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Counsel for Plaintiffs and the Proposed Class

17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**

19 CORYLN DUNCAN and BRUCE
20 DUNCAN,

21 Plaintiffs,

22 v.

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

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

**NOTICE OF PLAINTIFFS' UNOPPOSED
MOTION TO LIFT THE STAY**

Hearing

Date: June 29, 2023

Time: 2:00 p.m.

Courtroom: 2

Hon. Troy L. Nunley

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

2 PLEASE TAKE NOTICE THAT on June 29, 2023, at 2:00 p.m., or as soon thereafter as
3 this matter may be heard, Plaintiffs will and hereby do respectfully move the Court, in the
4 courtroom of the Honorable Troy L. Nunley, Courtroom 2, 15th Floor of the United States
5 District Court for the Eastern District of California, located at 501 I Street, Sacramento, CA
6 95814, for an order granting Plaintiffs' motion to lift the stay currently imposed in this case.

7 This motion is based on the notice of motion and motion to lift the stay, the following
8 memorandum of points and authorities, the arguments of counsel, and any other matters in the
9 record or that properly come before the Court.

10
11 Dated: May 25, 2023

/s/ Nina Wasow

12 _____
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17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**

19 CORYLN DUNCAN and BRUCE
20 DUNCAN, individually and on behalf of
21 all others similarly situated,

22 Plaintiffs,

23 v.

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

25 Defendant.

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

**PLAINTIFFS' UNOPPOSED MOTION TO
LIFT THE STAY**

Hearing

Date: June 29, 2023

Time: 2:00 p.m.

Courtroom: 2

Hon. Troy L. Nunley

1 INTRODUCTION

2 This proposed class action arises from allegations relating to Defendants The Alieria
3 Companies, Inc. (“Alieria”); Trinity Healthshare, Inc.¹ (“Trinity”); and OneShare Health, LLC²
4 (“OneShare”; collectively, “Defendants”). Plaintiffs Corlyn and Bruce Duncan (“Plaintiffs”)
5 allege that Defendants sold inherently unfair and deceptive health care plans and failed to
6 provide purchasers with the coverage they believed they would receive. Plaintiffs allege that
7 Defendants claimed the health care plans were not “insurance” and therefore were not subject
8 to oversight by state insurance commissioners or the requirements of the Patient Protection
9 and Affordable Care Act (“ACA”). Plaintiffs allege that Defendants designed the health care
10 plans to look and feel like health insurance that would provide meaningful coverage for the
11 purchasers’ health care needs.

12 Now, over three years after the filing of this litigation, Plaintiffs and OneShare have
13 negotiated a proposed nationwide class action settlement that is poised to resolve all of
14 Plaintiffs’ claims against OneShare on terms that deliver meaningful relief to a nationwide
15 class of members. Plaintiffs are also filing a motion for Approval of Settlement Class and
16 Preliminary Approval of Settlement. If approved, the settlement will be a major step forward
17 in making Class members whole.

18 However, the entire case is currently stayed. (Order, ECF No. 88.) Therefore, this
19 unopposed motion respectfully asks the Court to lift the stay as to Plaintiffs’ claims against
20 OneShare so that Plaintiffs can submit the settlement for the Court’s review and hasten the
21 resolution of this case.

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

28 ² OneShare was formerly known as Unity Healthshare, LLC (“Unity”) and Kingdom
Healthshare Ministries, LLC.

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, at ¶¶ 11–13.) Plaintiffs allege that OneShare’s predecessor Unity, and subsequently Defendant Trinity, did not meet the legal requirements of a HCSM. (*Id.* ¶¶ 12–14.) Plaintiffs allege that, while serving as the third-party administrator for Unity and then Trinity, Alieria 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 Alieria took 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 and/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 as represented, meet the requirements of health insurance plans under federal or state law, or provide the coverage that was represented. (*Id.*) And Plaintiffs argue that Defendants have breached their fiduciary duties to class members and have 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 Alieria in a Georgia state court in 2019 relating to Alieria’s actions in administering the Unity plan, alleging that Alieria misappropriated the funds paid by and belonging to the Unity members. Alieria 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 Alieria.

Nonetheless, Alieria has filed bankruptcy which has complicated Plaintiffs’ ability to recover from Alieria. In reaching this settlement, the parties have agreed to a resolution that

1 benefits and serves the best interests of the Unity members, given the Alera bankruptcy and the
2 claims in this case.

3 **II. Procedural Background**

4 Prior to issuance of the stay, this case was fiercely contested. After Plaintiffs filed their
5 initial complaint in April 2020, (ECF No. 1), Defendants filed motions to dismiss or to compel
6 arbitration, (ECF No. 13, 14), renewing them after the Plaintiffs amended their complaint in
7 June 2020 (1st Am. Compl., ECF No. 19; Alera Mot. Dismiss, ECF No. 36; OneShare Mot.
8 Dismiss, ECF No. 37; Trinity Mot. Dismiss, ECF No. 38.). Briefing abounded: Plaintiffs
9 opposed those motions, (Resp. Mot. Dismiss, ECF No. 44), and Defendants filed replies. (Alera
10 Reply Mot. Dismiss, ECF No. 46; OneShare Reply Mot. Dismiss, ECF No. 47; Trinity Reply
11 Mot. Dismiss, ECF No. 48.) Plaintiffs sought to file a sur-reply, (ECF No. 50), Defendants
12 opposed the request, (ECF No. 51), and Plaintiffs filed a reply, (ECF No. 52). As briefing on the
13 motions to dismiss concluded, Defