007 (9th Cir. 2018) (quoting *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000)). Here, neither Named Plaintiffs nor their counsel have any conflicts of interest with absent class members. To the contrary, their interests are aligned. Named Plaintiffs purchased health care plans from Defendants, just like every other Class member, and share those Class members' interest in recouping the costs they incurred in subscribing to those allegedly defective plans. *See* Hamburger Decl. ¶ 27.

Named Plaintiffs and their counsel have also demonstrated their commitment to the class over the last three years. Since filing suit, counsel have spent hundreds of hours

prosecuting the case. *Id.* ¶ 26. The case has been hard-fought, with several dispositive motions. *See supra* Section II ("Procedural Background"). Plaintiffs' counsel also spent considerable time negotiating this settlement agreement over the last year. *Id.* Plaintiffs' counsel are well-versed in complex class litigation and devoted substantial time and expertise to the benefit of the Class. Hamburger Decl. ¶¶ 6-8. There is no reason to doubt the adequacy of this representation.

b. The Settlement Class meets the requirements of Rule 23(b)(3).

"In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3)." *Hanlon*, 150 F.3d at 1022. Here, the settlement class is maintainable under Rule 23(b)(3), as common questions predominate over any questions affecting only individual members, and class resolution is superior to other available methods of adjudication. *See id.*

Whether "a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is informed by whether certification is for litigation or settlement." *In re Hyundai & Kia*, 926 F.3d at 558. A key aspect of assessing predominance of common questions in a settlement class is that "a district court need not inquire whether the case, if tried, would present intractable management problems." *Amchem*, 521 U.S. at 620. That is the case here. And even though a nationwide class might present certain management problems—though by no means intractable—Class counsel and their settlement administrator anticipate no significant problems in carrying out the settlement's terms.

Likewise, the arbitration clauses discussed in the pending motions to dismiss and to compel arbitration are no barrier to preliminary approval of the settlement. Courts certify settlement classes even when arbitration clauses may have posed a hurdle to certification in ordinary litigation. *See, e.g.*, *Ontiveros v. Zamora*, 303 F.R.D. 356, 370 (E.D. Cal. 2014) (granting settlement approval when a ruling compelling arbitration "could have impaired plaintiffs' ability to proceed as a class"). This Court can act similarly.

As alleged, the merits of Class members' claims would uniformly depend on issues concerning OneShare's conduct. It is better to resolve all settlement Class members' claims

through a single nationwide class action as opposed to a series of individual or class lawsuits. "From either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources, and no greater prospect for recovery." *Hanlon*, 150 F.3d at 1023. The class action's superiority is even more pronounced here because "[t]he individual damages of each [Class member] are too small to make litigation cost effective in a case against funded defenses and with a likely need for expert testimony." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1123 (9th Cir. 2017). Moreover, the costs of administering multiple class action lawsuits would consume a greater percentage of the amount of funds available to pay the class members and would be inefficient. Finally, this settlement recognizes the reality that OneShare, too, might end up in bankruptcy if it incurs legal expenses and suffers judgments in multiple jurisdictions.

The fact that the settlement would release claims "that could have been brought" but were not is neither unusual nor an obstacle to approval. "Only rarely will a class assert every possible claim that might offer relief," and "[a]s a general rule, a court need not assess the importance of every claim a class might make before holding that a class satisfies Rule 23(b)(3)'s predominance requirement." *Jabbari v. Farmer*, 965 F.3d 1001, 1008 (9th Cir. 2020). Class counsel know of no claims not brought that would have materially affected the strength of the case or the relief available.

c. The settlement provides the best method of notice practicable.

Before approving a class settlement, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). When the settlement class is certified under Rule 23(b)(3), the notice must also be the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Id.* (c)(2)(B).

Rule 23 "recognize[s] contemporary methods of giving notice to class members," no longer requiring notice "by first class mail." Fed. R. Civ. P. 23(c)(2) advisory committee's note to 2018 amendments. The rule recognizes that "electronic methods of notice, for example

email, [will sometimes be] the most promising" method for delivery of notice—depending on the makeup of the class and whether class members are likely to have email access. *Id.*

Here, the settlement contemplates an efficient and effective notice process. It calls for notice to be provided in a form agreed upon by the parties and approved by the Court, with the costs of notice covered by the settlement fund as approved by the Court. SA §§ 2.2.2–2.2.3. Plaintiffs' counsel or BMC will create a website to facilitate notice and claim submission that contains a description and summary of the case, the Class definition and distribution plan, a schedule of events including deadlines for submitting claims and objecting, Plaintiffs' counsel's contact information, and settlement and litigation documents. *Id.* § 2.2.3.2. They will update the website as additional information, like applications for attorneys' fees and motions for final approval, becomes available. *Id.*

Class members will be notified of the Settlement in the form set forth in Appendix B. The members will have the choice to opt out or to file a proof of claim. They will be instructed to select whether they are making a claim for their monthly premium payments or for their unpaid medical expenses. If they choose to make a claim for monthly premiums, they will be instructed to provide proof of payment of those premiums. If instead they choose to seek payment of unpaid medical expenses, they will be instructed to provide invoices or other claims from medical providers or demands from collection agencies, and to provide a HIPAA release allowing Plaintiffs' counsel or their agents to contact the medical providers to negotiate down the amount of the medical claims.

THE COURT SHOULD SET A SCHEDULE FOR FINAL APPROVAL

Once the Court directs notice of the settlement to the class, the next step in the settlement approval process will be to schedule a final approval hearing, allowing time for notice to be sent to the class and an opportunity for class members to submit objections and opt-out requests.

Accordingly, Plaintiffs propose the following schedule:

Deadline for disseminating class notice	30 days after entry of order preliminarily approving Settlement and Certifying Settlement Class ("Order")
Deadline for Class Members to opt out or submit claims	120 days after entry of Order
Plaintiffs to file a motion for final approval, attorneys' costs and fees, and service awards	150 days after entry of Order
Replies in support of final approval and fee application	___ days after entry of Order
Final approval hearing	___ days after entry of Order

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter the accompanying proposed order directing notice of the proposed settlement to the class, certifying the Settlement Class, appointing Class Counsel, and setting a hearing to decide whether to grant final approval of the settlement.

Dated: May 25, 2023

/s/ Nina Wasow

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AGREEMENT TO SETTLE CLAIMS

Duncan v. The Aliera Companies, Inc., et. al,
No. 2:20-cv-00876-TLN-KJN U.S. District Court, Eastern District of California

Albina v. The Aliera Companies, Inc., et. al,
No. 5:20-cv-00496-DCR, U.S. District Court, Eastern District of Kentucky

Smith v. The Aliera Companies, Inc., et. al,
1:20-cv02130-RBJ, U.S. District Court, District of Colorado

This Agreement to Settle Claims ("Agreement") is between plaintiffs Corlyn Duncan, Bruce Duncan, Hanna Albina, Austin Willard, Rebecca Smith, Ellen Larson, Jaime Beard, Jared Beard ("Named Plaintiffs"), the "Settlement Class" (as defined in Section 1.17), and defendants OneShare Health, LLC formerly known as Unity HealthShare, LLC and Kingdom HealthShare Ministries, LLC (collectively, "Defendants"). Named Plaintiffs and Defendants are referred to collectively as the "Parties." This Agreement is a full expression of the agreements between the Parties.

RECITALS

This Agreement is made with reference to the following facts:

1. In December of 2015 Aliera Companies, Inc. ("Aliera") was incorporated to sell direct primary care medical plans. In 2016, Aliera approached the parent ministry of Unity Healthshare, LLC ("Unity"), proposing that it expand its sharing plan offerings by allowing Aliera to market its own products alongside the Unity program and act as the administrator of both the Aliera products and the Unity programs.

2. Aliera and Unity's parent ministry entered into a Memorandum of Understanding on October 31, 2016 that was reduced to a contract on February 1, 2017. Pursuant to the agreement, Aliera received an exclusive license to sell and administer Unity sharing programs. It permitted Aliera, as administrator, to receive all payments directly from the Unity members. As administrator, Aliera was responsible for making sharing determinations under the Unity program consistent with the member sharing guidelines. Shortly after the Memorandum of Understanding was signed, Aliera began offering and administering the Unity program.

3. In 2018, after developing concerns regarding the accounting for and segregation of Unity funds held by Aliera, Unity discovered that an Aliera insider had written himself about $150,000 in checks from Unity funds without approval. Unity voiced its concerns about how Aliera was maintaining Unity's bank accounts used to administer Unity and pay sharing requests of members. In July 2018, Unity demanded that Aliera turn over to it the control of Unity's funds. Unity terminated the relationship with Aliera on August 10, 2018. Prior to Unity's termination of the agreement, Aliera had formed a new entity, Trinity HealthShare, Inc. ("Trinity").

After Unity's termination of the agreement, Aliera represented Trinity as an HCSM and continued to do business. Aliera sought to move Unity members over to Trinity, and during this effort, denied Unity access to its website and member database.

4. Aliera sued Unity and Unity's parent ministry in Georgia in late 2018, and Unity counterclaimed. *See Aliera Healthcare v. Unity Healthshare, LLC, et al*., No. 2018CV308981 (Fulton Cnty. Super. Ct.). The Georgia litigation was resolved and the parties entered into a settlement under which Aliera promised to pay OneShare a confidential sum over time.

5. Following the termination of its relationship with Aliera, Unity began administering its own programs, but because Aliera continued to withhold the website and other Unity intellectual property, a name change was necessitated. Initially, Unity became Kingdom HealthShare Ministries, LLC ("Kingdom"), but because of name confusion with another entity with a similar name, Kingdom was almost immediately changed to OneShare Health, LLC ("OneShare"). On July 1, 2019, the healthshare program became known as OneShare.

6. Subsequently, three putative class action lawsuits were filed against Aliera, Trinity, and OneShare. The actions, brought in the United States District Courts for the Eastern District of California, Eastern District of Kentucky, and District of Colorado, alleged, *inter alia*, that Aliera, Trinity, and Unity marketed and sold illegal health insurance plans and failed to provide consumers with the coverage promised under the plans. The claims against OneShare were limited to programs that were sold to Unity members while Unity was associated with Aliera, from November 1, 2016, to August 10, 2018. Litigation commenced in all three actions. OneShare does not agree with the allegations in these lawsuits and maintains that it has never operated as an illegal health insurance plan or failed to provide the services promised to its members. Plaintiffs take the opposite view.

7. Trinity filed for bankruptcy on July 7, 2021. An involuntary bankruptcy petition was filed against Aliera on December 3, 2021. Both cases are pending in the United States Bankruptcy Court for the District of Delaware. As a result of the bankruptcies, the class actions were stayed.

8. When Aliera entered bankruptcy, it had not completed the payments pursuant to its settlement agreement to OneShare. OneShare has filed a claim against the Aliera estate in bankruptcy court for $3.75 million representing amounts unpaid under the Aliera settlement agreement.

9. In April 2022, the Named Plaintiffs and Defendants agreed to mediate their dispute before the Honorable Thomas B. Griffith who had recently retired from the United States Court of Appeals for the District of Columbia. Negotiations proceeded over the next eight months until, on December 16, 2022, the Parties executed a binding Term Sheet.

10. Pursuant to the Term Sheet, the Parties now enter into this Agreement to resolve all Settlement Class Released Claims by and between Defendants, Named Plaintiffs, and the proposed Settlement Class Members.

AGREEMENT

1. Definitions.

1.1 "Actions" shall mean *Duncan v. OneShare Health, LLC, et. al*, No. 2:20-cv-00876-TLN-KJN, U.S. District Court, Eastern District of California; *Albina et al., v. OneShare Health, LLC, et. al*, No. 5:20-cv-00496-DCR, U.S. District Court, Eastern District of Kentucky; and *Smith et al., v. OneShare Health, LLC, et. al*, 1:20-cv-02130-RBJ, U.S. District Court, District of Colorado, which is currently pending in the Tenth Circuit as Case Nos. 21-1185, 21-1186, and 21-1187.

1.2 "*Agreement Execution Date*" shall mean: the date on which the last signatory has signed this Agreement.

1.3 "*Aliera Bankruptcy*" shall mean *In re The Aliera Companies Inc*., Case No. 21-11548-JTD, in the United States Bankruptcy Court for the District of Delaware.

1.4 "*Case Contribution Award"* shall mean: any monetary amount awarded by the Court in recognition of the Named Plaintiffs' assistance in the prosecution of this Action and payable pursuant to Section 13.2.

1.5 "*Claims Processor*" shall mean: an independent claims processing entity selected by Plaintiffs' counsel and approved by the Court.

1.6 "*Class Counsel*" shall mean: Feinberg, Jackson, Worthman & Wasow, LLP, Sirianni Youtz Spoonemore Hamburger PLLC, Garner & Prather, PLLC, Handley, Farah & Anderson PLLC, Mehri & Skalet PLLC, Myers & Company, PLLC, and Varellas & Varellas.

1.7 "*Court*" shall mean the court in the action captioned *Duncan v. OneShare Health, LLC, et. al*, No. 2:20-cv-00876-TLN-KJN U.S. District Court, Eastern District of California.

1.8 "*Defendants*" shall mean: OneShare Health, LLC, formerly known as Unity HealthShare, LLC, and Kingdom HealthShare Ministries, LLC.

1.9 "*Distribution Plan*" shall mean: the process, formulas, and/or methods employed to calculate and distribute each Settlement Class Member's share of the Settlement Fund.

1.10 "*Effective Date*" shall mean: the date on which all of the conditions to settlement set forth in Section 2 have been fully satisfied or waived.

1.11 "*Final*" shall mean: The Settlement contemplated under this Agreement shall become "Final" thirty (30) days after any and all appeals periods applicable to the Action have expired and no other proceeding for review of the Action has been initiated.

1.12 "*Named Plaintiffs*" shall mean: Corlyn Duncan, Bruce Duncan, Hanna Albina, Austin Willard, Rebecca Smith, Ellen Larson, Jaime Beard, and Jared Beard.

1.13 "*Parties*" shall mean: Named Plaintiffs and Defendants.

1.14 *"Releasees"* shall mean: Defendants and each of their affiliates, subsidiaries, parents, fiduciaries, trustees, recordkeepers, partners, attorneys, administrators, representatives, agents, directors, officers, employees, insurers, reinsurers, predecessors, actuaries, vendors, service providers, agents, assigns, and the successors-in-interest of each. No other defendant, person or entity not specifically included in this definition is a Releasee.

1.15 "*Settlement*" shall mean: the settlement to be consummated under this Agreement.

1.16 "*Settlement Amount*" or "*Settlement Fund*" shall mean: the sum of all payments set forth in Section 3.

1.17 "*Settlement Class Members*" or "*Settlement Class*" shall mean: All individuals who purchased a program from both Aliera Healthcare, Inc. and Unity Healthshare LLC at any time on or before August 10, 2018. The parties may modify this class definition by mutual agreement at any time prior to preliminary court approval. After preliminary approval, the parties may only modify the class definition upon mutual agreement and approval of the court.

1.18 "*Settlement Class Period*" shall mean October 31, 2016 to August 11, 2018.

1.19 *"Settlement Class Released Claims*" shall mean: any and all claims of any nature whatsoever that were brought, or that could have been brought, against the Releasees by the Named Plaintiffs on behalf of the Settlement Class Members relating in any way to their purchase, enrollment, or participation in any Unity or OneShare programs, including but not limited to claims for any and all refunds, benefits, sharing, losses, opportunity losses, damages, attorneys' fees, costs, expenses, costs of other coverage, contribution, indemnification, or any other type of legal or equitable relief; provided, however, that the release will not extend to claims arising out of medical sharing or reimbursement disputes for health care costs incurred in non-Unity OneShare plans after August 10, 2018.

1.20 "*Settlement Trust Account*" shall refer to a trust account established by Class counsel at Washington Trust Bank under Account Number 2301462228.

1.21 "*Taxes*" shall mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax, and additional amounts imposed with respect thereto) imposed by any governmental authority.

2. Conditions to Effectiveness of the Settlement.

2.1 *General*. The Settlement provided for in this Agreement shall become effective when each and every one of the following conditions in Sections 2.2 and 2.3 have been satisfied or waived.

2.2 *Court Approval*. The Settlement contemplated under this Agreement shall be presented for approval by the Court as provided herein. The Parties agree jointly to recommend to the Court that it approve the terms of the Agreement and the Settlement contemplated hereunder. The Parties shall work together in good faith to secure approval of the proposed Settlement Class and approval of the Settlement. The Parties agree to seek a stay of the *Albina* and *Smith* actions referenced in Section 1.1 pending approval of the class settlement in *Duncan*, and upon final approval of the class settlement, to stipulate to a voluntary dismissal with prejudice of all of the Actions. Time is of the essence in this agreement, and the parties will work together so as to confer the benefits of this Settlement on the members of the Settlement Class as quickly as possible. Specifically, the Parties agree to promptly take all steps and efforts contemplated by the Agreement, including facilitating or completing the following:

2.2.1 *Certification of Settlement Class*. The Court shall have certified the Settlement Class for settlement purposes only. Class Counsel shall make a motion for certification of the Settlement Class under Federal Rule of Civil Procedure 23(b)(3), and if deemed necessary by Class Counsel, a motion to file a second amended complaint as part of the motions to approve this Agreement. The second amended complaint will not include new factual allegations or claims unless agreed upon by the Parties, but may assert a nationwide class to make the pleadings consistent with the Settlement Class. In agreeing to the certification of this Settlement Class for settlement purposes and/or amendment of the complaint, Defendants do not admit that the Named Plaintiffs could have met the requirements for class certification for this particular class under Rule 23 in the normal course of the litigation.

2.2.2 *Motion for Preliminary Approval and Notices*. The Court shall have preliminarily approved the Agreement ("Preliminary Approval Order") and authorized the issuance of notice ("Settlement Class Notice"). The Class Notice shall be in a form agreed upon by the Parties. In the event that the Parties do not agree upon the form of a Class Notice, they will meet and confer to attempt to resolve the dispute. If they are unable to resolve the dispute after the conference, then the Court will decide the content of the Notice. Class Counsel shall make a motion for preliminary approval, authorization to send the Settlement Class Notice, and for approval of and continuing jurisdiction over the proposed settlement claims process

("Preliminary Motion"). Defendants will not oppose these motions, but are not required to join the motions for preliminary or final approval including as they relate to the Rule 23 factors or take any action that may prejudice their position on class certification or the merits of Plaintiffs' claims should the Court deny preliminary or final approval of the Class Settlement. The order for preliminary approval shall be in a form agreed upon by the Parties. In the event that the Parties do not agree upon the form of the order for preliminary approval, they will meet and confer to attempt to resolve the dispute. If they are unable to resolve the dispute after the conference, the Parties may submit competing forms of the order to the Court. The Court must approve the form of the Settlement Class Notice and conclude that the notice to be sent fairly and adequately describes the terms of the Agreement, including the proposed Distribution Plan and the estimated attorneys' fees and litigation costs to be sought by Class Counsel. The Settlement Class Notice must also establish a deadline for Class Counsel to move for payment of attorney fees and litigation costs, give notice of the time and place of the hearing for final approval of the Settlement, and describe how a Settlement Class Member may opt out, comment on, object to, or support the Settlement.

2.2.3 *Issuance of Settlement Class Notice*. By the date and in the manner set by the Court in its Preliminary Approval Order, the Court-approved notice must be delivered to the Settlement Class Members. Costs of notice may be paid from the Settlement Fund if so ordered and approved by the Court, or advanced by Class Counsel to be reimbursed, after notice and approval by the Court, from the Settlement Fund. All costs associated with providing Settlement Class Notice shall be paid from the Settlement Fund.

2.2.3.1 The Settlement Class Notice is to be issued to Settlement Class Notice Recipients in the form and manner required by the Court.

2.2.3.2 Class Counsel or the Claims Processor shall create a webpage that contains at least the following material:

a. A description of the Action, including a summary of the litigation as agreed upon by the Parties.

b. The Settlement Class definition and proposed distribution plan;

c. A timeline and schedule of events, including deadlines for submitting claims, and objecting.

d. How to contact Class Counsel for additional information;

e. Settlement documents, or links to documents, including:

i. Settlement Class Notice;

ii. motions for preliminary approval; and

iii. all court orders on preliminary approval.

f. Litigation documents, or links to documents, including:

i. Plaintiffs' complaints; and

ii. Defendants' answers.

g. Updates. The webpage shall be updated as the following become available:

i. Class Counsel's application(s) for attorney fees, costs and Case Contribution Award (with all supporting materials); and

ii. Motion(s) for Final Approval of the settlement (including any objections and Class Counsel's response to those objections).

h. The form and contents of the webpage shall be agreed upon by the Parties. In the event that the Parties do not agree upon the form and contents of the webpage, they will meet and confer to attempt to resolve the dispute. If they are unable to resolve the dispute after the conference, then the Court will decide the form and content of the webpage.

2.2.4 *Fairness Hearing*. On the date set by the Court in its Preliminary Approval Order, the Parties shall participate in a hearing ("Fairness Hearing") during or after which the Court will determine by order (the "Final Order") whether: (i) the proposed Settlement between the Parties is fair, reasonable, and adequate and should be approved by the Court; (ii) final judgment should be entered ("Judgment"); (iii) the requirements of Rule 23 and due process have been satisfied in connection with the distribution of the Settlement Class Notice; (iv) to approve the payment of attorney fees and costs to Class Counsel and a Case Contribution Award as set forth herein, pursuant to Sections 13.1 and 13.2; and (v) that notice to the appropriate state and federal officials has been provided as required by CAFA through the mailing of the CAFA Notice and that Defendants have

satisfied their obligations pursuant to 28 U.S.C. § 1715. The Parties covenant and agree that they will reasonably cooperate with one another in obtaining an acceptable Final Order at the Fairness Hearing which contains the terms described herein and will not do anything inconsistent with obtaining such a Final Order.

2.2.5 *Motions for Final Approval*. On or before the date set by the Court in its Preliminary Approval Order, Named Plaintiffs shall have filed a motion ("Final Approval Motion") for a Final Order which contains the terms described herein. The Parties shall confer on the terms of the Final Order that Named Plaintiffs will propose to the Court.

2.3 *No Termination*. The Settlement shall not have terminated pursuant to Section 11.

3. ***Payments.*** OneShare shall make the following payments:

3.1 *Initial $3 Million Payment (split into two payments of $1.5 million)*. In December 2022, OneShare paid $1.5 million into the Settlement Trust Account. OneShare shall make another $1.5 million payment into the Settlement Trust Account by March 31, 2023.

3.2 *Assignment of $3.75 Million Aliera Obligation*. OneShare shall assign all amounts due it from Aliera, and all of its rights to its claim in the Aliera Bankruptcy, to the Settlement Class. The assignment shall include the principal sum of $3.75 million, all penalties and interest thereon, plus all rights associated with the obligation, including all rights in the pending Aliera Bankruptcy. Any payments or distributions associated with the claim shall be placed in the Settlement Trust Account.

3.3 *Time Payments*.

3.3.1 *Amount*. OneShare shall, in addition to the payments in 3.1 and 3.2 above, pay into the Settlement Trust Account the following:

3.3.1.1 $3.0 million, if paid in full by December 31, 2024; or

3.3.1.2 $3.3 million, if paid in full by December 31, 2025; or

3.3.1.3 $4.0 million if paid in full by December 31, 2026; or

3.3.1.4 $4.2 million if paid in full by December 31, 2027; or

3.3.1.5 $4.4 million, if paid in full by December 31, 2028; or

3.3.1.6 $4.6 million, if paid in full by December 31, 2029; or

3.3.1.7 $4.8 million, if paid in full by December 31, 2030; or

3.3.1.8 $5.0 million, if paid in full by December 31, 2031; or

3.3.1.9 $7.00 million.

3.3.2 *Timing of Time Payments*. Commencing January 1, 2023, the payments in 3.3.1 shall be made by OneShare into the Settlement Trust Account as follows:

3.3.2.1 Monthly payments of no less than $25,000; plus

3.3.2.2 Any amount exceeding 3.3.2.1 that OneShare elects to make; provided that OneShare must pay a minimum of $400,000 in each calendar year no later than December 31 of that year, until the entire obligation in Section 3 is fulfilled.

3.4 All payments shall be made into the Settlement Trust Account pending any orders pertaining to distribution of such sums. Upon request, OneShare's counsel will be provided with proof that the funds have been placed in the Settlement Trust Account.

3.5 The payments set forth in this Section are all of the payments OneShare is required to make under this Agreement. Any costs, expenses, or attorneys' fees incurred by Class Counsel or the Settlement Class will be paid from the payments made in this Section.

4. ***Default.*** In the event OneShare defaults on any payment required under Section 3, it may cure the default upon bringing its payments current within 60 days of the missed payment. If payments are not brought current within 60 days, Class Counsel may elect to accelerate the entire balance. In the event of a default before the full payment required under Section 3.1 is made, the amount due shall be $10 million minus any sums paid to the date of default. In the event of default after the payment in Section 3.1 is made, the amount due shall be $7 Million, minus payments made to the date of default.

5. ***Cooperation.*** OneShare shall reasonably cooperate with Class Counsel, the former members of Aliera, and the Aliera class(es) in obtaining compensation against Aliera, third parties that assisted Aliera, and Aliera's insiders. OneShare shall use reasonable efforts to disclose all information about class members and Aliera held or controlled by OneShare. OneShare shall provide such other documents and information to Class Counsel as reasonably requested to pursue Aliera and third parties for remedies. OneShare will cooperate and assist in all reasonable respects, but this agreement does not require OneShare to expend an inordinate or unreasonable amount of time or money in doing so. OneShare will provide all non-privileged documents that remain in its possession that were produced or collected in its litigation against Aliera and provide informal interviews and truthful testimony if requested by Class Counsel. The Parties understand that some of the information may require a Court order to release because of OneShare's Settlement Agreement with Aliera, and for any such information, the Parties will jointly seek any needed order.

6. Releases.

6.1 *Releases of the Releasees.* Upon the Effective Date of Settlement, Named Plaintiffs, on their own behalf and, to the full extent permitted by law, on behalf of the Settlement Class Members, absolutely and unconditionally release and forever discharge Releasees from any and all Settlement Class Released Claims that Named Plaintiffs or the Settlement Class have directly, indirectly, derivatively, or in any other capacity ever had or now have whether known or unknown, supported or unsupported.

6.2 Settlement Class Members shall be conclusively deemed to have covenanted not to sue Releasees for any and all Settlement Class Released Claims and shall forever be enjoined and barred from asserting any Settlement Class Released Claims. This in no way applies to any action taken by the Named Plaintiffs or Settlement Class Members to enforce the terms of the Agreement.

6.3 *Defendants' Releases of Named Plaintiffs, the Settlement Class, and Class Counsel.* Upon the Effective Date of Settlement, Defendants, to the full extent permitted by law, absolutely and unconditionally release and forever discharge the Named Plaintiffs, the Settlement Class Members, and Class Counsel from any and all claims based on the institution or prosecution of the Actions.

6.4 Defendants shall be conclusively deemed to have covenanted not to sue Named Plaintiffs, the Settlement Class Members, and Class Counsel for any and all such released claims relating to institution or prosecution of the Action. This in no way applies to any action taken by Defendants to enforce the terms of the Agreement.

7. Representations and Warranties.

7.1 *The Named Plaintiffs.* Named Plaintiffs represent and warrant that they have not assigned or otherwise transferred any interest in any Settlement Class Released Claims against any Releasees, and further covenant that they will not assign or otherwise transfer any interest in such claims.

7.2 *The Parties.* The Parties, and each of them, represent and warrant that they are voluntarily entering into this Agreement as a result of arm's-length negotiations; in executing this Agreement they are relying upon their own judgment, belief and knowledge, and the advice and recommendations of their own counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof. The Parties, and each of them, represent and warrant that they have carefully read the contents of this Agreement; they have made such investigation of the facts pertaining to the Settlement, this Agreement, and all of the matters pertaining thereto as they deem necessary

or appropriate; and this Agreement is signed freely by each person executing this Agreement on behalf of each party. Each individual executing this Agreement on behalf of any other person does hereby represent and warrant to the other parties that he or she has the authority to do so.

8. ***No Admission of Liability.*** The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims, and that nothing herein shall be deemed to constitute an admission of any liability or wrongdoing by any of the Releasees.

9. ***Distribution Plan, Claim Processing, and Report***.

9.1 *Plan Submitted to Court for Approval*. Class Counsel, as part of the motion for preliminary approval, shall propose a Distribution Plan to the Court for its review and approval which shall address the process of distributing the Settlement Fund to Settlement Class Members. OneShare shall not oppose the Distribution Plan unless it is inconsistent with law or manifestly unfair and inequitable to members of the Settlement Class. A distribution plan that is functionally similar to a distribution plan approved in the Sharity Bankruptcy is *per se* reasonable. Class Counsel may modify, amend or change any proposed Distribution Plan to address any concerns or issues expressed by the Court. The Distribution Plan and any changes to such plan shall be posted on the webpage discussed in Section 2.2.3.2 and maintained by Class Counsel or the Claims Administrator, and shall be summarized in the proposed Class Notice.

9.2 *Claims Processor Payment.* The fees and costs incurred by the Claims Processor in fulfilling its duties under this Agreement or the Distribution Plan shall be paid from the Settlement Amount.

9.*3* *Timing.* Distribution of funds to the Settlement Class shall not commence until final approval.

10. ***Effective Date of Settlement.***

10.1 *Effective Date*. This Agreement shall be fully effective and binding on the date on which all of the conditions to settlement set forth in Section 2 have been fully satisfied or expressly waived in writing.

10.2 *Disputes Concerning the Effective Date of Settlement*. If the Parties disagree as to whether each and every condition set forth in Section 2 has been satisfied or waived, they shall promptly confer in good faith and, if unable to resolve their differences within ten (10) business days thereafter, shall present their dispute for mediation and/or arbitration under Section 15.1.

11. Termination of Agreement to Settle Claims Due to Lack of Approval.

11.1 *Court Rejection*. If the Court declines to preliminarily or finally approve the Settlement as written, with the exception of approval of the form of the Settlement Class Notice or Distribution Plan, in whole or in part, then this Agreement shall automatically terminate, and thereupon become null and void. In the event the Court approves a settlement that differs from the terms herein (whether material or immaterial), in whole or in part, or does not afford Defendants a complete release, then either the Defendants or Class Counsel may, in their sole and absolute discretion, terminate this Agreement by delivering a notice of termination to counsel for the opposing party within 15 court days of the Court's final order.

11.2 *Court of Appeals Reversal*. If the Court of Appeals reverses the Court's order approving the Settlement, then, provided that no appeal is then pending from such a ruling, this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the mandate of the Court of Appeals.

11.3 *Supreme Court Reversal*. If the Supreme Court of the United States reverses the Court's order approving the Settlement, then this Agreement shall automatically terminate and thereupon become null and void, on the 31st day after issuance of the Supreme Court's mandate.

11.4 *Pending Appeal*. If an appeal is pending of an order declining to approve the Settlement, this Agreement shall not be terminated until final resolution of dismissal of any such appeal, except by written agreement of the Parties.

12. Consequences of Termination. If the Agreement is terminated and rendered null and void for any reason, then the following shall occur:

12.1 *Reversion of Actions*. The Actions shall revert to their status as of December 15, 2022, and the fact and terms of this Agreement shall not be used in the Actions for any purpose.

12.2 *Releases and Terms Void*. All Releases given or executed pursuant to this Agreement shall be null and void and none of the terms of the Agreement shall be effective or enforceable.

12.3 *Return of Funds*. All funds held in the Settlement Trust Account shall be returned to OneShare, less any amounts paid or advanced as costs of notice pursuant to Section 2.2.3.

13. Attorney Fees, Litigation Expenses, and Case Contribution Awards.

13.1 *Attorney Fees and Litigation Costs*. Subject to review and approval by the Court, Class Counsel shall apply for an award of attorney's fees in an amount not to exceed 28% of the Settlement Amount which shall be paid

from the Settlement Fund. Subject to review and approval by the Court, Class Counsel shall apply for reimbursement of actual costs which shall also be paid from the Settlement Fund.

13.2 *Case Contribution Award*. Subject to review and approval by the Court, each Named Plaintiff shall be paid a Case Contribution Award from the Settlement Fund of $10,000 for a total of $80,000.

14. Joint Communication About Settlement and Non-Disparagement. Attached as *Appendix A* to the Parties' Term Sheet is an agreed joint communication about the settlement. The Parties and counsel will not make public statements about the settlement that are inconsistent with this joint communication and any notice material approved by the Court. The Parties and their representatives including their Counsel will not publicly disparage each other in any way as it relates to this dispute, including in any unsolicited communication with any state or federal government official. Provided, however, that nothing in this Agreement will prevent any party from making any argument in any legal proceeding, including in any brief, oral argument, trial, or appeal, or prevent any attorney from complying with the attorney's duties under any applicable law or rules of professional conduct.

15. Miscellaneous

15.1 *Dispute Resolution*. In the event of any dispute under this Agreement, the Parties will agree to the appointment of a special settlement arbitrator who shall have the power to resolve any disputes under the Agreement except those relating to motions and filings with the Court in connection with obtaining approval of the Settlement, as any disputes directly relating to the court proceedings will be resolved by the Court. If the Parties cannot agree on an arbitrator, then the Court shall appoint one. The arbitrator shall, whenever possible, adjudicate issues on written submissions from the Parties or, if more efficient, by Zoom session(s). The arbitrator shall have the discretion to require the non-prevailing party to pay the costs of the arbitration, taking into account the reasonableness of the party's positions.

15.2 *Governing Law*. This Agreement shall be governed by the laws of State of California without regard to conflict of law principles, unless preempted by federal law.

15.3 *Tolling*. In addition to any tolling provided by law, the statutes of limitation for any claims related to the Unity programs are tolled for the putative class members from the date of the execution of this Agreement until the Court enters its order on Plaintiffs' motion for final approval or any opt-out date, whichever is earliest.

15.4 *Amendment*. Before entry of the Preliminary Approval Order, this Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties. Following entry of the Preliminary Approval

Order, this Agreement may be modified or amended only by written agreement signed on behalf of all Parties and approved by the Court.

15.5 *Waiver*. The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

15.6 *Construction*. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision thereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause the provision to be construed against the drafter thereof.

15.7 *Principles of Interpretation*. The following principles of interpretation apply to this Agreement:

15.7.1 *Headings*. The headings herein are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

15.7.2 *Singular and Plural*. Definitions apply to the singular and plural forms of each term defined.

15.7.3 *References to a Person*. References to a person include references to an entity, and include successors and assigns.

15.8 *Survival*. All representations, warranties, and covenants set forth herein shall be deemed continuing and shall survive the Effective Date of Settlement to the extent necessary to effectuate the terms of this Agreement.

15.9 *Entire Agreement*. This Agreement along with Appendix A of the Term Sheet contain the entire agreement among the Parties relating to this Settlement and supersedes any and all prior verbal and written communications regarding the Settlement provided, however, that the Term Sheet may be referenced to assist in the interpretation of any ambiguities that may exist in this Agreement.

15.10 *Counterparts*. This Agreement may be executed by exchange of executed faxed or PDF signature pages, and any signature transmitted in such a manner shall be deemed an original signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

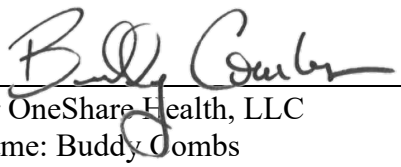
15.11 *Binding Effect*. This Agreement binds and inures to the benefit of the Parties hereto, their assigns, heirs, administrators, executors, and successors-in-

interest, affiliates, benefit plans, predecessors, and transferees, and their past and present shareholders, officers, directors, agents, and employees.

15.12 *Further Assurances.* Each of the Parties agree, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith promptly execute and deliver such other documents and take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement.

15.13 *Tax Advice Not Provided*. No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by counsel involved in the Action to the Settlement Class, nor is any representation or warranty in this regard made by virtue of this Agreement. The Tax obligations of the Settlement Class and the determination thereof are the sole responsibility of each Settlement Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Settlement Class Member.

DATED this 28th day of April, 2023.



for OneShare Health, LLC
Name: Buddy Combs
Title: Chief Legal Officer & General Counsel

Counsel for Plaintiffs in Duncan, Smith,
and Albina Putative Class Actions
Name: Richard E. Spoonemore
SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC

interest, affiliates, benefit plans, predecessors, and transferees, and their past and present shareholders, officers, directors, agents, and employees.

15.12 *Further Assurances.* Each of the Parties agree, without further consideration, and as part of finalizing the Settlement hereunder, that they will in good faith promptly execute and deliver such other documents and take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement.

15.13 *Tax Advice Not Provided.* No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by counsel involved in the Action to the Settlement Class, nor is any representation or warranty in this regard made by virtue of this Agreement. The Tax obligations of the Settlement Class and the determination thereof are the sole responsibility of each Settlement Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Settlement Class Member.

DATED this 27th day of April, 2023.

for OneShare Health, LLC
Name: Buddy Combs
Title: Chief Legal Officer & General Counsel

Counsel for Plaintiffs in Duncan, Smith, and Albina Putative Class Actions
Name: Richard E. Spoonemore
SIRIANNI YOUTZ SPOONEMORE HAMBURGER PLLC

Plaintiffs:

Bruce Duncan

Corlyn Duncan

Ellen Larson

Rebecca White, f/k/a/ Rebecca Smith

Jared Beard

Jamie Beard

Hanna Albina

Austin Willard

Plaintiffs:

Bruce Duncan

Corlyn Duncan

Ellen Larson

Rebecca White, f/k/a/ Rebecca Smith

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Jamie Beard

Hanna Albina

Austin Willard

Plaintiffs:

_____
Bruce Duncan

_____
Corlyn Duncan

_____
Ellen Larson

_____
Rebecca White, f/k/a/ Rebecca Smith

_____
Jared Beard

_____
Jamie Beard

_____
Hanna Albina

_____
Austin Willard

EXHIBIT 1

AGREEMENT TO SETTLE CLAIMS – DISTRIBUTION PLAN

Duncan v. OneShare Health, LLC, et. al,
No. 2:20-cv-00876-TLN-KJN U.S. District Court, Eastern District of California

Albina v. OneShare Health, LLC, et. al,
No. 5:20-cv-00496-DCR, U.S. District Court, Eastern District of Kentucky

Smith v. OneShare Health, LLC, et. al,
1:20-cv02130-RBJ, U.S. District Court, District of Colorado

Pursuant to the Agreement to Settle Claims, ¶¶1.9, 9, the following is the proposed Distribution Plan for the OneShare Settlement Agreement:

Class members will have the opportunity to submit claims that are either (a) the total recorded amount of the monthly payments made to Aliera/Unity during the class period as identified by the Claims Processor; or (b) the total unpaid medical expenses for hospitals or medical providers during the time in which the class member was enrolled with Unity/Aliera during the class period.

Class members who submit claims for unpaid medical expenses must authorize Plaintiffs' counsel or their agent to (1) investigate the claims and, if deemed necessary and appropriate by Plaintiffs' counsel or their agent, to represent the class member to negotiate with the providers/hospitals to reduce the amount of the debt owed and/or to resolve collections efforts against the class member with regard to the unpaid medical expenses; (2) cooperate fully with Plaintiffs' counsel or their agent in their efforts to reduce the amount of the unpaid medical expenses or collections fees and fines, including but not limited to, signing HIPAA-compliant authorizations for release of information; and (3) authorize the Claims Administrator to pay any funds from the case directly to the medical providers/hospitals to whom the unpaid medical expenses are owed, unless the Class member has fully resolved all unpaid medical expenses owed to providers/hospitals during the class period, while the Class member was enrolled in Unity/Aliera. If the Class member has fully resolved the debts to the providers/hospitals, Class members' claim shall be based upon the amount the Class member actually paid to resolve the debts to the providers/hospitals, and Class members may receive compensation based upon that claimed amount directly, rather than to their providers. Class members who do not agree to this process for claims for unpaid medical expenses, or who do not cooperate with this process, may only submit a claim for the total recorded amount of monthly payments made to Aliera/Unity. The amount of each claim for unpaid medical expenses shall be finalized by no later than December 31, 2024.

It is anticipated that the funds obtained as a result of this settlement agreement will not be sufficient to pay all claims in full. If all claims submitted cannot be paid in full, they will be paid on a *pro rata* basis, after all unpaid medical claims are final (December 31, 2024). Class counsel will report to the Court on the claims for unpaid medical expenses by no later than January 31, 2025, and will propose a timeline for disbursement of the settlement fund at that time.

United States Federal District Court
Eastern District of California
Duncan v. The Aliera Companies, et al.
Cause No. 2:20-cv-00867-TLN-KJN

ATTENTION:

Were you enrolled with Unity Healthshare through The Aliera Companies?

If so, this notice provides important information about your rights.

A court authorized this notice. This is not a solicitation from a lawyer.

- Individuals who enrolled in Unity Healthshare through The Aliera Companies filed three separate class action lawsuits against Unity Healthshare, The Aliera Companies, Inc., and Trinity Healthshare, Inc. The individuals who filed the lawsuits are referred to as "Plaintiffs."
- The lawsuits alleged, in part, that Unity Healthshare, Trinity Healthshare and The Aliera Companies sold unauthorized health insurance to their members.
- Trinity Healthshare and The Aliera Companies are now in bankruptcy and their assets will be liquidated. Any recovery for creditors and members of these companies will be addressed in the bankruptcy process.
- The Plaintiffs have reached a settlement agreement with Unity to resolve the claims against the company related to the time that the Unity/Aliera plans were sold (October 31, 2016 to August 11, 2018).
- The Court has preliminarily approved the settlement agreement and certified a settlement class. Your legal rights are affected, and you have a choice to make now:

Your Legal Rights In This Settlement	
You may comment on or object to the proposed Settlement	You have the right to comment on, object to or support the proposed Settlement. The Court will decide whether to approve or reject the proposed Agreement after a Final Hearing currently scheduled for _____ 2023 at ___ a.m./p.m. at the United States Courthouse, 501 I Street, Sacramento, CA 95814, Courtroom 2, 15th Floor. You may submit written comments or objections that you wish to be considered by the Court no later than ____, 2023. You should not call the Court.
You may make a claim	You may submit a claim if you qualify as a Class Member for either: (1) the total paid monthly payments to Unity/Aliera or (2) the unpaid medical expenses incurred while you were enrolled with Unity/Aliera. Claims must be submitted by _____, 2023. A claim form is included with this notice.
You may do nothing	By doing nothing, you get no financial benefit from this lawsuit and you give up any rights to sue OneShare separately about the same legal claims in this lawsuit or other claims that could have been brought.
You may ask to be excluded.	If you ask to be excluded, you will not benefit from this settlement. But you keep any right you may have to sue Unity (now known as OneShare) separately about the same legal claims in this lawsuit.

Questions? Visit www.sylaw.com/Aliera or email Unitysettlement@sylaw.com

FREQUENTLY ASKED QUESTIONS

1. Why did I get this notice?

You received this notice because the records maintained by The Aliera Companies indicate that you were enrolled with Aliera and Unity Healthshare between October 31, 2016 and August 11, 2018. **You are not a Class Member simply because you got this notice.**

This notice explains that the Court has preliminarily approved a settlement in a class action lawsuit that may affect you. Judge Troy L. Nunley of the United States District Court for the Eastern District of California is overseeing this class action. The lawsuit is known as *Duncan et al. v. The Aliera Companies, et al.*, Case No. 2:20-CV-00867-TLN-KJN.

Only individuals who meet the following definition of a Class Member are in the class:

> All individuals who purchased a plan from both Aliera Healthcare, Inc. and Unity Healthshare LLC at any time on or before August 10, 2018.

This definition is intended to include all individuals who may possess a legal right to assert a claim against Aliera or Unity arising out of their participation in an Aliera and Unity plan at any time on or before August 10, 2018.

2. What is a class action, and who is involved?

In a class action lawsuit, individuals called "Named Plaintiffs" or "Class Representatives" sue individuals or entities (called "Defendants") on behalf of themselves and others who may have a similar claim. In a Class Action lawsuit, one Court makes decisions on behalf of everyone in the Class—except for those people who choose to exclude themselves from the Class. Lawyers from five different law firms represent the Class, including Sirianni Youtz Spoonemore Hamburger. Class counsel can be reached at Unitysettlement@sylaw.com.

3. What is this lawsuit about?

In this lawsuit, the Named Plaintiffs claim that Defendants marketed, sold, and administered unauthorized and illegal health insurance and misrepresented the coverage and benefits to be provided pursuant to the health plans sold. Defendants deny those claims and allege that their conduct was lawful.

4. What does the proposed Settlement Agreement Provide?

The main points of the Settlement are described below. You can read the entire Settlement at www.sylaw.com/Unitysettlement. The Settlement is not final until the Court approves the Settlement after the Final Hearing.

- OneShare must pay $3 million into a Settlement Trust Account by March 31, 2023. OneShare

has already done so.

- OneShare must assign to the Class all payments to which it is entitled in the *Aliera* bankruptcy. OneShare has filed a $3.75 million proof of claim, and Plaintiffs expect a portion of that claim will be paid.

- OneShare must make timely additional payments to the Settlement Trust Account. At a minimum, OneShare must pay at least $400,000 per year. If OneShare pays an additional $3 million to the Trust Account by December 31, 2024, it will not be required to make additional payments.

- If OneShare does not complete the $3 million in additional payments by December 31, 2024, the amount OneShare must pay to the Settlement Trust Account increases, the longer it takes to make the payments. If OneShare does not complete its payments until December 31, 2031, the amount it will be required to pay will increase to $7 million. Thus, the Settlement Agreement imposes a financial incentive on OneShare for early payment.

- Class members will release any claims against OneShare that were brought or could have been brought in the lawsuit. Claims against the companies in bankruptcy or the insiders of Aliera are not released.

- Class counsel will seek reimbursement of litigation costs and payment of attorneys fees of up to 28% of the Settlement Fund.

- Named Plaintiffs may be awarded an additional service award of $10,000 each for the time and effort they spent advancing claims for the class.

5. When Will the Funds from the Settlement Trust Account Be Available?

The Court must finally approve the Settlement, and, if any Class Member appeals, a final decision on any appeal(s) must be made before funds are available.

Plaintiffs do not anticipate making payments before December 31, 2024. If OneShare completes its payments to the Settlement Trust Account by that date, Plaintiffs' counsel anticipate that all valid and approved claims can be paid at their *pro rata* amount within 90 days of that date.

If OneShare does not complete its payments by December 31, 2024, Plaintiffs' Counsel will report to the Court as to the proposed timing for payment of claims.

Plaintiffs do not expect that claims will be paid in full. However, the claims in this case will be coordinated with members' claims in the two bankruptcies, which may provide additional compensation for class members. You may receive a separate mailing about the Aliera bankruptcy.

6. What are my rights and options?

- **You May Comment on, Object to, or Support the Proposed Settlement.**

The Court will hold a hearing on the proposed Agreement to consider comments and approve or reject the Agreement.

- The Court currently has scheduled a hearing for _____ at __ a.m./p.m. The hearing will be located at United States Courthouse, 501 I Street, Sacramento, CA 95814, Courtroom 2, 15th Floor.
- The hearing date, time, and location can change without further notice. Please contact Class Counsel if you want to confirm the date and time of the hearing as that date approaches.

All comments on the Agreement must be submitted in advance to the address listed below. You are not required to submit comments or attend the hearing.

You may attend the hearing and may choose to bring a legal representative if you wish and at your own expense. You must tell the Court if you plan to come to the hearing to object to, comment on, or formally support the Agreement by _____.

If you choose to submit written comments or appear at the Court hearing, your letter must be received no later than _____ and must be mailed to:

Duncan v. Aliera Settlement Hearing
United States Courthouse
501 I Street
Sacramento, CA 95814

All communications with the Court must be in writing, and Class Members should not attempt to call the Court.

- **You may ask to be excluded.**

If you want to file your own case against Defendant OneShare, or continue one you already have begun or do not want to participate for any reason, you need to exclude yourself from the Class. If you exclude yourself from the Class you won't get any money from this settlement. However, you may then be able to sue or continue to sue Defendant for claims that were brought or could have been brought in this case. If you start your own lawsuit against Defendant after you exclude yourself, you will have to hire and pay your own lawyer for that lawsuit, and you will have to prove your claims. Before deciding whether to exclude yourself so you can start or continue your own lawsuit against Defendants, you should talk to your own lawyer without delay, because your claims may be subject to a statute of limitations or other restrictions.

- **You may submit a claim.**

IF YOU WANT TO RECEIVE A FINANCIAL BENEFIT FROM THIS SETTLEMENT AGREEMENT, YOU MUST SUBMIT A CLAIM. You can submit a claim for either: (1) the total monthly amounts you paid to Unity/Aliera or (2) the unpaid medical expenses incurred while you were enrolled with Unity/Aliera. Claims must be submitted by _____, 2023. A claim form and claim instructions are included with this notice. If you do not timely submit a claim, you will not receive any financial benefit from this settlement agreement. Submitting a claim does not guarantee that you will receive any financial benefit from this settlement agreement, but if you do submit a claim, it will be evaluated and administered consistent with this Notice.

7. How do I opt out of the Class?

To exclude yourself from this case, you must mail an "Exclusion Request" in the form of a letter stating that you want to be excluded from *Duncan v. Aliera*. Be sure to include your name and address and sign the letter. You must mail your Exclusion Request postmarked by _____, to: *Duncan v. Aliera,* Exclusion Request, (BMC address)_____.

CLAIM FORM INSTRUCTIONS

You must complete and return a claim form if you wish to be reimbursed for a portion of either (1) your total monthly payments to Unity/Aliera or (2) your uncovered out-of-pocket payments or debt owed for medical expenses incurred while you were enrolled with Unity/Aliera, as described under the terms of the Settlement Agreement. You must complete both the front and back of the claim form.

All claims must be *received* by the Claims Administrator by no later than _____, 2023. Any claims received after this date will not be eligible for payment.

A. Front and Back of Claim Form Must Be Completed.

You must provide either:

□ a total of the monthly payments and the dates you were enrolled with Aliera/Unity and proof of such payments and enrollment; or

□ evidence of uncovered medical expenses including (1) the date of service; (2) the name of the provider on that date and each provider's address and phone number, if available; (3) a short description of the service; and (4) the amount paid or debt owed related to the service. You must also include proof of any payments and/or debts owed.

You must also sign the back of the form and certify that the information you have provided is true and correct under penalty of perjury. The form also includes a HIPAA-compliant authorization for release of information so that your claim can be investigated.

B. Documentation.

Proof of medical service dates can be evidenced by clinical notes, an appointment schedule/log created at the time of treatment, invoices seeking payment that include dates of service, paid checks with notations regarding dates of treatment, a signed letter from the provider, or other evidence of similar reliability.

The identity of the medical provider can be evidenced by identification on clinical notes, appointment schedule/logs, invoices, or other documents of similar reliability.

Proof of payment or debt owed may consist of: cancelled checks, credit card account statements, provider ledgers, invoices stamped "paid," checking account statements, signed letters from the provider or provider's employer documenting the amount paid or debt incurred (so long as the letter clearly connects payments or debt with specific dates of service), or other evidence of similar reliability. You must include this additional proof with your Claim Form.

C. All Claims Submitted in One Mailing.

All claims should be submitted in a single mailing. You may obtain additional copies of Claim Forms or make copies of the form yourself. Documents that you submit will not be

returned, so please do not send original documents and you may wish to keep a copy of your submission for your records.

D. Mail Your Claim Form.

Your Claim Form should be mailed to:

BMC Settlement Claims Processing
(Insert address)

You may not submit Claim Forms by telephone, fax, e-mail or other means. If you want verification that your Claim Form was received, then you must mail your Claim Form via registered or certified mail.

Your claim form with attached documentation must be **received** by _____, 2023. Please mail the form with sufficient time for delivery.

E. Investigation.

The Claims Administrator and/or Class Counsel may independently confirm any claim. By submitting a Claim Form you agree that such an investigation may be made. The failure to cooperate may be grounds to deny a claim.

F. Adjudication of Claims.

After you submit your claim, the Claims Processor will process the claim and determine whether and to what extent your claim is valid and approved.

If your claim is denied, in whole or in part, the Claims Processor will provide a letter of explanation. That letter will explain why your claim was denied. You will be given an opportunity to correct any problems. If you disagree with the Claims Processor's determination, then you may follow the steps set forth in the denial letter to appeal.

Once all claims are adjudicated, Class counsel inform the Court as to the final determination of valid and approved claims. No claims will be paid until after December 31, 2024. If all funds have been received from OneShare by December 31, 2024, Class counsel anticipates paying all approved and valid claims on a *pro rata* basis within 90 days thereafter.

Questions?

If you have questions about how to complete this Claim Form, you may contact Class Counsel, Sirianni Youtz Spoonemore Hamburger at (206) 223-0303.

Name: _____
Please print your name

My Claim is based on (check box): □ Total Monthly Payments to Unity/Aliera or □ Uncovered Medical Expenses.

For Monthly Payments: List Dates Enrolled with Unity/Aliera and total payments made: _____.

For Uncovered Medical Expenses, provide the information below:

Date of Service (Required)	**Provider Name** (Required) (and address and phone number, if available)	**Description of Service** (including frequency and duration) (Required)	**Amount You Paid or Owe for the Service** (Required)	**Was this claim previously submitted for coverage?** (Y/N)

For both types of claims, please attach all documents that show that you either (1) paid the claimed monthly payments or (2) received the medical services and incurred a debt for the services identified above. Proof includes itemized statements, cancelled checks, credit card statements, receipts, treatment summaries, etc. **DO NOT SEND ORIGINALS AS THEY WILL NOT BE RETURNED TO YOU. Additional copies of this form can be found at www.sylaw.com/Unitysettlement.**

Name: _____

Address: _____

_____

Phone number: _____

Email address: _____

TIN: _____

I declare that the foregoing is true and correct under penalty of perjury.

Signature: _____

Duncan v. Aliera Settlement – **CERTIFICATION AND HIPAA RELEASE**

I hereby certify that (check one):

□I paid the total monthly payments for Unity/Aliera health plans and was not reimbursed for this cost by any other entity. OR

□I or my dependents incurred out-of-pocket expenses, or debt, for uncovered medical expenses while enrolled with Unity/Aliera as set forth on the claim form on the back of this page and any additional pages I have attached. I further certify that the information provided in this Claim Form is true and correct under penalty of perjury under the laws of the United States.

I also authorize Sirianni Youtz Spoonemore Hamburger, PLLC or its designee ("Attorneys") to investigate my claims and, if deemed necessary and appropriate, to represent me to negotiate with the medical providers identified in my claim to reduce the amount of the debt owed and/or to resolve collections efforts against me with regard to the unpaid medical expenses.

I further authorize each medical provider identified in my claim to discuss my health condition, diagnosis, treatment, health coverage, insurance and billing information and release all records related to such information to Attorneys. I understand that I have the right to revoke this authorization any time by delivering my written revocation to each provider. I understand I may revoke this authorization except to the extent that action has already been taken based on it. Unless otherwise revoked, this authorization expires 180 days from the date of my signature.

I understand that signing this authorization is voluntary. I understand I may inspect or copy the information to be used or disclosed, as provided in 45 CFR §164.524. I understand that any disclosure of information carries with it the potential for an unauthorized re-disclosure after which the information may not be protected by federal confidentiality rules.

I understand my express consent is required to release information relating to testing, diagnosis, and/or treatment for HIV/AIDS, sexually transmitted diseases, behavioral health conditions, including psychotherapy notes, or drug and/or alcohol use or abuse. If the following space is initialed by me, you are specifically authorized to release all such information relating to the claimant:_____.

I agree that photocopies, faxes, or digital copies of this authorization will be as valid as the original. If additional HIPAA authorization forms are required to enable Attorneys to negotiate on my behalf, I agree to complete such forms.

Signature: _____ Date: _____

Type or Print Your Name (required): _____

Current Address: _____
(Street or P.O. Box)

_____
City, State and Zip Code

Daytime/Evening Telephone Numbers: _____ (day) _____ (eve.)

Email Address: _____

If you received this notice in the mail, please write your identification number (from the address label on the envelope) here: _____

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Counsel for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., *et al.*,

Defendant.

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

DECLARATION OF ELEANOR HAMBURGER IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I, Eleanor Hamburger, declare as follows:

1. I am a partner with the law firm of Sirianni Youtz Spoonemore Hamburger ("SYSH"), one of the counsel of record representing Plaintiffs Corlyn and Bruce Duncan in this case.

2. This Declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement and for Settlement Class Certification. I make these statements based on personal knowledge and would so testify if called as a witness.

3. I am one of Plaintiffs' Counsel or Class Counsel in three class action lawsuits (collectively, the "Lawsuits") including this one, arising out of the purported health care sharing ministries and related programs marketed by The Aliera Companies on behalf of Unity Healthshare (now known as OneShare). Those Lawsuits, and their current status (apart from this case), are as follows:

- *Smith et al., v. The Aliera Companies, Inc., Trinity Healthshare Inc, OneShare Health LLC,* No. 1:20-cv-02130-RBJ (J. Jackson, D. Colo.). The amended complaint naming OneShare as a defendant was filed August 18, 2020. Rebecca White, f/k/a Rebecca Smith, Ellen Larson, Jared Beard, and Jaime Beard are plaintiffs in that case and seek to be Named Plaintiffs and class representatives in this action. The District Court denied Defendants' motions to compel arbitration on April 16, 2021, and Defendants appealed. After Sharity filed for bankruptcy protection, the case was stayed. It remains stayed before the 10th Circuit Court of Appeals with regard to Aliera and OneShare.
- *Albina et al. v. The Aliera Companies, Inc. Trinity Healthshare Inc., OneShare Health LLC,* No. 5:20-cv-496-JMH (J. Reeves, E.D. Ky.) (Class Counsel)., filed December

11, 2020. Hanna Albina and Austin Willard are plaintiffs in that case and seek to be Named Plaintiffs and class representatives in this action. The matter was pending before the District Court on Defendants' motions to compel arbitration. After Sharity filed for bankruptcy protection, the matter was stayed. Plaintiffs' counsel successfully moved to lift the stay as to Aliera. The District Court then certified a class of Kentucky residents who had purchased a plan through Aliera and Trinity Healthshare, Inc., and entered a judgment against Aliera and in favor of the class for $4,679,868.46 on November 17, 2021. The case is presently stayed as to OneShare.

SYSH's Background and Experience

4. SYSH has a nationwide practice focused on plaintiff-side class action and complex litigation. SYSH counsel are recognized both locally and nationally for their work on behalf of individuals with disabilities and complex health conditions, ERISA plan participants and low-income or otherwise vulnerable individuals. SYSH has pursued cases of first-impression to enforce various rights and privileges under the Affordable Care Act ("ACA"), including the ACA's anti-discrimination law and mental health parity requirements.

5. SYSH attorneys have acted as class counsel in dozens of class actions, as set forth in ***Exhibit A*** (Curriculum Vitae), most of which relate to consumer health care and/or health coverage rights.

Mv Background and Experience

6. I have worked my entire career representing individuals and classes regarding access to health care and health coverage. I graduated from New York University School of Law

where I was a Root-Tilden-Snow scholar. After law school, I worked at various nonprofit legal and advocacy organizations, including the New Jersey Office of the Public Advocate, Consumers Union's San Francisco office and Columbia Legal Services in Seattle, Washington. During one year of my tenure at Columbia Legal Services, I also taught a Disability Law Clinic at the University of Washington School of Law.

7. In 2004 I joined the Seattle law firm of Sirianni Youtz Meier & Spoonemore, now Sirianni Youtz Spoonemore Hamburger, representing clients in business litigation, insurance coverage disputes, ERISA health/disability and pension/profit sharing litigation, and securities fraud. I continue to represent health care and health coverage consumers, including on a *pro bono* basis, when the clients are low-income. In 2009 I became a partner in the law firm. My advocacy on behalf of persons with disabilities has been recognized by the Arc of Washington, Washington Autism Advocacy and Alliance and Autism Speaks. Our firm has been recognized by Columbia Legal Services for its work on behalf of low-income patients as a result of one of my cases, *Lopez v. Health Management Associates.*

8. My partner, Rick Spoonemore and I have been class counsel in more than three dozen health care class action lawsuits, as described in the attached firm CV. We have litigated or are litigating a number of cases of first impression regarding the Affordable Care Act, including *Schmitt v. Kaiser Found. Health Plan of Wash.*, 965 F.3d 945 (9th Cir. 2020), *T.S. v. Heart of Cardon, LLC,* 43 F.4th 737 (7th Cir. 2022), and *C.P. v. Blue Cross Blue Shield*, No. 3:20-cv-06145-RJB, 2022 U.S. Dist. LEXIS 227832 (W.D. Wash. Dec. 19, 2022).

The Litigation and Settlement

9. Together with co-counsel, SYSH has vigorously prosecuted this action on behalf of Plaintiffs and the other proposed Class Members. We brought the first class action regarding the health coverage sold by Aliera in Washington state, *Jackson et al., v. The Aliera Companies, Inc., Aliera Healthcare Inc., Trinity Healthshare Inc.*, No. 2:19-cv-1281 (J. Rothstein, W.D. Wash.). Ultimately, we partnered with all of the co-counsel in this case to bring five different class action lawsuits in Washington, California, Colorado, Missouri and Kentucky.

10. We vigorously pursued each case, including this one, by gathering as much publicly available data and discovery as possible. While we pursued discovery from defendants, they opposed our efforts at every turn. In each case, defendants moved to compel arbitration; in several cases we prevailed and convinced the federal district court that the plaintiffs never agreed to arbitrate. *See e.g., Smith v. Aliera Cos.*, 534 F. Supp. 3d 1345, 1359 (D. Colo. 2021); *Kelly v. Aliera Cos.*, No. 6:20-cv-05038-MDH, 2020 U.S. Dist. LEXIS 219472, at *15 (W.D. Mo. Nov. 23, 2020). However, in those cases, defendants appealed the denial of their motion to compel arbitration to the relevant circuit court. Eventually all of the cases were stayed due to Trinity's bankruptcy and then shortly thereafter, Aliera's bankruptcy.

11. Before the bankruptcy court and together with a consortium of state attorneys general, Plaintiffs' counsel aggressively represented the interests of Sharity and Aliera consumers to ensure that the vast majority of the proceeds in the bankruptcy process would go to members, and not the insiders who controlled the companies. Eventually, Plaintiffs' counsel ensured that the Sharity Liquidating Trust, the entity formed with the proceeds and claims of

Sharity Healthshare (formerly Trinity), would be used to fund the claims of the Sharity members. Sharity is now administratively dissolved, as a result of the court-approved plan of liquidation. Plaintiffs' counsel are also negotiating a similar resolution for the Aliera Liquidating Trust, in which the majority of the funds obtained will be distributed to both former Sharity and Unity members.

12. Due to Plaintiffs' counsel's involvement in both bankruptcy proceedings, we have unprecedented access to discovery of the documents relied upon by the Aliera and Sharity insiders. This includes extensive correspondence, claims information and other data. Although no formal discovery has been completed regarding Unity, Plaintiffs' counsel have access to sufficient information upon which this settlement is based.

13. Plaintiffs' Counsel have regularly communicated with our clients throughout to keep them apprised of the proceedings and to help Mr. and Mrs. Duncan assess the settlement, as well as the additional named plaintiffs from the *Smith* and *Albina* cases. Each of these plaintiffs has participated in their respective litigation, providing documents and declaration necessary to oppose the motions to dismiss filed in each case, and has been apprised of, assessed, and approved the Settlement Agreement. Each plaintiff has recognized their duty to the class and duty to achieve the best possible outcome for the class.

14. The parties did not begin settlement negotiations until after the case had been pending for over a year and a half and the parties had engaged in significant motion practice regarding arbitrability of the dispute. Additionally, the parties were significantly involved in two separate bankruptcy proceedings.

15. The parties reached agreement with the assistance of Judge Thomas B. Griffith (Ret.). Judge Griffith, who served on the United States Court of Appeals for the D.C. Circuit for fifteen years, facilitated the parties' negotiations. The parties mediated in person in Washington D.C. in April 2022, and although no settlement was reached at that time, continued to negotiate tirelessly until final terms incorporated into the Settlement Agreement could be reached.

16. Plaintiffs' Counsel negotiated and prepared a formal Settlement Agreement, developed a notice and distribution plan, and prepared and finalized drafts of the Settlement Agreement's exhibits, including the proposed class notice, all of which are attached as appendices to the Motion for Settlement Class Certification and Preliminary Settlement Approval.

17. The parties retained the services of an experienced settlement administrator, BMC Group Inc., which is the administrator of the Sharity Liquidating Trust. BMC is already familiar with the data that was maintained by The Aliera Companies, and can administer the claims efficiently. The parties have begun working with BMC to coordinate the issuance of class notice.

18. The named Plaintiffs have reviewed, considered, and expressed their approval of the Settlement Agreement.

19. If litigation continued, Plaintiffs believe they could have demonstrated that Defendants sold inherently unfair and deceptive health care plans and failed to provide purchasers with the coverage they believed they would receive. But Plaintiffs' counsel recognize, based on their experience in similar class actions and based on the record, that the case faced real challenges. This is particularly true where the two other parties involved in the

same or similar transactions ended up in bankruptcy. In light of this, it is reasonable to have concerns about the collectability of a large judgment against OneShare. In addition, Aliera's insiders have asserted Fifth Amendment rights in connection with efforts to obtain discovery from them. Plaintiffs believe they had reasonably strong prospects of overcoming Defendants' arguments and defenses, but there can be little doubt that the foregoing issues presented the possibility that the Class would recover nothing.

20. Given the procedural framework of this case, Plaintiffs face additional hurdles. If the Court were to deny defendants' motions, Defendants would likely pursue interlocutory appeal pursuant to Section 16(a) of the Federal Arbitration Act. Even if they prevailed on that appeal, they would have been required to brief class certification (and a possible interlocutory appeal of the Court's ruling), summary judgment, motions in limine and trial, which may be followed by yet another appeal. Each stage presents significant risk, cost, and delay for class members.

21. Aliera's bankruptcy further complicated Plaintiffs' prospects against OneShare. Aliera possesses many of the documents that Named Plaintiffs require to prove their claims. But the Bankruptcy counsel for Aliera and the Aliera Unsecured Creditors' Committee have not made those documents available, and indicate that they may not until a Plan of Liquidation is confirmed. Aliera's insiders have made blanket objections to subpoenas to them directly within the bankruptcies, citing *inter alia,* their Fifth Amendment rights. And, in any event, Aliera no longer has any employees. In sum, discovery in this matter promised to be time-consuming, exceedingly difficult and expensive.

22. SYSH is committed to dedicating the necessary resources and working together with co-counsel for the benefit of the class.

23. I am not aware of any conflicts of interest that would impair or impede our ability to represent the Class as we have done to date. The settlement agreement before the Court is the only extant agreement between the parties.

24. The parties estimate that the Class consists of more than 60,000 members, each of whom are eligible to receive substantial relief from the settlement.

25. Based on my experience with this matter and class actions generally, I believe that this Settlement is in the Class's best interest and recommend the settlement agreement.

26. Our firm and our co-counsel have spent hundreds of hours in connection with the prosecution of this action and in negotiating and finalizing a nationwide class settlement with OneShare. At the time of final approval, we will provide a detailed statement regarding the total amount of fees incurred in the prosecution of this action, but it is anticipated that the lodestar based on the time this firm and our co-counsel have spent on this matter will likely exceed the amount of the 28% contingent fee request that we will seek at that time. None of the proceeds from the Settlement will revert to OneShare.

27. Each of the plaintiffs in the three cases have spent significant hours diligently representing the interests of the proposed class members. Each are aligned with the interests of the class, having purchased health plans from defendants just like every class member. Each actively participated in the investigation of the case and provided documents and information to Plaintiffs' counsel. A number of the plaintiffs filed appeals of denials of coverage by

Aliera/Unity and submitted complaints to their state insurance department. They have actively participated in the cases by filing substantive declarations, and were willing to be involved in the bankruptcy proceedings in two separate bankruptcies. They have provided input to Plaintiffs' counsel throughout and will continue to act with the best interests of class members in mind.

28. I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 25, 2023 By: */s/ Eleanor Hamburger*

Eleanor Hamburger

EXHIBIT A

SIRIANNI YOUTZ
SPOONEMORE HAMBURGER

Sirianni Youtz Spoonemore Hamburger PLLC is a Seattle litigation law firm that has been serving local, national and international clients since 1981. Our litigation practice is wide and varied. Individuals and businesses retain us for many reasons:

- Our commitment to the best achievable outcome. Each case is different, and outcomes are always uncertain. But our results speak for themselves. As plaintiffs' counsel, we have obtained: (1) a $247 million judgment, the largest in history under Section 16(b) of the 1934 Securities Exchange Act (the short-swing stock trading prohibition); (2) a $45 million recovery in a major consumer class action; (3) a $30 million recovery in a class action against a major health insurer; and (4) substantial arbitration awards in favor of defrauded investors. As defense counsel, we have obtained numerous summary judgments dismissing claims against title companies, product manufacturers, law firms and lawyers.
- Our willingness to try cases to judgment when trial is necessary. Our lawyers have tried over 50 matters between them.
- Our willingness to settle when the cost and risk of further litigation warrant it. We analyze cases early, rather than waiting until trial approaches. Early analysis facilitates early settlement. In the right circumstance, this maximizes the client's net benefit.
- Efficient and cost-effective representation. We move cases along. We do not overstaff them. And our clients are represented by the lawyer they hire. We know that your representation is only as good as the attorney who is doing your work.
- Our reputation and experience. Much of our new work is referred to us by other lawyers. We are proud to count judges as among our clients. Our lawyers have 100 years of combined experience. Messrs. Youtz and Spoonemore are each "AV" rated by Martindale-Hubbell and, for many years in a row, have been named as Super Lawyers®. (See superlawyers.com for selection criteria). In 2020, Chris Youtz was again selected for inclusion in *The Best Lawyers in America* for commercial litigation.

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Ms. Hamburger and Mr. Spoonemore have extensive experience in health care and ERISA litigation. They have been appointed class counsel in more than three dozen class action lawsuits and represented individuals and organizations in dozens of complex cases. The following are just a few representative cases:

- In a 2019 action against Community Health Systems on behalf of their client Empire Health Foundation, Mr. Spoonemore and Ms. Hamburger secured a $70 million settlement after prevailing on a key summary judgment motion on liability just weeks before trial was to commence. As a result of the litigation, 17,000 former patients of Deaconess and Valley Hospitals in Spokane, Washington had their medical debts erased and Empire Health Foundation received $22 million.

- In class actions against Blue Cross Blue Shield of Illinois, Regence BlueShield, Premera Blue Cross, Group Health Cooperative, Moda, King County, Washington's Health Care Authority, Boeing, and other entities, Mr. Spoonemore and Ms. Hamburger successfully forced insurers to eliminate health insurance exclusions and limitations that had historically prevented children with autism and other developmental disabilities from receiving medically necessary health care. *See e.g. O.S.T. v. Regence BlueShield*, 181 Wn.2d 692, 335 P.3d 416 (2014); *Z.D. v. Group Health Coop.*, 2012 WL 1977962, 53 BNA 2190 (W.D. Wa. 2012). *The Seattle Times*, in a May 2014 editorial, credited Mr. Spoonemore and Ms. Hamburger with enforcing Washington State's Mental Health Parity Act when the Washington Insurance Commissioner had refused to act to ensure coverage. *See* Editorial: State Needs Parity Mandate to Cover Autism Therapy, May 20, 2014 ("Instead, Kreidler and the Legislature left enforcement to class-action lawyers, in particular attorneys Rick Spoonemore and Ele Hamburger."). These cases followed a series of cases litigated by Mr. Spoonemore in the late 1990s and early 2000s where he received judgments and settlements for Washington insureds exceeding $40 million arising out of violations

of Washington's Every Category of Provider Law. *See e.g. Hoffman v. Regence BlueShield*, 140 Wn.2d 121 (2000).

- In early 2016, Mr. Spoonemore and Ms. Hamburger launched a series of groundbreaking class action lawsuits against insurers and the State of Washington arising out of the denial of insurance coverage for Harvoni and other direct acting anti-viral drugs used to cure individuals with Hepatitis C. On May 27, 2016, a federal court in Seattle entered an injunction in one of their first cases, and required the State of Washington to provide access to this life-saving treatment to Medicaid beneficiaries despite its $800 million cost to the State. A state court followed, entering a similar injunction against the State with respect to its coverage of public employees. Three private insurers subsequently settled with agreements to provide access to Harvoni for all insureds. This litigation spawned similar cases around the country, ensuring access to treatment for Hepatitis C virus for tens of thousands of patients.

Mr. Spoonemore's health care practice began in the early 1990s, when he successfully represented several hundred women who had been denied health insurance coverage for the treatment of breast and ovarian cancer, as well as his *pro bono* work through the King County Bar Association's Volunteer Attorneys for Persons with AIDS Program (VAPWA) during the height of the AIDS health crisis. *See e.g. Berry v. Blue Cross*, 815 F. Supp. 359 (W.D. Wa. 1993). As part of his work on behalf of cancer and AIDS patients, he drafted an amendment to Washington's Injunction Bond Statute, RCW 7.40.080, that permitted state courts to waive the injunction bond requirement "in situations in which a person's health or life would be jeopardized," thereby permitting effective injunctive relief to be entered for individuals in need of health care who had successfully obtained injunctive relief but could not afford to bond the injunction. In the mid-1990 he was lead counsel in *Bowen v. Principal Mutual*, a class action that successfully enjoined Principal Mutual from terminating health insurance coverage for hundreds of individuals diagnosed with HIV in Washington State. He was featured in the King County Bar Association's radio campaign "Voices of Justice" for this work on behalf of HIV/AIDS patients.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., *et al.*,

Defendant.

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

DECLARATION OF JAMES J. VARELLAS III IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I, James J. Varellas III, declare as follows:

1. I am admitted to practice law in California, Kentucky, and New York, and I am also admitted to practice in the United States Courts of Appeals for the Fifth, Sixth, and Eleventh Circuits and in the United States District Courts for the Eastern District of California, the Northern District of California, the Central District of California, the Southern District of New York, the Eastern District of New York, the Eastern District of Kentucky, and the Western District of Kentucky.

2. I am currently of counsel at the law firm of Varellas & Varellas PLLC, one of the counsel of record representing Plaintiffs Hanna Albina and Austin Willard in the case *Hanna Albina v. The Aliera Companies, Inc.*, 20 civ. 496 (E.D. Ky.), and I have been appointed class counsel in that case as it relates to the class that was previously certified against a separate Defendant, The Aliera Companies, Inc. Those Plaintiffs seek to join this case through the proposed amended complaint and intend to dismiss their individual and class claims pending in the Eastern District of Kentucky against OneShare Health, LLC, upon approval of the proposed settlement class herein.

3. This Declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement. I make these statements based on personal knowledge and would so testify if called as a witness.

Firm's Background and Experience

4. Varellas & Varellas PLLC has an active litigation practice representing clients in a range of types of cases, including personal injury, class and collective actions, and other areas

of complex litigation. I have tried both class action and individual cases to a verdict in state and federal courts on issues ranging from securities fraud to complex medical malpractice.

Mv Background and Experience

5. I received a Bachelor of Arts, *summa cum laude*, from the University of Kentucky in 2002, a Master of Arts from the University of Sussex in 2005, and a Juris Doctor from the University of California, Berkeley, School of Law, in 2007. I began my legal career as a law clerk to Chief Judge Jennifer B. Coffman of the United States District Courts for the Eastern and Western Districts of Kentucky.

6. After finishing my clerkship, I was an associate at Cravath, Swaine & Moore LLP in New York and at Fenwick & West LLP in San Francisco. At Cravath, I was a member of the trial team in the four-month class action trial in the case of *In re Vivendi Universal, S.A. Securities Litigation*, 02 civ. 5571 (S.D.N.Y.), one of the largest and most complex securities litigation matters ever tried to a verdict, and I represented clients in a number of other class action and complex litigation matters, including Johnson & Johnson in the matter of *Burton v. Ellberger*, 08 civ. 116452 (N.Y. Sup. Ct.) (class action lawsuit seeking to enjoin the $447 million acquisition of Omrix Biopharmaceuticals, Inc.).

7. At Fenwick & West, I continued to represent clients in a range of class action and complex litigation matters, including Diamond Foods in the matter of *In re Diamond Foods, Inc. Securities Litigation*, 11 civ. 5386 (N.D. Cal.) (shareholder class action lawsuit alleging securities fraud); the law firm of Greenberg Traurig LLP in *Noble v. Greenberg Traurig LLP*, 11 civ. 593201 (Cal. Super. Ct.) (shareholder class action lawsuit alleging aiding and abetting of securities fraud

committed by real estate investment companies); and Symantec in *Gordon v. Symantec Corp.*, 12 civ. 231541 (Cal. Super. Ct.) (class action lawsuit seeking to enjoin shareholder vote on executive compensation at annual meeting of shareholders).

8. In November 2021, I was appointed class counsel in *Hanna Albina v. The Aliera Companies, Inc.*, 20 civ. 496 (E.D. Ky.), one of the cases that gave rise to this proposed settlement with OneShare Health, LLC.

Recommendation

9. Based on my experience with this matter and class actions generally, my law firm and I believe that this Settlement is in the Class's best interest.

10. My co-counsel and I have communicated with the named Plaintiffs in *Hanna Albina v. The Aliera Companies, Inc.*, 20 civ. 497 (E.D. Ky.), and each of them is in agreement with the terms of the proposed settlement and wishes to pursue their individual and class claims as part of this action in exchange for dismissing the same claims in the pending action in the Eastern District of Kentucky upon approval of the proposed settlement

11. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: May25, 2023

By: *James J. Varellas III*
James J. Varellas III

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., *et al.*,

Defendant.

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

DECLARATION OF NINA WASOW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I, Nina Wasow, declare as follows:

1. I am a partner with the law firm of Feinberg, Jackson, Worthman & Wasow LLP ("FJWW"), one of the counsel of record representing Plaintiffs Corlyn and Bruce Duncan in this case.

2. This Declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement. I make these statements based on personal knowledge and would so testify if called as a witness.

Firm's Background and Experience

3. FJWW has a nationwide practice focused on plaintiffs' class actions and complex litigation. The attorneys in the firm are nationally recognized for their work, including employee benefits actions on behalf of ERISA plan participants; wage and hour actions on behalf of employees in California and nationally; and civil rights actions on behalf of women, people of color, people with disabilities, and individuals in other protected groups.

4. My former firm, Lewis, Feinberg, Lee & Jackson, P.C. (LFLJ) and its predecessors litigated cases from 1976 until the firm closed in 2015. I started FJWW in 2015 with three partners who had worked at LFLJ. At LFLJ and FJWW, my partners and I have served as class counsel or co-counsel in numerous class actions including the following:

- ***Cunningham v. Wawa, Inc.***, 387 F. Supp. 3d 529 (E.D. Pa. 2019): FJWW was co-counsel for plaintiffs in this class action on behalf of certain terminated employee participants of the Wawa Employee Stock Ownership Plan (ESOP). Plaintiffs alleged that 2014 and 2015 amendments and subsequent forced liquidation of the class members' company stock violated ERISA. The settlement, approved in April 2021, resulted in a payment of $21.6 million on behalf of the class.
- ***Strauch v. CSC***, No. 14-cv-00956 (D. Conn.) (final approval granted July 12, 2021). Attorneys from the firm and co-counsel represented a group of current and former technical support workers in a Fair Labor Standards Act collective as well as workers in

two certified Rule 23 classes with parallel state-law claims. Plaintiffs alleged that Defendant willfully misclassified them as exempt from federal and state overtime laws and therefore failed to compensate them for overtime hours as required by law. Plaintiffs won a jury verdict on liability in December 2017 and the case settled on appeal for $9.5 million.

- ***Castro v. ABM Industries, Inc.***, No. 4:17-cv-03026 (N.D. Cal.) (final approval granted September 3, 2019). Attorneys from the firm, along with co-counsel, represented three certified classes of janitorial employees. Plaintiffs alleged that Defendants had a company-wide policy of not reimbursing or indemnifying putative class members for out-of-pocket expenses for work-related use of their personal cell phones, in violation of California law. A $5.4 million settlement was approved by the Court in September 2019.
- ***Guidry v. Wilmington Trust, N.A.***, 333 F.R.D. 324 (D. Del. 2019), FJWW represented as co-counsel a class of participants in the MRMC ESOP. Plaintiff alleged breaches of fiduciary duty and prohibited transactions by the ESOP Trustee in 2012 and 2013 stock purchase transactions. The court granted final approval to a $19.5 million settlement in 2020.
- ***Kindle v. Dejana***, 238 F. Supp. 3d 353 (E.D.N.Y. 2017): FJWW represented as co-counsel a class of participants in the Atrium ESOP. Plaintiffs alleged that Defendants breached their fiduciary duties under ERISA by selling the ESOP's Atrium stock to the Company's President and CEO for less than fair market value in 2011. Following one day of trial, the parties agreed to a settlement under which Dejana Defendants paid over $2.5 million on behalf of the class.
- ***Lindell v. Synthes, Inc.***, No. 111CV02053LJOBAM, 2017 WL 6417209, at *2 (E.D. Cal. Jan. 9, 2017). In January 2017, the Eastern District of California granted final approval of a class settlement of $5 million on behalf of 186 Sales Consultants who worked for Synthes, Inc. in California. The case settled claims for unreimbursed business expenses under Labor Code § 2802 and unlawful wage deductions.
- ***Rogers v. Kindred Healthcare, Inc.***, No. RG14729507 (Super. Ct. Alameda County) (final approval granted Oct. 7, 2016). The Alameda County Superior Court approved a class action settlement of $2.465 million on behalf of a class of over 2,700 Personal Care Attendants who asserted that their employer did not provide them with required meal and rest breaks when working in licensed healthcare facilities, failed to pay them earned wages and overtime premiums, and issued noncompliant paystubs.
- ***Pfeifer v. Wawa, Inc.***, 214 F. Supp. 3d 366 (E.D. Pa. 2016): FJWW was co-counsel for plaintiffs in this class action on behalf of certain terminated employee participants of the Wawa ESOP. Plaintiffs alleged that a 2015 amendment and subsequent forced liquidation of the class members' company stock violated ERISA. The settlement, approved in August 2018, resulted in a payment of $25 million on behalf of the class.

5. In addition, my partners and I have served as counsel while at LFLJ or FJWW in many successful non-class cases.

Mv Background and Experience

6. I received a Bachelor of Arts degree, *magna cum laude*, from Columbia University in 2000, and a Juris Doctor degree from New York University School of Law, *magna cum laude*, in 2005. I served as a law clerk for the Honorable Susan Graber of the Ninth Circuit Court of Appeals and the Honorable Saundra Brown Armstrong of the U.S. District Court for the Northern District of California.

7. I have specialized in employee benefits since entering legal practice. I joined LFLJ as an associate attorney in 2007 and became a shareholder in the firm in 2013, and was one of the founding partners of FJWW. From 2011-2012, I was named a Northern California Rising Star by Super Lawyers Magazine, and from 2013 to the present I have been named a Northern California Super Lawyer by the same publication.

8. I am a frequent writer and speaker on employee benefits law. My publications include: Contributing author, Sacher et al., *Employee Benefits Law* (BNA Books); "Appeals Court Considers the Boundaries of Indemnification for ESOP Fiduciaries," ABA Labor and Employment Law Section, Employee Benefits Committee Newsletter, Summer 2009; "Plaintiffs Prevail in Johnson v. Couturier." ABA Labor and Employment Law Section, Employee Benefits Committee Newsletter, Fall 2009; "Commentary to DOL's Proposed Changes on the Definition of 'Fiduciary.'" Employee Benefits Committee Newsletter, Winter 2010; "A Reasonable Proposal: Treat ESOP Valuators as Fiduciaries Under ERISA," BNA Pension & Benefits Reporter

Daily, July 8, 2011; "When is a Spouse Not a Spouse: Court to Consider Applicability of DOMA to Spousal Benefits Under ERISA," Employee Benefits Committee Newsletter, Winter 2011; and "Amara and Discretionary Clauses: Is the SPD Enough?," Employee Benefits Committee Newsletter. Fall 2012; "*Montanile*: Blessing or Curse?," Employee Benefits Committee Newsletter, Spring 2016.

Recommendation

9. Based on my experience with this matter and class actions generally, my law firm and I believe that this Settlement is in the Class's best interest.

10. I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 25, 2023 By: */s/ Nina Wasow*

Nina Wasow

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., *et al.*,

Defendant.

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

DECLARATION OF MIKE MYERS IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I, Mike Myers, declare as follows:

1. I am an attorney with the law firm Myers & Company ("Myers"), one of the counsel of record representing Plaintiffs Corlyn and Bruce Duncan in this case.

2. This Declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement. I make these statements based on personal knowledge and would so testify if called as a witness.

Firm's Background and Experience

3. Myers handles personal injury, commercial litigation and class action cases. The majority of these cases are filed in Washington. But Myers also litigates cases in Oregon, Idaho, Colorado and California.

4. Myers has served in cases as co-class counsel.

Mv Background and Experience

5. I graduated from Stanford University in 1989 and from Seattle University Law School in 1992.

6. I have been AV rated for 15 years and was voted trial lawyer of the year by the Washington Defense Trial Lawyers in 2018.

Recommendation

7. Based on my experience with this matter and class actions generally, Myers and I believe that this Settlement is in the Class's best interest.

8. I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 23, 2023 By: */s/ Mike Myers*

Mike Myers

Eleanor Hamburger *(pro hac vice)*
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN, Plaintiffs, v. THE ALIERA COMPANIES, INC., *et al.*, Defendant.	Case No. 2:20-CV-00867-TLN-KJN **DECLARATION OF JEROME P. PRATHER IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

I, Jerome P. Prather, declare as follows:

1. I am admitted to practice law in all state and federal courts in the Commonwealth of Kentucky, and I am also admitted to practice in the United States Courts of Appeals for the Fifth, Sixth, and Eleventh Circuits. My motion for admission *pro hac vice* in this case will be forthcoming upon receipt of the appropriate certification of the Kentucky Bar Association.

2. I am currently the sole member of the law firm Garmer & Prather, PLLC, one of the counsel of record representing Plaintiffs Hanna Albina and Austin Willard in the case *Hanna Albina, et ux. v. The Aliera Companies, Inc.*, U.S. District Court, Eastern District of Ky., Civil Action No. 5:20-496-DCR, and I have been appointed class counsel in that case as it relates to the class that was previously certified against a separate Defendant, The Aliera Companies, Inc. Those Plaintiffs seek to join this case through the proposed amended complaint and intend to dismiss their individual and class claims pending in the Eastern District of Kentucky against OneShare Health, LLC, upon approval of the proposed settlement class herein.

3. This Declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement. I make these statements based on personal knowledge and would so testify if called as a witness.

Firm's Background and Experience

4. Garmer & Prather has a robust litigation practice that focuses on representing plaintiffs in catastrophic injury actions, wage and hour class actions, and other areas of complex litigation including various other tort cases that are at times pursued as class actions or multi-plaintiff actions.

5. I have tried numerous jury trials to verdict in both the state and federal courts in the Commonwealth of Kentucky.

6. I have served as counsel of record in numerous class and non-class cases with successful results for our clients.

7. I have been appointed class counsel in the following actions: *Benjamin v. DJGN, LLC*, No. 1:22-CV-166-TSB (S.D. Ohio) [stipulated certification pending as a settlement class arising from *Christopher Sullivan v. DJGN Lexington, LLC d/b/a Tony's Steaks & Seafood*, Civil Action No. 5:22-CV-00064-DCR (E.D. Ky.)]; *Hanna Albina, et ux. v. The Aliera Companies, Inc.*, Civil Action No. 5:20-496-DCR (E.D. Ky.) (November 8, 2021) (which is the same litigation that gave rise to this proposed settlement with OneShare Health, LLC); *Ronald Held, et ux. v. Hitachi Automotive Systems, et al.*, Com. of Ky., Madison Circuit Court, Civil Action No. 18-CI-294 (August 22, 2019); *James Hensley, et al. v. Haynes Trucking, et al.*, Com. of Ky., Fayette Circuit Court, Civil Action No. 10-CI-3986 (Jan. 23, 2013); *Terry Powell, et al. v. Jimmy Tosh, et al.*, Civil

Action No. 5:09-CV-121-R (W.D. Ky.) (March 2012). I am also currently counsel in a purported class and collective action that is currently pending, *Rodney Mitchell, et ux. v. Bob Evans Restaurants, LLC*, Civil Action No. 2:22-CV-2123 (S.D. Ohio), and a purported class action, *Emily Rice v. DJGN Lexington, LLC*, Com. of Ky., Fayette Circuit Court.

Mv Background and Experience

8. I received a Bachelor of Arts, *cum laude*, from Vanderbilt University in 2003, and a Juris Doctor from the University of Kentucky College of Law in 2006.

9. I have specialized in catastrophic personal injury cases throughout my career, with a growing emphasis on wage and hour class action and collective action litigation, as well as other class action litigation, since 2010. I was counsel of record and primary brief writer in the case of *Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430 (Ky. 2018), which is currently a leading case on class certification in the Commonwealth of Kentucky.

10. I have been a governor of the Kentucky Justice Association since 2011 and a District Vice President of that association since 2021. From 2015-2019, I was named a Kentucky Rising Star by Super Lawyers, and since 2020 I have been listed as a Kentucky Super Lawyer. I am listed by Best Lawyers beginning in 2023 and Garmer & Prather has been listed by Best Law Firms for many years. I have been rated AV-Preeminent by Martindale-Hubbell since 2013. I am an invited fellow of the Litigation Counsel of America, a formerly was a barrister of the Central Kentucky American Inn of Court.

11. I am a frequent writer and speaker on subjects germane to plaintiff's litigation. I have had at least 11 articles published by the Kentucky Law Journal and various bar association

publications. I have been an invited lecturer, chairperson, or both, for more than 25 continuing legal education seminars.

Recommendation

12. Based on my experience with this matter and class actions generally, my law firm and I believe that this Settlement is in the Class's best interest.

13. I have communicated with the named Plaintiffs in *Hanna Albina, et ux. v. The Aliera Companies, Inc.*, U.S. District Court, Eastern District of Ky., Civil Action No. 5:20-496-DCR, and each of them is in agreement with the terms of the proposed settlement and with pursuing their individual and class claims as part of this action in exchange for dismissing the same claims in the pending action in the Eastern District of Kentucky upon approval of the proposed settlement.

14. I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: May 24, 2023

By: /s/ Jerome P. Prather
Jerome P. Prather

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Counsel for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., *et al.*,

Defendant.

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

DECLARATION OF CYRUS MEHRI IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL

I, Cyrus Mehri, declare under penalty of perjury and in accordance with the laws of Washington D.C. that:

1. I am one of the proposed class counsel in this case and a founding partner at the law firm of Mehri & Skalet, PLLC ("M&S") with offices in Washington, D.C.

2. Founded in 2001, M&S primarily represents employees, consumers, and whistleblowers in class action and other high-impact cases across the country. M&S lawyers have decades of experience representing plaintiffs in dozens of class and collective actions in a variety of fields including consumer fraud, civil rights, employment discrimination, and wage and hour. Attached as Exhibit A is the firm's bio.

3. I have been practicing law for over thirty years. I litigate cases involving consumer and civil rights, discrimination, and corporate fraud. Among the dozens of class actions that I have led or co-led to successful conclusions are some of the country's largest and most significant race and gender cases, including *Roberts v. Texaco Inc.*, No. 94-CV-02015 (S.D.N.Y), *Ingram v. Coca- Cola Co.*, No. 98-CV-03679 (N.D. Ga), *Augst-Johnson v. Morgan Stanley & Co. Inc.*, No. 06-CV- 01142 (D.D.C.), *Amochaev v. Citigroup Global Markets, Inc., d/b/a Smith Barney*, No. C051-298 (N.D. Cal.), and *Carter v. Wells Fargo Advisors LLC*, No. 09-CV-01752 (D.D.C). These settlements feature sweeping injunctive relief, including the appointment of independent task forces or settlement monitors, as well as tens of millions of dollars of monetary relief. In 2021, Judge Charles Breyer appointed me to serve on the Plaintiffs' Steering Committee in the Multi-District Litigation involving opioid litigation against the consulting company McKinsey.

4. In addition, in litigation related to this action, Bankruptcy Judge John T. Dorsey appointed Mehri & Skalet to serve as counsel to the creditors' committee in the Sharity Bankruptcy proceeding. We also serve as putative class counsel in federal courts in the states of Washington and Missouri in cases involving Aliera.

5. I have also served on the Cornell Law School Advisory Council and received the Law School's Public Service Award. I received an Honorary Degree, Doctor of Laws, from Hartwick College and serve on that college's Board of Trustees.

6. M&S partner Jay Angoff graduated from Vanderbilt Law School in 1978. Soon after joining M&S in 2009, HHS Secretary Kathleen Sebelius appointed him to serve as the first Director of Affordable Care Act implementation. He returned to M&S in December 2012.

7. Mr. Angoff has served as Missouri's Insurance Commissioner and as New Jersey's Deputy Insurance Commissioner. In addition, he has served as counsel to the National Insurance Consumer Organization and as Vice-President for Strategic Planning for Quotesmith.com (now insure.com), an internet quotation service and insurance broker. Mr. Angoff was one of the primary drafters of California's Proposition 103 and of a similar auto insurance initiative in New Jersey. He began his career as an antitrust lawyer with the Federal Trade Commission.

8. Mr. Angoff has argued before the 6th, 8th, and 9th Circuits and before the Missouri Supreme Court and the Illinois Court of Appeals. He has led several cases challenging unlawful auto insurance rating factors to successful conclusions, including *Landers v. Interinsurance Exchange of the Automobile Club*, File No. LI03033530 (Los Angeles County, $24 million settlement), *Foundation for Taxpayer and Consumer Rights v. GEICO* (Los Angeles County, settled at up to $12 million), and *Clutts v. Allstate* (Madison County, Ill., $6 million settlement). He also served as lead counsel in *St. Louis Effort for AIDS v. Huff*, 782 F.3d 1016 (8th Cir. 2015), which struck down a Missouri statute conflicting with the Affordable Care Act.

9. Based on our experience with this matter and class actions generally, Mr. Angoff and I believe that this Settlement is in the Class's best interest.

10. I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: May 24, 2023, at Washington, D.C.

/s/ Cyrus Mehri

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EXHIBIT A

Firm Resume

(Last Updated May 24, 2023)

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OUR BACKGROUND & COMMITMENT

Mehri & Skalet, PLLC ("M&S") handles high-impact cases and has a track record for getting far-reaching results. We prove every day that the law can be used to achieve fairness and justice, as our . seasoned attorneys fight complex cases, primarily in the areas of civil rights and consumer rights class actions; whistleblower suits alleging fraud against the government; cases involving corporate abuse in insurance, financing, and other areas; as well as individual cases with a public interest impact.

M&S attorneys have decades of experience in litigation and issue advocacy,and strong ties with public interest, consumer, labor, whistleblower, and civil rights organizations

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OUR PRACTICE AREAS

Civil Rights

M&S represents employees in individual and class discrimination cases filed across the United States. M&S also represents professionals who have reached the heights of their careers but continue to face discrimination from their employer, to ensure that they receive fair economic and non-economic terms in their severance agreements.

Using federal and state anti-discrimination laws, M&S represents individuals fighting unlawful discrimination that adversely affects their employment, business, or financial circumstances. While M&S maintains a broad-based practice, many of our cases fit into these general categories of discrimination:

- glass ceiling and discrimination in promotions and advancement;
- discrimination in pay or business opportunities;
- discrimination in hiring, including by way of testing and other selection procedures;
- discrimination in contracting
- discrimination in access to credit and capital marketss;
- discrimination in employment benefits, including pregnancy policies; and
- sexual harassment.

M&S has forged creative partnerships with key civil rights organizations.

Key Civil Rights Cases

A sample of current and past civil rights cases prosecuted by M&S lawyers includes:

* ***Borders v. Wal-Mart Stores, Inc.*, No. 17-cv-00606 (S.D. Ill.)**

M&S and co-counsel at The National Women's Law Center and A Better Balance represented a nationwide settlement class of several thousand Walmart employees who alleged that the company's policies discriminated against pregnant workers, and that the company systemically failed to provide pregnant workers the

same types of workplace accommodations available to others. The matter resulted in a groundbreaking, court-approved $14 million settlement in April 2020.

*** *Chalmers v. City of New York*, No. 20-cv-03389 (S.D.N.Y.)**

In May 2020, M&S, along with co-counsel Valli Kane & Vagnini LLP, launched a class race discrimination lawsuit against the City of New York, on behalf of New York City Fire Protection Inspectors and Associate Fire Protection Inspectors (FPIs) and their union, AFCSME District Council 37 Local 2507. The case is ongoing. The FPIs claim that for over a decade they have been paid substantially less each year than New York City's building inspectors who work for the Department of Buildings. The FPIs allege that the pay difference arises because of race—more FPIs than building inspectors are people of color The pay gap cannot be explained by differences in their jobs, according to the FPIs, who contend that the job requirements and duties of the two types of jobs are similar and that FPI jobs are physically riskier. They also allege that the discrimination is part of a pattern of racial discrimination by the Fire Department of New York. The class certification motion is pending. The United States District Court for the Southern District of New York granted plaintiffs motion for class certification.

*** *Howard v. Cook Cty. Sheriff's Office*, No. 17-cv-08146 (N.D. Ill.)**

M&S and co-counsel represented hundreds of women employed by the Cook County Jail as correctional officers, sheriff deputies, paramedics, nurses, and in other jobs. The suit documented a pattern of pervasive and disturbing sexual harassment by inmates directed at women working in the Jail and failures by Cook county Sheriff Tom Dart and the County to take action to address it. The case settled for $31 million and substantial programmatic relief,

*** *Brown v. Medicis Pharm. Corp.*, No. 13-cv-01345 (D.D.C.)**

M&S and co-counsel represented a class of over 200 women who alleged that Medicis's top executives created a sexually hostile environment for the women in its sales force and discriminated against them in pay and promotions. Under the court-approved settlement, Medicis agreed to pay a total of about $7.1 million, an average of over $30,000 per class member, and to provide comprehensive programmatic relief.

* ***White v. Lynch*, EEOC Case No. 510-2012-00077X**

M&S represented a certified class of over 400 women alleging sexual harassment, and that the federal Bureau of Prisons permitted the inmates at its largest correctional complex to create a hostile work environment based on sex over many years. The women alleged that many managers were hostile toward their presence in the workforce and that the agency did not adopt reasonable measures to prevent or deter the virtually incessant sexual harassment by the inmates. This case settled for $20 million for the class of workers and meaningful injunctive relief aimed at reforming policies and practices to eliminate sexual harassment.

* ***Carter v. Wells Fargo Advisors, LLC*, No. 09-cv-01752 (D.D.C.); *Amochaev v. Smith Barney*, No. 4:05-cv-01298-PJH (N.D. Cal.); *Augst-Johnson v. Morgan Stanley & Co., Inc.*, No. 06-cv-01142 (D.D.C.)**

As part of our Women on Wall Street Project, M&S along with co-counsel filed class actions against Wachovia Securities, LLC, Smith Barney, and Morgan Stanley alleging that each company had engaged in systemic gender discrimination against its female financial advisors. Settlement was achieved in each case—with Wells Fargo Advisors/Wachovia for $32 million, with Smith Barney for $33 million, and with Morgan Stanley & Co for $47 million—exceeding $114 million in total. The settlements also provided significant programmatic relief, including specified changes to internal company policies, and the appointment of independent diversity monitors.

* ***Norflet v. John Hancock Life Ins. Co.*, No. 04-cv-01099 (D. Conn.)**

In 2004, M&S, along with co-counsel, initiated a ground-breaking class action against John Hancock Life Insurance for its company-wide policy prohibiting the sale of life insurance to African American consumers in the early to mid-20th century. The lawsuit also confronted John Hancock's practice of offering African Americans substandard and seriously inferior life insurance products when it did sell insurance to African Americans.

The Court granted the Plaintiff's motion for class certification in 2007. The parties reached a settlement in 2009, which created a $24-million fund to pay claims to the class plus fees and costs. There was also a large *cy pres* component of approximately

$15 million, which was distributed to organizations that benefit African American communities by a court-appointed committee.

*** *Robinson v. Ford Motor Co.*, Nos. 04-cv-00844, 04-cv-00845 (S.D. Ohio)**

M&S and the U.S. Equal Employment Opportunity Commission ("EEOC") each filed a lawsuit in 2004, challenging Ford's procedures for selecting apprentices nationwide. The suits alleged that, since 1997, Ford had discriminated against African American workers on the basis of race in selecting apprentices. The two cases were consolidated in the Southern District of Ohio.

Judge S. Arthur Spiegel approved a settlement agreement in 2005. Judge Spiegel said, "[t]he settlement provides substantial monetary and non-monetary benefits to the class… as well as extensive systemic relief. The new testing procedures benefitted not only the class members, but potentially also all employees and future employees of Ford." The EEOC held a Commissioners' meeting that focused on this settlement and removing bias in testing procedures in 2007.

*** *Ingram v. Coca-Cola Co.*, No. 98-cv-03679 (N.D. Ga.)**

Four named plaintiffs represented a class of 2,200 current and former salaried, African American employees of Coca-Cola in this class action filed in 1999. The case involved race discrimination in promotions, compensation, and evaluations. The plaintiffs alleged a substantial difference in pay between African American and white employees; a "glass ceiling" that kept African Americans from advancing past entry-level management positions; "glass walls" that channeled African Americans to management in areas like human resources and away from power centers such as marketing and finance; and senior management knowledge of these problems since 1995 and a failure to remedy them.

In 2001, the Court approved a final settlement agreement, valued at $192.5 million and designed to ensure dramatic reform of Coca-Cola's employment practices. A court-appointed task force chaired by Alexis Herman, former Secretary of Labor, issued several annual task force reports highlighting the progress Coca-Cola made in complying with the settlement agreement.

* ***Roberts v. Texaco*, No. 94-cv-02015 (S.D.N.Y.)**

Six plaintiffs filed *Roberts v. Texaco* as a class action in 1994, alleging that Texaco discriminated against African American employees by failing to promote and adequately compensate them in relation to white employees. Each of the six plaintiffs hit a glass ceiling when they tried to advance to management. In addition, in an industry that was known to be behind in diversity, Texaco employed even fewer people of color than other employers in the oil industry. Discovery revealed that African Americans were significantly under-represented in higher levels of management. The investigation also revealed that Texaco maintained a secret list of "high potential" employees and no African Americans were on that list. The case was settled in 1996 for what was the largest sum ever allowed in a race discrimination case, $176.1 million. In addition to damages, the settlement called for pay raises for about 1,400 black employees as well as systemic programmatic relief.

* * *

Whistleblower Protection

Whistleblowers serve as society's canaries in the coal mine, alerting the public to fraud, waste, abuse, and criminal activity. M&S recognizes the critical role whistleblowers can play in protecting public funds; ensuring the safety of food, drugs and automobiles; protecting the environment; exposing securities laws violations and financial crimes; and revealing problems in many other sectors of the economy.

M&S attorneys investigate and litigate cases under both the federal False Claims Act (FCA) and analogous state laws—which prohibit fraud perpetrated against the government, including fraud in government contracts and government-funded projects, such as military aerospace and weapons systems; private prisons and detention centers; subsidized housing; and Medicare and Medicaid.

Similarly, M&S attorneys advise whistleblowers who submit information to the Securities and Exchange Commission, the Internal Revenue Service, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice, the Federal Deposit Insurance Corporation, and the U.S. Treasury Department concerning violations of standards maintained by those agencies. Successful prosecutions based on this information may result in a whistleblower award.

The firm also represents whistleblowers who have been subjected to retaliation in violation of any of the 24 major federal whistleblower protection provisions. M&S also litigates cases under the state equivalents of those federal laws.

The attorneys who spearhead M&S's whistleblower practice have been at the forefront of shaping whistleblower law and policy for more than 30 years. Partner Richard Condit, who was previously Senior Counsel at the Government Accountability Project, has over 30 years of experience providing whistleblower protection. Partner Cleveland Lawrence III has 20 years of experience working on whistleblower cases and issues, and previously served as Co-Executive Director of whistleblower organizations Taxpayers Against Fraud and its sister organization, TAF Education Fund.

Key Whistleblower Cases

A sample of current and past, disclosable whistleblower cases prosecuted by M&S lawyers includes:

***United States ex rel. Relator 1, Relator 2, Relator 3, and Relator 4 v. Bechtel Corporation, et al.*, Case No. 4:17-CV-05074-SMJ (E.D. Wash.)**

M&S and co-counsel Smith & Lowney represented four whistleblowers whose actions resulted in the government uncovering a ten-year period of overcharging for labor costs and related wrongdoing by construction giants Bechtel and AECOM. In 2020, the whistleblowers' efforts resulted in a $57.75 million settlement between the government and the contractors, which is one of the largest involving a Department of Energy (DOE) facility. They received $13.75 million, nearly 24% of the government's recovery, as their reward which is authorized under the federal False Claims Act. The share the whistleblowers received is one of the highest ever received in a case where the government has chosen to intervene. Each of the whistleblowers also settled their individual whistleblower retaliation claims.

* ***Busche v. URS Energy & Constr., Inc.*, DOL No. 10-1960-14-002**

This was a whistleblower retaliation case filed by a former engineer and manager working at the DOE's Hanford Waste Treatment Plant against URS Energy and Construction, Inc. and Bechtel National, Inc. (BNI). In 2016, URS, BNI, and Ms. Busche arrived at a mutually satisfactory resolution of her case.

* ***Johnson v. Not-For-Profit Hosp. Corp.*** **(Resolved Pre-Filing)**

This case concerned a claim of whistleblower retaliation by the Human Resources Director of the only public hospital in the District of Columbia. The case was favorably concluded in 2018.

The firm litigates other whistleblower matters that are either under seal or under investigation and cannot be disclosed.

* * *

Workers' Rights

Wage and hour laws exist to protect employees, who are often dependent upon their employers for financial security, from being exploited in the workplace. At M&S, we use our understanding of the law to ensure that workers receive the wages and benefits they have earned.

M&S represents a class of about 25,000 federal employees who were required to work during the partial government shutdown in October 2013 but were not paid on their regularly scheduled paydays by the government. They allege that they were not timely paid minimum wage and, to the extent that they were required to work overtime, were not timely paid overtime wages either. The Court of Federal Claims has ruled that the government did indeed violate the FLSA, and the parties and the Court are still analyzing damages for individual employees.

The firm also litigates wage and hour cases against private employers. For example, the firm has been litigating a case against MetLife on behalf of approximately 125 dental consultants who were misclassified as independent contractors and denied overtime pay. In January 2020, the U.S. District Court for the Southern District of New York granted final approval of a $3,390,000 settlement on behalf of the class. In 2021, M&S along with co-counsel, achieved a $31.5 million settlement on behalf of the class who sued the parent company of discount retailers Marshalls, TJ Maxx, and

HomeGoods asserting wage and hour claims. And in 2008, M&S, along with co-counsel, filed suit on behalf of a putative class of Bank of America mortgage loan officers who were misclassified as exempt from the FLSA and thereby were improperly denied reimbursement of expenses, in violation of California law. In September 2010, the Court approved the class action settlement, which provided for payment of more than $8 million to class members.

* * *

Consumer Protection, Insurance, and Healthcare

M&S enforces the rights of consumers against a variety of abuses. Our lawyers believe that consumers can ensure that the marketplace remains fair and efficient by using the class action vehicle to achieve relief on behalf of all persons affected by an unfair or deceptive practice. M&S also represents people in disputes with insurance companies, including people who claim insurance companies have refused to pay or who have been overcharged, unfairly discriminated against, or unlawfully declined or misled. The strength and integrity of our consumer protection practice benefits from our attorneys' strong ties to premier consumer advocate organizations, such as the Center for Auto Safety, Public Justice, the Center for Science in the Public Interest, and Public Citizen. The combined expertise of our team provides whistleblowers and healthcare fraud tipsters with the strategic insights necessary to investigate and litigate their claims. We also represent and advise governmental entities, non-profit organizations, and interest groups regarding insurance-related issues. M&S partner, Jay Angoff, is a former state and federal insurance regulator with expertise in the Affordable Care Act.

M&S attorneys investigate and litigate all types of consumer protection issues, including:

- automotive and other consumer product defects and recalls;
- enforcing the Affordable Care Act;
- excessive or unjustified insurance rates;
- antitrust, unfair pricing, and deceptive billing practices;

- predatory lending, credit, and insurance schemes;
- consumer and small business online and support services;
- fraud or unfair practices in real estate, banking, and finance; and
- medical, pharmaceutical, and healthcare-related fraud.

M&S has handled both individual and class action product liability cases, with an emphasis on defective construction materials, such as defective water pipes, defective exterior siding products, and fire-retardant plywood. Each of these products were foisted on an unsuspecting public by manufacturers who refused to voluntarily take responsibility for their defective products, which caused enormous economic and health problems.

Key Consumer Protection, Insurance, and Healthcare Cases

M&S is litigating or has settled several consumer class actions. These include:

* ***Harris v. Farmers Ins. Exch.*, No. BC579498 (Cal. Super. Ct., L.A. Cty.)**

In 2015, M&S and co-counsel filed a class action complaint in California challenging Farmers Insurance Company's practice of charging its most loyal policyholders more than what was justified by the risk they present, based on their lack of price sensitivity. Named plaintiffs are three long-term, Farmers policyholders. In August 2020, after multiple court proceedings, a proceeding before the California Insurance Department, and extensive negotiations, Judge Maren Nelson approved a $15 million settlement which will compensate long-term, Farmers policyholders who were overcharged.

* ***Kelly v. Aliera Companies, Inc.*, No. 20-cv-05038 (W.D. Mo.)**

In April 2020, M&S, along with co-counsel Sirianni Youtz Spoonemoore Hamburger, launched a class action lawsuit in Missouri against Aliera and Trinity Healthshare for issuing purported "health care sharing ministry" health plans that fail to comply with state and federal law. The lawsuits allege that Aliera and Trinity have been refusing to pay claims for health benefits that would otherwise be covered under state and/or federal law, have violated Missouri's consumer protection act, and have issued illegal policies and plans that fail to include certain required benefits.

***In Purdue Pharma L.P. et al.*, No. 19-23649-RDD (Bankr. S.D.N.Y.)**

In 2019, M&S filed a class action complaint on behalf of Chicago Public Schools (CPS) in the multi-district opioid litigation underway in federal court in Cleveland, Ohio, seeking damages for expenses that have been imposed on public schools – primarily relating to special education, other educational supports, counseling, and employee health insurance --- by opioid market participants. M&S has helped public schools across the country create a groundbreaking multi-million dollar Public School District Special Education Trust, which will be funded by Purdue and Mallinckrodt, two pharmaceutical companies that played a major role in the opioid crisis and who filed for Chapter 11 bankruptcy.

Commented [JK1]: Not accurate yet.

***In Re: McKinsey & Co., Inc., National Prescription Opiate Consultant Litigation*, 21-MD-2996-CRB (N.D. Cal.)**

M&S and co-counsel, on behalf of public school districts in Maine, New York, Tennessee, West Virginia, Kentucky, Ohio, and Florida, brought lawsuits against McKinsey for the harm it caused in these districts. These cases were transferred to the California MDL, which is being supervised by Judge Charles Breyer in the Northern District of California. Judge Breyer appointed M&S's founder, Cyrus Mehri, to the MDL's 10-member plaintiffs' steering committee to represent the interests of public school districts. A settlement in principle has been reached with McKinsey.

***Worth v. CVS Pharmacy, Inc.*, 16-cv-00498 (E.D.N.Y.)**

M&S was co-counsel with Center for Science in the Public Interest and another law firm on behalf of two consumers in a class action filed in federal court in the Eastern District of New York, alleging that CVS falsely marketed its Algal-900 DHA product to improve memory. Plaintiffs alleged that the study CVS relied on for its claim was conducted by the in-house scientists for another supplements company, which withdrew its own product from the market after the Federal Trade Commission warned that the study did not support its memory claims. In addition, Plaintiffs alleged that larger and more rigorous studies have consistently found no effect of DHA

supplements on memory. That case settled in late 2019 with refunds available to purchasers of the product.

*** *In re MagSafe Apple Power Adapter Litig.*, 09-cv-01911 (N.D. Cal.)**

M&S served as co-lead class counsel on behalf of millions of consumers, alleging that Apple's MagSafe adapter, which powered its laptop computers, was defectively designed and would prematurely fray and fail to work. In 2015, a California federal court approved a settlement providing up to 100% cash refunds for adapters that failed in the first year of use, and a percentage of the purchase cost for adapters that failed up to three years after purchase. In addition, Apple provided a free, redesigned adapter for anyone who presented one at an Apple store.

* * *

Real Estate, Housing, and Lending

Guided by the expertise of Steve Skalet, who has over 35 years of litigation and transactional experience in real estate and financial fraud, M&S has represented clients in cases involving real estate, lending and debt collection practices, and defective construction materials.

In the class action context, the firm handles cases under the Equal Credit Opportunity Act, Truth in Lending Act, Fair Debt Collection Practices Act, Real Estate Settlement Procedures Act, and other federal and state consumer protection statutes.

*** Reverse Mortgages: *Bennett v. Donovan*, No. 11-cv-00498 (D.D.C.), and *Plunkett v. Castro*, No. 14-cv-00326 (D.D.C.)**

M&S represented plaintiffs in a series of cases in federal court in the District of Columbia that resulted in three landmark reforms in the federal reverse mortgage program: (1) U.S. Department of Housing and Urban Development (HUD)revised the program in 2015 to allow surviving spouses of borrowers to obtain protection from foreclosure; (2) HUD rewrote its model mortgages in 2014 to protect spouses from foreclosure; and (3) HUD withdrew illegal "guidance" it had issued in 2008 that prevented borrowers from selling their homes to spouses or family members at fair market value.

M&S and AARP Foundation Litigation sued HUD in 2011 on behalf of three individuals, all of whom faced foreclosure soon after they lost their spouses. HUD immediately withdrew its illegal guidance restricting the borrower's right to sell the property. The Court of Appeals for the D.C. Circuit ruled in 2013 that Plaintiffs had standing to challenge HUD's illegal regulations, and also opined that HUD's regulations were illegal. Soon afterward, a federal district court ruled that HUD's regulations were illegal and remanded the matter to HUD to fashion a remedy. Beginning with mortgages issued in August 2014, all surviving spouses in the reverse mortgage program were eligible for protection from foreclosure. In June 2015, HUD announced a program allowing surviving spouses to stay in their homes by having the reverse mortgages assigned to HUD. Based on HUD's own estimates, this litigation likely benefitted tens of thousands of current borrowers and their families, and future borrowers in the program.

* ***Sonoda v. Amerisave Mortg. Corp.*, No. 11-cv-01803 (N.D. Cal.)**

In 2011, M&S, along with co-counsel, filed a class action in California against Amerisave Mortgage Corporation for violating the Truth in Lending Act through their deceptive advertising practices in the selling of residential mortgages. The suit alleged that Amerisave promised customers they could quickly request a "lock-in" of low advertised online rates, required the consumer to pay for a property appraisal prior to the rate being locked-in, and then allowed the lock-in period to expire, locking the customer into the agreement at a higher rate. In 2013, the case was settled for $3.1 million, which was distributed to class members to compensate them for a portion of the improper fees they paid.

* **Metropolitan Money Store Cases (D.C. Super. Ct.)**

M&S represented numerous homeowners who had been stripped of hundreds of thousands of dollars of home equity through a mortgage rescue scam that lured individuals facing potential foreclosure to "temporarily" sign away the deeds to their homes with a promise of redemption after their credit improved through credit

counseling. This practice allowed scam artists to gain access to home equity which was then stolen from the homeowner. The Washington Lawyers' Committee on Civil Rights and Urban Affairs referred the clients to M&S, which provided *pro bono* representation to these victims of fraud. In 2009, M&S successfully resolved the cases to protect the homeowners.

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Sports Law

M&S's attorneys have a long and robust history of promoting fairness in the sports industry. M&S founding partner Cyrus Mehri, together with Johnnie L. Cochran, Jr., co-founded the Fritz Pollard Alliance, an affinity group for NFL coaches of color, and helped design the NFL's Rooney Rule. The Rule, which was adopted by the NFL in 2002, mandates that any league club seeking a head coach or general manager interview at least one candidate of color. With the Rule in place, the NFL has made substantial progress in people of color achieving the role of Club President, General Manager, Head Coach and other leadership positions.

American University Professor and M&S of counsel attorney, N. Jeremi Duru, is an active member of the national sports law community and has written extensively on both sports and employment law, including co-authoring "Sports Law and Regulation: Cases, Materials, and Problems (4th ed.) (Wolters Kluwer)" and "The Business of Sports Agents (3d ed.) (University of Pennsylvania Press)" as well as authoring "Advancing the Ball: Race, Reformation, and the Quest for Equal Coaching Opportunity in the NFL (Oxford University Press)."

Mr. Mehri and Professor Duru represented the Fritz Pollard Alliance, the organization of coaches, scouts, and front office personnel of color in the NFL for approximately 15 years. They have also advised the Professional Footballers Association in the United Kingdom (the UK's soccer players union) in its efforts to increase diversity among managers in the UK soccer community.

OUR ATTORNEYS

Cyrus Mehri

Cyrus Mehri is a founding partner of Mehri & Skalet. He litigates cases involving discrimination, civil and consumer rights, and corporate fraud. The business press has long followed Mr. Mehri's work. *The New York Times* stated, "Mr. Mehri's vision for corporate America involves sweeping change, not the piece meal kind." *Fast Company* said "He is something of a one-man army in the battle against business as usual . . . [H]is impact—both in terms of penalties and remedies—is undeniable." His work has been recognized in numerous books and articles, most recently in Diversity Inc, authored by award winning author Pamela Newkirk. In 2021, the *Wall Street Journal* profiled Mr. Mehri in its Future of Work section and described Mr. Mehri as having fought "some of the most significant workplace race-discrimination lawsuits in U.S. history."

Mr. Mehri's reputation is well-earned. He has led and co-led some of the largest and most significant race and gender cases in U.S. history, including the two largest race discrimination class actions in history: *Roberts v. Texaco Inc.*, which settled in 1997 for $176 million and *Ingram v. The Coca-Cola Company*, which settled in 2001 for $192.5 million. Both settlements include historic programmatic relief, featuring independent Task Forces with sweeping powers to reform key human resources practices such as pay, promotions and evaluations. Trial Lawyers for Public Justice named Mr. Mehri a finalist for "Trial Lawyer of the Year" in 1997 and 2001 for his work on the Texaco and Coca-Cola matters respectively.

Currently, Mr. Mehri is leading a nationwide effort on behalf of public school districts adversely impacted by the opioid crisis due to rising special education and supplemental education costs to opioid-exposed children, including children diagnosed with neonatal opioid withdrawal syndrome. Mr. Mehri led the negotiations that resulted in an agreement to help establish the Public School District Special Education Trust totaling $30.5 million from the Purdue and Mallinckrodt Bankruptcy proceedings. Judge Charles Breyer appointed Mr. Mehri to serve on the Plaintiffs Steering Committee on behalf of Independent School Districts nationwide in the McKinsey consulting company opioid litigation.

Mr. Mehri has a history of representing defrauded investors, pensioners and consumers, as well as small businesses subjected to price-fixing, in other class

actions. For example, the 1993 case *Florin v. Nations Bank* restored $16 million to a pension plan that was bilked by company insiders at Simmons Mattress Company. In 1991, *In re Bolar Pharmaceutical Co*. returned over $25 million to defrauded shareholders. Mr. Mehri serves as co-lead counsel in numerous consumer class actions. Mr. Mehri helped to prosecute one of the largest securities cases in history, a $2.5 billion settlement with AOL Time Warner.

Mr. Mehri's work supports underrepresented groups in various settings. On April 6, 2004, Mr. Mehri, along with Martha Burk and the National Council of Women's Organizations, announced a project called "Women on Wall Street." The project focuses on gender discrimination in financial institutions. As a result of the project, in 2007, M&S announced a $46 million settlement with Morgan Stanley on behalf of female financial consultants. In 2008, the firm announced a comparable $33 million settlement with Smith Barney, and in 2011, the firm reached a comparable $32 million settlement with Wachovia Securities/Wells Fargo Advisors. These are settlements that have sweeping reforms that will fundamentally change the allocation of business opportunities at these brokerage houses.

Furthermore, Mr. Mehri served as lead counsel in *Robinson v. Ford Motor Company*. The settlement created a record 279 highly coveted apprenticeship positions for African American employees as well as payment of $10 million. In a May 2007 EEOC Commissioners meeting, Mr. Mehri and others testified about this settlement's significance on testing procedures in the workplace.

Additionally, Mr. Mehri uses his expertise to provide recommendations to the judicial nominations space. In September 2008, Mr. Mehri testified before the Senate Judiciary Committee alongside Supreme Court litigant Lilly Ledbetter. Mr. Mehri's testimony called for diversifying the pool of potential judicial nominations not just in terms of race and gender but also in terms of life and work experience.

Mr. Mehri is also an instrumental advisor in sports law. On September 30, 2002, Mr. Mehri and Johnnie L. Cochran, Jr. released the report, "Black Coaches in the National Football League: Superior Performance, Inferior Opportunities." The report became the catalyst for the NFL's creation of a Workplace Diversity Committee and the adoption of a comprehensive diversity program. The NFL reached a record number of

African American head coaches. Mr. Mehri co-founded the Fritz Pollard Alliance, an affinity group for coaches of color, front office, scouting personnel and game day officials in the NFL. In 2007, the Miami-Dade County Office of the Mayor and Board of County Commissioners gave Mr. Mehri the "Distinguished Visitor" Award.

Mr. Mehri frequently authors or contributes to scholarly works. In October 2008, Mr. Mehri co-authored a paper—with M&S partner Ellen Eardley— called "21st Century Tools for Advancing Equal Opportunity: Recommendations for the Next Administration." The American Constitution Society published this paper along with papers by several other authors including Senator Ted Kennedy and Former Attorney General Janet Reno. For the 2008 National Employment Law Association Convention, Mr. Mehri co-authored a paper, "A 'Toolbox' for Innovative Title VII Settlement Agreements." Mr. Mehri also has co-authored an article in Fordham's Journal of Corporate and Financial Law entitled "One Nation, Indivisible: The Use of Diversity Report Cards to Promote Transparency, Accountability, and Workplace Fairness." He also co-authored—with M&S partner Michael Lieder—a book chapter entitled "Addressing the Ever Increasing Standards for Statistical Evidence: A Plaintiff Attorney's Perspective," which was published in *Adverse Impact Analysis: Understanding Data, Statistics, and Risk* (2017). Mr. Mehri is a frequent guest on radio and TV, including NPR and the *New York Times* podcast, the Daily. He has recently published articles in *The Atlantic*, *Politico* and the *Washington Post*.

Mr. Mehri graduated from Cornell Law School in 1988, where he served as Articles Editor for the Cornell International Law Journal. After law school, he clerked for the Honorable John T. Nixon, U.S. District Judge for the Middle District of Tennessee. Since then, Mr. Mehri has received numerous awards. Mr. Mehri received the Outstanding Youth Alumnus Award from Hartwick College and the Alumni Award from Wooster School in Danbury, Connecticut "for becoming a beacon of good, positively affecting the lives of many." Mr. Mehri gave the 2009 Commencement Speech at Hartwick College and the Founder's Day Speech at Wooster School. The Pigskin Club of Washington, DC awarded Mr. Mehri the prestigious "Award of Excellence." In March 2003, the Detroit City Council passed a testimonial resolution honoring Mr. Mehri and wishing him "continued success in changing the fabric of

America." In 2007, the Miami-Dade County Office of the Mayor and Board of County Commissioners gave Mr. Mehri the "Distinguished Visitor" Award. In 2019, Mr. Mehri accepted the Diversity and Trailblazing Award at the D&I Honors hosted by Diverse & Engaged during Congressional Black Caucus week. In 2021, Mr. Mehri received an Honorary Doctor of Laws degree from Hartwick College. In 2023, Mr. Mehri joined the Board of Trustees of Hartwick College.

In 2017, Mr. Mehri co-founded the consulting company, Working Ideal which focuses on Diversity and Inclusion strategies.

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Steven A. Skalet

Steven A. Skalet is a founding partner of M&S and was its managing partner for 20 years. He has over 40 years of litigation and transactional experience in real estate, consumer fraud, bank fraud, discrimination, civil rights and class action litigation. He recently retired as an equity partner and is currently "of counsel" to the firm and in that capacity maintains an interest in a variety of cases.

Mr. Skalet was involved in all aspects of the firm's litigation practice—especially in the areas of consumer and financial fraud—and continued his real estate and finance practice.

Mr. Skalet began his career with the Washington, D.C. firm of Melrod, Redman & Gartlan, where he worked on several American Civil Liberties Union cases, including a case granting women the right to employment with the U.S. Park Service as park police.

Mr. Skalet has had a varied litigation practice before state and federal courts throughout his career. From 1973 until the formation of M&S, Mr. Skalet practiced with Kass & Skalet, PLLC, and various iterations of the firm, a well-known real estate, litigation, complex business, and consumer protection firm. The firm's practice focused on real estate and litigation, including consumer class actions under the Truth-in-Lending and Equal Credit Opportunity acts. The firm represented many tenant associations who purchased their rental property under the District of Columbia Tenant Opportunity To Purchase Act, and represented many condominium,

cooperative and homeowner associations. That firm grew to approximately 23 lawyers in 3 jurisdictions and, when it split up in 1995, was known as Kass, Skalet, Segan, Spevack & Van Grack, PLLC.

In 2001, Mr. Skalet and Cyrus Mehri started M&S, concentrating in complex litigation and class actions. The firm has developed a varied and successful litigation practice in state and federal courts. Since its inception Mr. Skalet has been lead counsel or co-lead counsel in successful class action cases against Dell, Inc., Mercury Marine, Hewlett Packard, Sony, Apple, Ford, Verizon, Mitsubishi, Morgan Stanley, and many other companies.

Mr. Skalet has been an advisor to the Federal Reserve Board on credit and banking matters. He has served on the Montgomery County Advisory Committee reviewing the wholesale simplification of the Montgomery County Code. He also served on the District of Columbia Bar Committee responsible for drafting form commercial leases and the Montgomery County Board of Realtors committee responsible for drafting residential real estate contracts.

Mr. Skalet has actively participated in Community Associations Institute activities and was Chair of the District of Columbia Legislative Action Committee for many years. In 1999, and again in 2001, he was awarded the Public Advocate Award for his work on District of Columbia legislation.

Mr. Skalet graduated from the University of Pennsylvania School of Law in 1971 and the University of Rochester in 1968.

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Jay Angoff

Jay Angoff is a partner at M&S and heads the firm's insurance practice. He previously served as the first director of the Affordable Care Act (ACA) implementation at HHS and as the Missouri Insurance Commissioner, making him one of the few people to have served as both a state Insurance Commissioner and the chief federal insurance regulator.

He is currently counsel in cases challenging the practice of price optimization—charging policyholders based on their willingness to tolerate a price increase, rather

than on the risk they present—as well as the systematic overcharging of enlisted members of the military.

Cases in which Mr. Angoff has obtained refunds for consumers overcharged by insurers include: *Harris v. Farmers Insurance Exchange* (Cal. Super. Ct., L.A. Cty.) ($15 million settlement), *Landers v. Interinsurance Exchange of the Automobile Club* (Cal. Super. Ct., L.A. Cty.) ($24 million settlement), *Clutts v. Allstate* (Ill. Cir.) ($6 million settlement), and *Foundation for Taxpayer and Consumer Rights v. GEICO* (Cal. Super. Ct., L.A. Cty.) (settlement valued at up to $12 million).

Mr. Angoff has also represented and advised state insurance departments in connection with proposed mergers and restructurings, including the Maryland, Pennsylvania, Montana, and Missouri Departments. He also represents and advises both for-profit and non-profit organizations on the ACA- and other insurance-related matters, including in rate proceedings before state regulators.

Mr. Angoff also serves as an expert witness on insurance-related issues. Among the issues he has testified on are: payments constituting illegal rebates; fronting arrangements; illusory coverage; duties of primary and excess insurers; an insurer's duties in connection with its surplus; the scope of the business judgment rule; the insurable interest rule; the duty of an insurer to settle within policy limits when liability is reasonably clear; and the duty of the insured to inform the insurer of a material change in the risk.

Recent decisions making new law in which he has prevailed include *St. Louis Effort for AIDS v. Huff*, 782 F.3d 1016 (8th Cir. 2015), in which the 8th Circuit struck down a Missouri statute limiting the ability of ACA-authorized consumer assistance organizations to help consumers obtain health insurance, and *Corbin v. Allstate*, 140 N.E.3d 810 (Ill. App. Ct. 2019) in which the Illinois Appellate Court held that the filed rate doctrine does not apply to filed auto insurance rates in Illinois.

At HHS, Mr. Angoff's responsibilities included developing the regulations implementing the ACA's individual and small group market reforms, including the Patient's Bill of Rights, Medical Loss Ratio rule and Rate Review rule; implementing the Consumer Assistance, Exchange, and Rate Review grant programs; and establishing the Early Retiree Reinsurance Program and Preexisting Condition

Insurance Plan. At HHS, Mr. Angoff also served as Senior Advisor to the Secretary and as Regional Director for Region VII, headquartered in Kansas City.

Between 1993 and 1998, Mr. Angoff served as Director of the Missouri Department of Insurance. There, he became one of the first Insurance Commissioners to order a traditionally non-profit Blue Cross plan to establish a healthcare foundation with the full value of its assets. After five years of ultimately successful litigation, he oversaw the establishment of the foundation, the Missouri Foundation for Health, which is now one of the nation's largest healthcare foundations with over $1.2 billion in assets. He also helped implement a health insurance exchange for state workers, which reduced their health insurance rates by up to 45%. And he established a competitive bidding process for workers compensation insurers that reduced workers comp rates by 24%. He also oversaw and accelerated the run-off of the Transit Casualty and Mission insolvencies, two of the largest and longest-running insurer insolvencies in the nation.

Prior to his service in Missouri, Mr. Angoff served as Deputy Insurance Commissioner of New Jersey and Special Assistant to the Governor for Health Insurance Policy. In those positions, he helped draft and implement New Jersey's individual and small group reform laws. He is also one of the primary drafters of Proposition 103, the California auto insurance reform initiative approved by the voters in 1988.

Mr. Angoff began his career as an antitrust lawyer with the Federal Trade Commission. He also served as a staff attorney for Congress Watch, a public interest lobbying organization, as counsel to the National Insurance Consumer Organization, and as Vice-President for Strategic Planning for Quotesmith.com (now insure.com), an internet quotation service and insurance broker.

He has written for The New York Times, The Washington Post, and The Wall Street Journal, among other publications, and has appeared on MSNBC and Fox News. He is the recipient of the James R. Kimmey Lifetime Achievement Award and the Rory Ellinger Award for Public Interest Litigation.

Mr. Angoff is a member of the District of Columbia, Missouri, New Jersey, and U.S. Supreme Court bars, and is a graduate of Oberlin College and Vanderbilt Law School.

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Richard Condit

Richard Condit is a partner at M&S, and co-chairs the firm's Whistleblower Rights Practice. His practice includes cases involving whistleblower retaliation, disclosures to the SEC and other federal agencies, and false claims or fraud against the government or its contractors. Mr. Condit has over 30 years of experience working with whistleblowers of diverse backgrounds in a wide variety of industries, representing lawyers, doctors, bank executives, firefighters, social workers, police officers, engineers, and laborers. The subject matter of the issues raised by whistleblowers Mr. Condit has worked with are equally diverse, covering such problems as fraud against the government, nuclear safety, environmental protection, bank fraud, food safety, mortgage fraud, securities law or regulatory violations, public transit safety, and many others.

Most recently, Mr. Condit, along with co-counsel, represented four whistleblowers whose actions resulted in the government uncovering a ten-year period of overcharging for labor costs and related wrongdoing by construction giants Bechtel and AECOM. In 2020, their efforts resulted in a $57.75 million settlement between the government and the contractors, which is one of the largest involving a U.S. Department of Energy facility. They received $13.75 million, nearly 24% of the government's recovery and one of the highest ever received in a case where the government has chosen to intervene.

Prior to joining M&S, Mr. Condit worked at the Government Accountability Project (GAP)—first from 1987-1995 and again in 2007. In his first stint at GAP, he helped develop the organization's environmental whistleblower and citizen enforcement programs. When Mr. Condit returned to the organization, he served as Senior Counsel and lead GAP's in-house litigation of whistleblower and open government cases. Richard is also former General Counsel for Public Employees for Environmental Responsibility (PEER), where he led the group's whistleblower litigation efforts. Moreover, he previously served as an adjunct faculty member of the University of the District of Columbia David A. Clarke School of Law, teaching Whistleblower Law and Practice in the classroom and through the school's highly

regarded clinical program. Mr. Condit is admitted to practice before the U.S. Supreme Court and multiple federal district courts. He has also appeared before several U.S. Courts of Appeal and regularly practices before the U.S. Department of Labor, the U.S. Office of Special Counsel, the U.S. Merit Systems Protection Board, and various state courts and agencies.

Mr. Condit's expertise is recognized by whistleblower law and support organizations. In 2021, he appeared at Whistleblowers of America's first Workplace Promise Institute conference and spoke on a panel focused on legal protections for whistleblowers. Mr. Condit also spoke at the Taxpayer's Against Fraud 21st Annual Conference. At the TAF conference, he moderated a panel that discussed the mental health challenges, stress, and trauma experienced by whistleblowers.

Mr. Condit's work was recognized in Tom Mueller's 2019 book, *Crisis of Conscience: Whistleblowing in the Age of Fraud*; former U.S. EPA senior criminal enforcement lawyer Richard Emory's 2019 book, *Fighting Pollution and Climate Change*; and Chip Ward's 1999 book, *Canaries on the Rim – Living Downwind in the West*.

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Ellen Eardley

Ellen Eardley is a partner at M&S and a member of the management team. She practices civil rights and employment discrimination law and also offers diversity, equity, inclusion, and justice consulting services.

Ms. Eardley co-leads the firm's civil rights practice. She represents people who have experienced race discrimination, sex discrimination, sexual assault, and other civil rights violations in the workplace and at school. She represents over 500 plaintiffs who have experienced sexual harassment while working at the Cook County Jail in Chicago, *Howard v. Cook County Sheriff's Office*, No. 17-8146 (N.D. Ill.), which is one of the largest sexual harassment cases in history. Along with co-counsel from the National Women's Law Center and A Better Balance, Ms. Eardley was lead counsel in *Borders v. Wal-Mart Stores, Inc.*, a nationwide pregnancy discrimination class action in which a district court approved a $14-million settlement.

A leader on issues of diversity, inclusion, equity, and justice (DEIJ), Ms. Eardley offers strategic consulting services to organizations, employers, schools, non-profits, and government entities. In collaboration with the Working IDEAL consulting network, she provides racial equity assessments, conducts investigations of allegations of discrimination, and develops DEIJ plans intended to dismantle structural barriers to inclusion.

Ms. Eardley was formerly the Assistant Vice Chancellor for Civil Rights & Title IX at the University of Missouri. She served on both the Chancellor's and Provost's staffs and was responsible for addressing discrimination and sexual violence in a community of more than 60,000 people. She founded the University's first institutional equity office, creating a central place to address all forms of discrimination and sexual violence with an intersectional lens. Ms. Eardley was credited with building a team of highly qualified equity professionals, increasing transparency through annual reports, improving key equity-related university policies, and co-chairing university-wide task forces to address sexual violence as well as to improve accommodations for pregnant students. She increased campus resources for disability inclusion and fought to ensure that trans students could use their lived names on key documents, such as diplomas.

Before taking on her university administrator role, Ms. Eardley practiced law at M&S for eight years, where she was a Partner. She also taught Sex Discrimination Law at American University's Washington College of Law during this time. Ms. Eardley began her legal career as a fellow and counsel at the National Women's Law Center. She also was an associate at a labor and employment firm now known as McGillivary Steele Elkin, LLP. In addition to her law degree, Ms. Eardley holds a master's degree in women's and gender studies.

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Michael Lieder

Michael Lieder is a partner at M&S who joined the firm in 2012. Since then, he has worked primarily on employment discrimination, wage and hour, and insurance class action litigation for the firm. He has been lead counsel or had a significant role in five of the civil rights class action lawsuits discussed above – *Borders v. Wal-Mart Stores,*

Inc., *Chalmers v. City of New York*, *Richardson v. City of New York*, *Brown v. Medicis*, and *White v. Lynch* – in the wage and hour case against MetLife mentioned above, and several other concluded or ongoing cases.

Mr. Lieder's work includes "Onward and Upward after *Wal-Mart v. Dukes*," co-authored with M&S's Cyrus Mehri, on successfully pursuing employment justice in the wake of *Wal-Mart v. Dukes*. He also co-authored—with M&S co-founder Cyrus Mehri—a book chapter entitled "Addressing the Ever Increasing Standards for Statistical Evidence: A Plaintiff Attorney's Perspective" which was published in *Adverse Impact Analysis: Understanding Data, Statistics, and Risk* (2017).

Prior to joining M&S, Mr. Lieder was of counsel, a partner, and a member of Sprenger & Lang, PLLC. At that firm, he generally served as lead counsel or in another leading role in employment discrimination, ERISA, wage and hour, and consumer class action litigation, including the following prominent cases:

- *In re TV Writers Cases*, No. 268836 et al. (Cal. Super. Ct., L.A. Cty. 2011) (settled this age discrimination class action against major television networks, studios, and talent agencies on behalf of members of the Writers Guild of America for about $70 million, believed to be the largest settlement of an age discrimination class action ever);
- *Whitaker v. 3M Co.*, (Minn. Sup. Ct., Ramsey Cty. 2011) (settled this age discrimination class action claiming discrimination primarily in potential ratings, training, and promotions for about $16 million plus injunctive relief);
- *Seraphin v. SBC Internet Servs., Inc.*, No. CV 09-131-S-REB (D. Idaho 2011) (consumer class action);
- *Jarvaise v. RAND Corp.*, No. 1:96-CV-2680 (D.D.C. 2007) (settled this gender discrimination class action claiming discrimination in pay for about $3 million);
- *Carlson v. C.H. Robinson Worldwide, Inc.*, No. CV-02-3780 (D. Minn. 2006) (settled this gender discrimination class action on behalf of about 230 women against a logistics company for $15 million, about $65,000 per class member, one of the largest per capita settlements ever of a gender discrimination class action);

- *Lucich v. New York Life Ins. Co.*, No. 01-1747 (S.D.N.Y. 2004) (settled this ERISA pension benefits class action on behalf of sales agents for $16 million and agreement to make retirement benefits available to more agents);
- *Franklin v. First Union Corp.*, Nos. 3:99cv344 and 610 (E.D. Va. 2001) (settled this ERISA breach of fiduciary duty class action for about $26 million in what is believed to be the first successful challenge to plan fiduciaries selecting own underperforming funds in 401(k) plan);
- *Thornton v. National Railroad Passenger Corp.*, No. 98-890 (D.D.C. 2000) (settled this race discrimination class action for trackworkers for $16 million and broad injunctive relief, most of which was incorporated into a collective bargaining agreement and is thereby enduring);
- *McLaurin v. National Railroad Passenger Corp.*, No. 98-2019 (D.D.C. 1999) (settled this race discrimination class action for managers and professionals for $8 million and broad injunctive relief including salary adjustments for employees identified as underpaid in pay equity analysis);
- *Hyman v. First Union Corporation*, No. 94-1043 (D.D.C. 1997) (settled this age discrimination collective action for $58.5 million, believed at the time to be the largest settlement of an age discrimination collective action and still possibly the largest per capita);
- *Burns v. Control Data Corporation*, No. M.D. 4-96-41 (D. Minn. 1997) (settled this age discrimination collective action for $29 million);
- *In Re: Maytag Corporation/Dixie Narco Plant Closing Litigation*, No. 92-C-417 (W.V. Cir. Ct., Jefferson Cty 1995) (settled this breach of contract and fraud class action arising out of the closing of a factory for $16.5 million); and
- *In re Pepco Employment Litigation*, No. 86-0603 (D.D.C. 1993) (settled this race discrimination class action for $38.5 million and broad injunctive relief).

The settlements in many of the cases required comprehensive injunctive relief in addition to substantial payments to the class members. In many of these cases, Mr. Lieder worked closely with co-counsel from other firms.

Mr. Lieder is well-known in the class action employment bar. He has written papers and spoken at seminars and webinars concerning certification of employment discrimination class actions, the impact of *Dukes* on certification of employment discrimination class actions, statistical evidence in employment discrimination cases, mediation of employment discrimination cases, the Age Discrimination in Employment Act, Rule 23(f) review of class action certification decisions, ERISA litigation, and wage-and-hour litigation. He also has authored several amicus briefs to the Supreme Court and Courts of Appeal. In 2007, he was named one of "500 Leading Plaintiffs' Lawyers in America" by Lawdragon magazine, and in 2013, he was selected as a "Super Lawyer."

Before beginning work at Sprenger & Lang in 1991, Mr. Lieder graduated magna cum laude from Georgetown University Law Center, where he was a Notes and Comments editor on the Georgetown Law Journal. Mr. Lieder also worked for six years as an associate at the Madison, Wisconsin office of Foley & Lardner LLP, and served as a visiting assistant professor for a year at the University of Toledo College of Law.

Mr. Lieder is an accomplished author with wide-ranging interests. He co-authored a book, *Wild Justice: The People of Geronimo vs. the United States*, published by Random House in 1997, which was favorably reviewed by the New York Times and the Washington Post, among other leading publications.

Mr. Lieder also wrote or co-authored five pieces published in various law journals:

- Class Actions Under ERISA, 10 Employee Rights & Employment Policy J. 665 (2006);
- Navajo Dispute Resolution and Promissory Obligations: Continuity & Change in the Largest Native American Nation, 18 Amer. Ind. L. Rev. 1 (1992);
- Constructing a New Action for Negligent Infliction of Economic Loss: Building on Cardozo & Coase, 66 Wash. L. Rev. 937 (1991);
- Religious Pluralism and Education in Historical Perspective: A Critique of the Supreme Court's Establishment Clause Jurisprudence, 22 Wake Forest L. Rev. 813 (1987); and

- Adjudication of Indian Water Rights Under the McCarran Amendment: Two Courts Are Better Than One, 71 Geo. L.J. 1023 (1983).

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Cleveland Lawrence III

Cleveland Lawrence III is a partner at M&S, where he is Co-Chair of the Whistleblower Rights Group. He is an expert on False Claims Act, whistleblower, fraud, and compliance issues, and has been a thought leader in the *qui tam* community for more than a decade. At the firm, Mr. Lawrence has been lead counsel or had a significant role in in several of the whistleblower cases discussed above, including the case against Bechtel and AECOM that resulted in a $57.75 million settlement between the government and the contractors, which is one of the largest involving a U.S. Department of Energy facility. From 2008 to 2016, Mr. Lawrence led the Taxpayers Against Fraud Education Fund (TAFEF) and its sister organization, Taxpayers Against Fraud. In those capacities, he regularly met with whistleblowers, federal and state government officials, private attorneys, and the public to combat fraud against federal and state funds. He also served as editor in-chief of TAFEF's law journal, the False Claims Act & *Qui Tam* Quarterly Review, and managed annual national seminars on the IRS, SEC, and CFTC whistleblower programs.

A seasoned litigator, Mr. Lawrence also has experience as outside counsel, having handled a variety of fraud, compliance, ethics, and whistleblower issues—including as defense counsel. Prior to his service at TAFEF, Mr. Lawrence spent more than six years as an associate at Weil, Gotshal & Manges, LLP, where among other things, he defended clients against FCA lawsuits, and assisted clients facing internal investigations and administrative subpoenas from government agencies. In addition to these duties, he counseled corporate and individual clients in several other areas of litigation practice, including complex commercial law, products liability, bankruptcy, antitrust, class action, insurance coverage, healthcare, employment, and environmental law.

Throughout his career, Mr. Lawrence has worked with the highest levels of all three branches of Government to shape whistleblower law and policy. He has

partnered with high-ranking officials from the U.S. Department of Justice to coordinate the nation's largest annual False Claims Act conference—which often featured Directors of the IRS, SEC, and CFTC whistleblower programs as well. In addition to arguing before federal district and circuit courts on behalf of his own whistleblower clients, Mr. Lawrence has authored and filed numerous amicus curiae briefs on behalf of TAFEF in federal and state courts across the country—including the United States Supreme Court. In addition, Mr. Lawrence has: testified before Congress and state legislatures regarding FCA and whistleblower-related legislation; represented a testifying witness during Congressional committee hearings; prepared draft and model federal and state legislation; and submitted multiple comment letters to federal agencies implementing Dodd-Frank and other whistleblower reward programs.

Mr. Lawrence has examined whistleblowing from multiple perspectives and frequently speaks about the topic to a variety of audiences, including conferences, seminars, and other educational events for whistleblowers and attorneys sponsored by the American Bar Association, the Federal Bar Association, the National Healthcare Anti-Fraud Association, TAF, and others; law students, graduate students, compliance officers, and other groups; and media outlets such as *Law360*, *POLITICO*, and *The CPA Journal*.

Mr. Lawrence received a B.A. from Georgetown University and he graduated, with honors, from The George Washington University Law School, where he was a member of the Public Contracts Law Journal. A native of New Orleans, he is a founder and president of the Lagniappe Education Foundation, a 501(c)(3) non-profit organization that provides scholarship assistance to deserving college-bound graduates from his *alma mater*, Edna Karr High School.

* * *

Joshua Karsh

Mr. Karsh joined M&S in 2020, opening up the firm's Chicago office. In his 30 years of practice, Mr. Karsh has represented all kinds of clients—individual workers and nation states, community-based organizations and litigation classes with tens or hundreds of thousands of class members, sole proprietors, and large companies. He is a seasoned trial and appellate litigator: he has tried multiple cases to verdict (before

both judges and juries), arbitrated and mediated cases, and briefed and argued appeals across the country.

Before joining M&S, Mr. Karsh was the Legal Director for the National Immigrant Justice Center. Before that, he was a partner and shareholder in a high-powered litigation boutique in Chicago, where he worked for almost twenty years.

Mr. Karsh is a graduate of the University of Chicago Law School and Yale University, and clerked for United States District Court Judge Hubert L. Will. He is a member of the American Law Institute (ALI), a Fellow of the College of Labor and Employment Lawyers, and has been heralded as an Illinois Super Lawyer® and listed on the Illinois Leading Lawyer Network List.

Mr. Karsh played a leading role in each of the following cases:

- *Cruz et al. v. Estados Unidos Mexicanos et al. (N.D. Cal., No.01-0892-CRB).* Represented thousands of guest workers (braceros) in litigation against the Mexican government and three Mexican state-owned banks to recover wages withheld from the workers between 1942 and 1946. Settlement of this class-action entitled 6,100 U.S-resident braceros, or their surviving family members, to reparations. Reported at 387 F. Supp.2d 1057 (N.D. Cal. 2005).
- ***Lewis v. City of Chicago*** (N.D. Ill., No. 98 C 5596) (bench trial in 2004; victory in the U.S. Supreme Court in 2010; damages judgment and remedial injunction in 2012). Represented more than 6,000 African Americans who had been denied jobs as entry-level firefighters with the Chicago Fire Department because of their scores on a discriminatory, written hiring exam. Obtained a damages judgment and injunction creating 111 jobs for class members and awarding more than $70 million in backpay and retroactive pension contributions. Reported at 2005 WL 639618 (N.D. Ill. March 22, 2005), 560 U.S. 205 (2010), and 643 F.3d 201 (7th Cir. 2011).
- ***Howard v. Cook County Sheriff et al.*** (N.D. Ill., No. 17 C 08146). Represented more than 500 women working at the Cook County Jail, bringing hostile work environment claims against the

Jail for failing to protect them from sexual harassment by male detainees. Obtained a $31 million settlement, plus programmatic relief, including the appointment of a retired federal judge as an outside monitor, to ensure the Jail's protection of these women in the future.

- ***Gecker v. Flynn*** (N.D. Ill., Bankr. Adv. No. 08 A 00972) (bench trials in 2010 and 2013). Represented a Chapter 7 bankruptcy trustee against seven defendant directors and officers of the defunct Emerald Casino, in breach-of-contract and breach-of-fiduciary-duty litigation, obtaining a $272 million judgment in 2014, which was affirmed on appeal in 2017. Reported at 867 F.3d 743 (7th Cir. 2017); 530 B.R. 44 (N.D. Ill. 2014).

- ***Thornton Tp. High School Dist. 205 et al. v. Argo Comm. High School Dist. 217 et al.*** (N.D. Ill., No. 06 C 2005). Represented several majority-African-American school districts challenging the decision made by eleven predominantly White high school districts to secede from the largest high school interscholastic conference in Illinois. The new arrangement they contemplated would have effectively ended regular-season competition between majority-White and majority-African-American high schools in the southwest suburbs of Chicago. This case was one of the first to use the "effects test" provisions of the Illinois Civil Rights Act of 2003 and settled on terms that assured continued regular-season competition and meetings between majority-white and majority-African-American high schools.

- ***Ernst v. City of Chicago*** (N.D. Ill., No. 08 C 4370) (jury trial on liability in 2014; appellate argument before the Seventh Circuit in 2016; bench trial on damages in 2017). Represented five women denied employment by the Chicago Fire Department based on their scores on a discriminatory physical test that disproportionately excluded women while bearing no demonstrable relationship to job performance. Reversing the district court's adverse liability rulings, the Seventh Circuit directed entry of judgment in the women's favor and remanded for a determination of damages, which were tried. Obtained judgments totaling more than 4 million

dollars, plus offers of instatement with full retroactive seniority and pension benefits. Reported at 837 F.3d 788 (7th Cir. 2016).

- ***del Valle v. McGuffage et al.*** (N.D. Ill., No. 01 C 796). Represented Latino and African American voters in a class action against seven local election jurisdictions and the Illinois State Board of Election Commissioners, challenging the use of flawed systems of recording and counting votes, as a violation of the Voting Rights Act and the Fourteenth Amendment. The use of these voting systems had consistently resulted in disproportionately high error rates and undercounting of votes, particularly in predominantly minority voting districts. The settlement in the case led to elimination of punch-card ballots and optical-scan voting systems that failed to provide error notification throughout Illinois.
- ***Torres et al. v. Goddard, et al.,*** (D. Arizona, No. CV 06-2482-PHX-SMM). Represented Western Union money-transfer customers challenging the Arizona Attorney General's interdiction and seizure of thousands of electronic fund transfers, followed by civil forfeitures of the funds, as violations of the Fourth Amendment and the Due Process and Commerce Clauses.
- ***Jones v. Walgreen Co.*** (N.D. Ill., No. 07-0097). Represented a nationwide class of women retail store management employees in a Title VII class action against the nation's largest drugstore chain. Obtained a $17 million settlement, which also included injunctive relief requiring objective criteria for pay and promotion decisions and outside review of gender equity compliance efforts.
- ***Bell et al. v. Woodward Governor Company.*** (N.D. Ill., No. 03 C 50190). Represented minority employees in a Title VII class action alleging race and national-origin discrimination by a large manufacturing employer, resulting in a multi-million-dollar settlement, which also provided comprehensive injunctive relief. The injunctive relief included both appointment of a third-party monitor to assure Title VII compliance in the future and retention of workplace industrial-organizational experts to create and implement best practices for job-related compensation and promotional decisions going forward.

- ***Trombetta v. Proviso School District 209 et al.*** (N.D. Ill., No. 02 C 5895) (jury trial in 2004). Represented a school-district employee fired after exercising his First Amendment right to support the candidate of his choice in local school board elections. The jury verdict for compensatory and punitive damages was, at the time, one of the highest ever in a single-plaintiff civil rights action in the U.S. District Court for the Northern District of Illinois.
- ***Jefferson v. Ingersoll Int'l, Inc.,*** No. 98 C 50042 (N.D. Ill., Western Div.). Represented women and minorities bringing race and sex discrimination claims under Title VII, resulting in more than $1 million in monetary relief and a wide range of injunctive measures. 195 F.3d 894 (7th Cir. 1999).
- ***Jimenez v. GLK Foods*** (E.D. Wis., No. 12 cv 209). Represented approximately 100 Mexican migrant workers in a class and collective action against the world's largest sauerkraut producer, principally for wage-and-hour violations and wrongful discharge. In 2016, obtained a precedent-setting ruling that workers employed under the federal government's H-2B visa program are not terminable-at-will. In April 2017, obtained a judgment of $837,000 for the workers. Reported at 2016 WL 2997498.
- ***Rosiles-Perez et al. v. Superior Forestry Service, Inc.,*** 250 F.R.D. 332 (M.D. Tenn. 2008) (settled in 2010). Represented more than 2,200 H-2B visa guest workers in a Rule 23 class and FLSA collective action to recover unpaid wages, resulting in a $2.75 million settlement.
- ***Lopez v. Fish Farms*** (E.D. Tenn., No. 2:11-cv-00113). Represented fourteen Mexican migrant agricultural workers against a Tennessee tomato farm, bringing claims for retaliatory discharge. Settled for $390,000.
- ***Personal PAC v. McGuffage*** (N.D. Ill., No. 12-CV-1043). Represented Personal PAC and two of its supporters in a successful First Amendment challenge to portions of Illinois' campaign finance

law, resulting in a permanent injunction barring enforcement. Reported at 858 F. Supp.2d 963 (2012).

- ***Goodman v. Ward*** (Ill. Supreme Ct., No. 109796). Represented a judge before the Illinois Supreme Court in this election-law case, which presented a novel question of Illinois constitutional law regarding the contours of the requirement of residency for judicial office. Reported at 241 Ill.2d 398 (2011).

* * *

Ezra Bronstein

Ezra Bronstein is a Senior Associate at M&S. Building on his government experience, Mr. Bronstein guides domestic and foreign whistleblowers, from crypto technologists and construction workers to consultants and investors, through their legal matters, including the SEC's and CFTC's whistleblower reward programs, qui tam cases against government contractors, and lawsuits relating to workplace retaliation. Mr. Bronstein also litigates class actions targeting abusive or fraudulent business practices and represents independent school districts nationwide in opioid-related litigation.

Before joining M&S, Mr. Bronstein directed the Federal Housing Finance Agency Office of Inspector General's whistleblower operations, led public corruption investigations, and participated in prosecutions of complex white-collar crimes. Mr. Bronstein also assessed regulatory compliance and internal controls of Fannie Mae, Freddie Mac, Federal Home Loan Banks, and the Federal Housing Finance Agency, and recommended improvements in public reports to Congress.

Mr. Bronstein serves as a board member and legal advisor to several nonprofit organizations, including Geder Avos, an organization dedicated to preserving historic Jewish cemeteries and mass graves in Eastern and Central Europe.

Mr. Bronstein graduated from The George Washington University Law School in 2012, where he was a Presidential Merit Scholar. While in law school, Mr. Bronstein interned at the U.S. Securities and Exchange Commission and a public company.

Before law school, Mr. Bronstein volunteered as a community organizer and teacher in Johannesburg and Pretoria, South Africa, and was ordained as a rabbi.

Mr. Bronstein is a member of the District of Columbia and New York Bars and is admitted to practice before numerous federal courts.

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Judge U.W. Clemon

Retired U.S. District Judge U.W. Clemon (Chief Judge N.D. Alabama), joined M&S as Of Counsel on January 1, 2017. Judge Clemon was Alabama's first black federal judge, serving as the Chief Judge of the Northern District of Alabama from 1999-2006. Joining M&S gives him a chance to return to his roots in civil rights and other public spirited and complex litigation.

Judge Clemon served as the trial judge during Lilly Ledbetter's successful trial against Goodyear. The Supreme Court created new legal standards and reversed Ms. Ledbetter's trial victory. In her dissent, Justice Ginsberg called on Congress to act to restore the law and the legal principles consistent with Judge Clemon's trial decisions. The Lilly Ledbetter bill became the first law that President Obama signed into law as President. Ms. Ledbetter has this to say about Judge Clemon: "There is no finer person or jurist than Judge U.W. Clemon. As the presiding judge, he managed my trial exactly how it should have been. He was fair to both sides. But for him, I may never have had my day in court and may never have had the opportunity to make history to change the law for the better for all Americans."

Judge Clemon serves on the plaintiffs' Steering Committee in perhaps the largest antitrust case in the nation, BlueCross Antitrust. Judge Clemon is also frequently deployed as a mediator, arbitrator or court-appointed Special Master including serving as Special Master in a historic M&S case, *Norflet v. John Hancock*.

As a student activist at Miles College, Judge Clemon confronted the infamous Eugene "Bull" Connor over Birmingham's segregation ordinances in 1962 and marched with Dr. Martin Luther King in the following year. In 1968 he graduated from Columbia Law School, where he began a life-long relationship with the NAACP Legal Defense & Educational Fund, Inc.

Before his judicial appointment, Judge Clemon was a civil rights lawyer. He sued Coach Paul Bear Bryant in 1969 to desegregate the University of Alabama's football team, and has represented many plaintiffs in employment cases. He was the first African American elected to the Alabama State Senate since Reconstruction and served respectively as chairman of the Rules and Judiciary Committees.

He confronted Governor George C. Wallace on many race-related issues. After nearly thirty years of service, Judge Clemon retired from the federal bench in 2009.

Judge Clemon was profiled in the New York Times Magazine for his decades-long involvement in the debate over desegregation in Alabama public schools. Judge Clemon represented Black plaintiffs in a lawsuit against suburban Gardendale, Alabama, whose all-white council proposed plans to split the community's schools into its own district, separate from the more diverse schools in Jefferson County. The district judge found that race discrimination was a motivating factor, but allowed the split to go forward. Judge Clemon argued the case on appeal, and in February 2018 the decision was reversed.

* * *

N. Jeremi Duru

N. Jeremi Duru, a Professor of Law at American University's Washington College of Law, serves as Of Counsel to M&S. Before entering academia, Professor Duru was an associate at M&S, where he represented plaintiffs' interests in employment discrimination and other civil rights matters.

Much of Professor Duru's work involved challenges to discriminatory employment practices in professional athletics. In recognition of this work, the National Bar Association honored Professor Duru with its 2005 Entertainment and Sports Lawyer of the Year award. Professor Duru has lectured and written extensively on sports law and employment law topics and, among other publications, is co-author of Sports Law and Regulation: Cases, Materials, and Problems (3d ed.) (Wolters Kluwer) and author of Advancing the Ball: Race, Reformation, and the Quest for Equal Coaching Opportunity in the NFL (Oxford University Press). In 2018, he received both

the American University Faculty Award for Outstanding Teaching and the Washington College of Law Award for Excellence in Teaching.

After receiving his undergraduate education at Brown University, Professor Duru completed a joint-degree program at Harvard University, receiving a Master's degree in Public Policy from the John F. Kennedy School of Government and a Juris Doctorate from Harvard Law School. He then served as a law clerk to the Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit.

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Counsel for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., *et al.*,

Defendant.

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

DECLARATION OF WILLIAM ANDERSON IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

I, William Anderson, declare as follows:

1. I am a partner with the law firm of Handley Farah & Anderson PLLC ("HFA"), one of the counsel of record representing the Plaintiffs in this litigation.

2. This Declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement. I make these statements based on personal knowledge and would so testify if called as a witness.

Firm's Background and Experience

3. HFA has a nationwide practice and extensive expertise prosecuting class actions against national and multinational corporations whose policies and practices have systematically harmed consumers, workers, farmers, or others.

4. HFA is comprised of 10 lawyers, a licensed private investigator and a paralegal located in offices in Washington, DC; New York, NY; Boston, MA; Philadelphia; PA; Boulder, CO; and London, England. The firm's lawyers have graduated from top law schools, clerked for federal and state court judges, litigated groundbreaking cases, recovered hundreds of millions of dollars, published books and articles, been interviewed on dozens of television programs, and received multiple awards.

5. HFA's lawyers have litigated dozens of class actions against national and multinational corporations that made fraudulent misrepresentations to the detriment of consumers. In litigating such cases involving deceptive business practices, lawyers at HFA have alleged violations of numerous state and federal consumer protection statutes.

Mv Background and Experience

6. I received a Bachelor of Arts degree, *cum laude*, from The George Washington University in 2001, and a Juris Doctor degree from American University, Washington College of Law, in 2004. I subsequently served as a law clerk for the Honorable Rhonda Reid Winston on the DC Superior Court before entering private practice in 2005. I have focused almost exclusively on class action work continuously since that time, with particular emphasis on consumer protection.

7. From 2005-2018, I worked with the law firm Cuneo Gilbert & LaDuca, LLP—a Washington, DC-based boutique class action law firm. During that time, I was recognized as a DC Super Lawyer in Consumer Protection for five continuous years from 2014-2018. I have also lectured on the topic of class action tactics and strategy.

8. After spending 13 years with Cuneo Gilbert & LaDuca, LLP, in 2018 I co-founded Handley Farah & Anderson PLLC. A resume for HFA is attached hereto as Exhibit 1 summarizing some of the class actions I have worked on with Handley Farah & Anderson, as well as at my prior firm.

9. In November 2021, I was appointed class counsel in *Hanna Albina v. The Aliera Companies, Inc.*, 20 civ. 496 (E.D. Ky.), one of the cases that gave rise to this proposed settlement with OneShare Health, LLC.

Recommendation

10. Based on my experience with this matter and class actions generally, my law firm and I believe that this Settlement is in the Class's best interest.

11. I declare under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: May 25, 2023 By: */s/ William Anderson*

William Anderson

EXHIBIT 1

Handley Farah & Anderson PLLC

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About the Firm

Handley Farah & Anderson PLLC (HFA) seeks to improve the world. The law firm litigates cases against large corporations and other powerful interests that have unlawfully harmed people. The firm vigorously pursues such cases to halt unjust practices, hold wrongdoers accountable and recover financial damages for victims.

HFA has particular expertise prosecuting class actions against multinational corporations whose policies and practices have systematically harmed workers, consumers, farmers, or others. Most of the lawsuits filed by HFA are class actions that could not have been effectively pursued on an individual basis, and the firm's lawyers have extraordinary experience litigating complex class actions from inception through trial.

When determining which cases to pursue, HFA chooses to fight for those who need our help most: underpaid workers, mistreated farmers, overcharged consumers, rejected tenants, courageous whistleblowers, persons with disabilities, defrauded investors, and victims of discrimination. The resources of these clients are vastly outmatched by those of the defendants—but HFA's gifted lawyers level the playing field.

Lawyers at Handley Farah & Anderson PLLC

HFA is comprised of ten lawyers, a licensed private investigator and a paralegal located in offices in Washington, DC; New York, NY; Boulder, CO; Boston, MA; Philadelphia, PA; and London, England. The firm's lawyers have graduated from top law schools, clerked for federal and state court judges, litigated groundbreaking cases, recovered hundreds of millions of dollars, published books and articles, been interviewed on dozens of television programs, and received multiple awards.

Yet beyond their impressive résumés, the lawyers at HFA are creative and inspired litigators. They employ innovative legal strategies to overcome obstacles, and they fearlessly litigate cases as long as necessary to secure justice for their clients. While they come from different backgrounds, those lawyers are united by a singular purpose: to use their law degrees and legal talents to help those in need.

HFA's lawyers have been repeatedly recognized for their extraordinary work and skills. For example, founding partner Matthew Handley was a 2018 Finalist for Public Justice's Trial Lawyer of the Year for successfully representing a class of same-sex spouses denied health insurance coverage by Wal-Mart. That same year, Mr. Handley's legal efforts on behalf of trafficked workers was featured prominently in the book, *The Girl from Kathmandu, Twelve Dead Men and a Woman's Quest for Justice*, by award-winning journalist Cam Simpson.

Uncovering Injustices

Unlike many plaintiffs' firms, HFA rarely pursues cases on the heels of government indictments or cases that other firms have already filed. Instead, HFA labors to uncover, examine, and prosecute injustices that no one else has discovered.

The lawyers at HFA are particularly adept at investigating and developing compelling cases. They collaborate with nonprofit organizations and private investigators to unearth corporate abuses around the world and identify viable legal claims for the injured parties.

Practice Areas

Leveraging the diverse legal backgrounds and unique investigative skills of its lawyers, HFA litigates complex matters across a broad range of practice areas, including:

- Antitrust
- Commodity Manipulation
- Consumer Protection
- Disability Rights
- Employment Discrimination
- Exploited Foreign Labor
- Fair Housing
- Mistreated Farmers
- Police Misconduct
- Securities Litigation
- Wage Theft
- Whistleblower/False Claims Act

In litigating such cases, the lawyers at HFA have recovered—through settlement and trial verdicts—hundreds of millions of dollars for plaintiffs. The firm has also secured critical injunctive relief that has halted discriminatory misconduct, reconfigured corporate policies, modified unsafe products and reinvigorated competitive markets.

Consumer Protection

One of the largest practice areas at HFA is devoted to consumer protection. The firm's attorneys have considerable experience litigating class actions that allege violations of consumer protection statutes.

HFA's lawyers have also litigated dozens of class actions against multinational corporations that have made fraudulent misrepresentations to the detriment of consumers. In litigating such cases involving deceptive business practices, lawyers at HFA have alleged violations of numerous state and federal consumer protection statutes. For example, lawyers at HFA have served as lead, co-lead or counsel in the following cases:

• *True v. American Honda Motor Co.*, (C.D. Cal.) Founding Partner William Anderson spearheaded this first-of-its-kind class action regarding fuel efficiency and battery issues in Honda Civic Hybrid vehicles. Anderson served as class counsel in the lawsuit, which, after several years of contentious litigation, produced a settlement with actual cash benefits realized of well over $50 million.

• *Friedman v. Guthy-Renker*, (C.D. Cal.): Mr. Anderson served as co-lead counsel in this class action alleging hair loss and scalp irritation caused by haircare products. After years of contentious litigation, in 2017 the Court approved a $26.25 million cash settlement with no reversion, resulting in payments to class members of as much as $20,000 each.

• *Shuman v. SquareTrade, Inc* (N.D. Cal): HFA was co-lead counsel in this class action lawsuit alleging that SquareTrade has routinely and systematically failed to pay consumers the full reimbursement value of their items covered by their Protection Plans. A nationwide class settlement was recently approved, which provides 100% of the alleged damages in the litigation, as well as injunctive relief to address the underlying conduct at issue.

• *Gornstein v. TimberTech*, (D. Mass) Mr. Anderson served as co-lead counsel in this action alleging a defect in certain decking manufactured by TimberTech. After protracted negotiations, a settlement providing free replacement decking and a $4.50 per square foot labor reimbursement was approved by the Court.

•*Alea v. Wilson Sporting Goods Co.* (N.D. Ill.): Mr. Anderson served as lead counsel in this litigation. After years of contentious litigation, Mr. Anderson secured a settlement providing warranty extensions and offering free inspection and new replacement bats for thousands of consumers.

• *Precht v. Kia Motors America* (C.D. Cal.): Mr. Anderson served as co-lead counsel in this litigation, which resulted in a recall and repair for thousands of vehicles with allegedly defective electronic brake systems.

• *Hadley v. Subaru of America, Inc.* (D. N.J.): Mr. Anderson's litigation concerning defective safety latches that were releasing without warning at highway speeds and shattering windshields resulted in a worldwide recall for the defective hood latches, which saved lives.

• *In re LivingSocial Marketing and Sales Practices Litig.* (D.D.C.): In this MDL, Mr. Anderson and his team recovered $4.5 million for purchasers of LivingSocial products that were subject to gift card restrictions alleged to be unfair and illegal.

• *In re Global Concepts Limited, Inc.*, (S.D. Fla.) Mr. Anderson served as co-lead counsel in this litigation concerning more than three million falsely advertised pest control devices. Along with co-counsel, Anderson negotiated a nationwide settlement providing full refunds to class members with no cap on claims or risk of pro rata reduction. The settlement was finally approved from the bench without the filing of a single objection.

• *Ardon v. City of Los Angeles*, (L.A. Sup. Ct.) Mr. Anderson served as counsel in this case challenging the improper collection of telephone taxes by the City of Los Angeles. The settlement, which included the establishment of a settlement fund of $92,500,000, was approved by the Court.

• *Sloan v. United States*, (D. D.C.) This litigation involved the illegal collection of taxes on long-distance telephone service by the IRS. After the filing of the case, the IRS acknowledged the inapplicability of the tax and established a program that has returned more than $8 billion dollars to American taxpayers (albeit through unilateral action, not through a settlement). Mr. Anderson was part of the small team at his prior firm that aggressively litigated the case on behalf of taxpayers.

• *Jien v. Perdue Farms, Inc.* (D. Md.): HFA is co-lead in a pending antitrust class action alleging that the leading poultry processors in the United States conspired to fix and depress the compensation of processing plant workers in violation of the Sherman Act.

• *Moehrl v. National Association of Realtors* (D. Ill): HFA is counsel in this pending antitrust class action alleging that the National Association of Realtors and the four largest real estate brokerages conspired to inflate the commissions charged to sellers of homes. The class was recently certified and the litigation is ongoing.

• *Burrell v. Lackawanna County* (M.D. Pa): HFA is co-lead counsel in this pending collective and class action alleging that civilly-detained debtors were forced to work at a private recycling center, in violation of RICO and both federal and Pennsylvania minimum wage laws.

• *Lyman v. Ford Motor Company* (E.D. Mi.): HFA is counsel in this consumer class action alleging that certain Ford F-150 trucks suffer from a defect which causes the vehicles to consume excessive amounts of motor oil.

• *Albert et al v. Global Tel*Link Corp. et al* (D. Md.): HFA is co-lead in this class action lawsuit alleging that Global Tel*Link Corp. ("GTL"), Securus Technologies, LLC ("Securus"), and 3Cinteractive Corp. ("3CI") charged unlawfully inflated prices for collect calls made by incarcerated individuals in jails and prisons throughout the United States.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORYLN DUNCAN and BRUCE DUNCAN,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., *et al.*,

Defendant.

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

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Hearing
Date: June 15, 2023
Time: 2:00 p.m.
Courtroom: 2

Hon. Troy L. Nunley

Plaintiffs Corlyn Duncan and Bruce Duncan ("Plaintiffs") and Defendant OneShare Health, LLC ("OneShare") have entered into an Agreement (attached as an appendix to Plaintiffs' motion for preliminary approval),[1] which if approved, would resolve this putative class action. Plaintiffs have filed a motion to preliminarily approve the settlement, certify a settlement class and direct notice to the proposed Settlement Class. OneShare has filed a response to Plaintiffs' motion for preliminary approval stating that while it does not join or agree with all of the arguments set forth in the motion, it fully supports approval of the settlement.

The Court has read and considered the motion, the Agreement, counsel's declarations, the proposed notice package and the proposed distribution plan; has reviewed the relevant briefing and determined that Plaintiffs have provided the Court sufficient information to decide whether the Agreement should be granted preliminary approval; and concludes that it is appropriate to direct notice in a reasonable manner to all class members who would be bound by the proposal, since the parties' showing establishes that the Court will likely be able to (i) approve the proposal under Federal Rule of Civil Procedure 23(e)(2), and (ii) certify the class for purposes of ruling on the proposal. *See* Fed. R. Civ. P. 23(e)(1)(B).

It is therefore **ORDERED** that Plaintiffs' Motion for Certification of Settlement Class Preliminary Approval of Class Action Settlement is **GRANTED**.

The Court finds as follows:

Tentative Approval of the Proposed Settlement

1. The Court has reviewed Plaintiffs' motion, the Agreement, its exhibits, and all arguments made.

2. The parties' Agreement is the product of over three years of litigation in this case, including briefing motions to dismiss and to compel arbitration and navigating various Defendants' bankruptcy proceedings. It also stems from nearly three years of litigation in *Smith v. Aliera Cos.*, No. 20-CV-2130 (D. Colo.), and *Albina v. Aliera Cos.*, No. 20-CV-496 (E.D.

[1] Unless otherwise stated, all capitalized terms have the meaning as defined in the parties' Agreement.

Ky.), each involving substantial motion practice. The Agreement incorporates the claims against OneShare raised in this case, *Smith*, and *Albina*.

3. Based on its review, the Court finds that the Court will likely be able to approve the proposed settlement as fair, reasonable, and adequate under Federal Rule of Civil Procedure 23(e)(2). The Court preliminarily finds that the proposed settlement is in the best interests of the Settlement Class. The Agreement: (a) results from efforts by representative Plaintiffs and class counsel who adequately represented the Class; (b) was negotiated at arm's length with the assistance of Judge Thomas B. Griffith (D.C. Cir., Ret.); (c) provides relief for the Class that is reasonable and adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief to the Class; (iii) the proposed award of attorneys' fees, costs, and service awards, including timing of payment; and (iv) the strengths and weaknesses of the parties' claims and defenses; and (d) the fact that the Agreement treats Class members equitably relative to each other. Accordingly, the Court preliminary approves the proposed settlement. Further, release by Plaintiffs and the Settlement Class of the Settlement Class Released Claims is preliminarily approved pending a Final Approval Hearing.

Certification of the Settlement Class

4. In connection with considering approval of this class settlement, the Court further finds that the following proposed Settlement Class meets the requirements for class certification under Federal Rule of Civil Procedure 23(b)(3):

> All individuals who purchased a plan from both Aliera Healthcare, Inc. and Unity Healthshare LLC at any time on or before August 10, 2018.

The claims to be resolved class-wide for the Settlement Class are the Settlement Class Released Claims, as defined in the Agreement.

The Court appoints the following Plaintiffs identified in the Second Amended Complaint as Class representatives: Corlyn and Bruce Duncan, Rebecca White, Ellen Larson, Jaime and Jared Beard, Hanna Albina and Austin Willard. The Court concludes that each are adequate representatives of the proposed settlement class.

5. In connection with considering approval of this class settlement, the Court finds that the prerequisites for a class action under Federal Rule of Civil Procedure 23(a) and (b)(3) are satisfied for the following reasons: (a) the Settlement Class, which consists of over 60,000 people across the country, appears so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class for purposes of determining whether the settlement should be approved, and those questions of law predominate over any questions affecting any individual class member; (c) Plaintiffs' claims are typical of the claims of the Settlement Class; (d) Plaintiffs and their counsel are adequate representatives of the Class; and (e) a class action on behalf of the Class is superior to other available means of adjudicating this dispute. The Court also concludes that, because the action is being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of a nationwide class action involving the issues in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

6. The Court's findings concerning the Rule 23 factors and certification of this settlement class are not preclusive, and by not opposing the entry of this Order, OneShare is not waiving or prejudicing its right to oppose class certification if this settlement does not obtain final approval. All arguments concerning class certification are reserved. Moreover, by entering into the settlement agreement and not opposing preliminary approval of the class settlement, OneShare is not waiving or prejudicing its motion to compel arbitration, which will be addressed and ruled upon by the Court if the class settlement does not obtain final approval.

7. Pursuant to Federal Rule of Civil Procedure 23(g), the Court appoints Sirianni Youtz Spoonemore Hamburger, PLLC; Feinberg, Jackson, Worthman and Wasow, LLP; Handley Farah & Anderson, PLLC; Myers & Co., PLLC; Mehri & Skalet, PLLC; Garmer & Prather, PLLC; and Varellas & Varellas PLLC as Class Counsel for the Settlement Class.

Notice and Settlement Administration

8. BMC Group Inc. ("BMC") is appointed to serve as the Settlement Administrator and is authorized to receive protected health information and otherwise confidential

information, including claims information, from OneShare, Aliera or other third parties in order to effectuate the class notice and claims process, to email and mail the approved Notice to Settlement Class members and further administer the settlement in accordance with the Agreement and this Order. Defendants OneShare and Aliera and/or their affiliates are ordered to provide any HIPAA-protected health information required by BMC to effectuate class notice and the claims process.

9. The Court finds that the provisions for notice to the Settlement Class set forth in the Agreement and its exhibits satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and will provide the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice is reasonably calculated to apprise Settlement Class members of the nature of this litigation; the scope of the Settlement Class, the Settlement Class's claims, issues, or defenses; the terms of the Agreement; the right of Settlement Class members to appear, object to the Agreement, and exclude themselves from the Settlement Class and the process for doing so; the Final Approval Hearing; and the binding effect of a class judgment on the Settlement Class. The Court therefore approves the proposed methods of providing notice and directs BMC to proceed with providing notice to Settlement Class members, pursuant to the terms of the Agreement and this Order.

10. No later than ten (10) days after the date of this Order, Defendant OneShare shall provide notices and materials required under the Class Action Fairness Act ("CAFA"), 28 U.S.C. 1715(b). OneShare shall submit a declaration confirming its compliance with the CAFA requirements.

11. No later than _____, 2023 [thirty (30) days after the entry of this Order], (the Notice Date), and consistent with the Agreement, the parties shall provide to BMC records of class members by which BMC may disseminate notice. No later than sixty (60) days after receipt of the identified records, BMC shall substantially complete its notice including by disseminating notice to all reasonably identifiable Settlement Class members by email, and for those Settlement Class members for whom no email address is available and a physical

address is available, by U.S. Mail, and through publication of the dedicated settlement website, including any required processing of changes of address. BMC shall submit a declaration confirming its compliance with the class notice procedures contained in this Order.

12. No later than fourteen (14) days before the hearing on final approval of this settlement, Class Counsel shall file with the Court a report prepared by BMC, regarding the number and dollar value of Claims submitted (both for monthly payments and unpaid medical expenses) and the number and identity of persons who opted out of the Settlement prior to the Opt-Out deadline.

Opt-Out Requests and Objections

13. All Settlement Class members who do not opt out and exclude themselves shall be bound by the terms of the Agreement upon entry of the Final Approval Order and Judgment.

14. Settlement Class members who wish to object to the Settlement must submit a written notice of objection to the Court no later than _____, 2023 [150 days after the entry of this Order]. The objection must (i) clearly identify the case name and number, *Duncan v. The Aliera Companies, Inc.*, No. 2:20-CV-00867-TLN-KJN (E.D. Cal.); and (ii) include the following information:

(a) the objector's name, address, and telephone number, and the same information for the objector's attorney, if applicable;

(b) the factual and legal grounds for the objection, including adequate evidence (documents and attestations) to establish that the objector is a member of the Settlement Class;

(c) if the objector wishes to appear at the Final Approval Hearing, a statement of intent to appear, the name, address, telephone number, and email address of the attorney who will appear (if applicable) a list of witnesses (if applicable) and copies of any evidence the objector plans to present at the hearing (if applicable).

15. If an objection is submitted to the Court, it must be timely submitted by (i) filing through the Court's Case Management/Electronic Case Files system, (ii) filing in person at any

location of the United States District Court for the Eastern District of California, or (iii) mailing to the United States District Court for the Eastern District of California.

16. These procedures and requirements for objecting are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class member's objection to the settlement, in accordance with the due process rights of all Settlement Class members.

Final Approval Hearing and Schedule

17. The Court will hold a hearing on entry of final approval of the settlement, an award of fees and expenses to Class Counsel, and service awards to the Class Representatives at 2:00 p.m., _____, 2024 [approximately 180 days after the entry of this Order], in Courtroom 2, at the Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, CA 95814. At the final approval hearing, the Court will consider: (a) whether the settlement should be approved as fair, reasonable, and adequate for the Settlement Class, and judgment entered on the terms stated in the settlement; and (b) whether Plaintiffs' application for attorneys' fees and costs should be granted.

18. Plaintiffs shall move for final settlement approval and approval of attorneys' fees, litigation-expense reimbursements, and class-representative service awards no later than _____, 2023 [no later than seventy (70) days after the entry of this Order]. If Plaintiffs file an omnibus motion seeking both final approval and attorneys' fees, they shall have leave to exceed the page limits set by local rule and this Court's case-management procedures, but their motion shall not exceed 30 pages in length. No later than _____, 2023 [no later than one hundred fifteen (115) days after the entry of this Order, or fourteen (14) days prior to the final approval hearing], Plaintiffs may file reply papers, if any.

19. The Court reserves the right to adjust the date of the final approval hearing and related deadlines. In that event, the revised hearing date or deadlines shall be posted on the settlement website referred to in the Notice, and the parties shall not be required to resend or republish notice to the Settlement Class.

IT IS SO ORDERED.

Dated: _____

_____
HON. TROY L. NUNLEY
UNITED STATES DISTRICT JUDGE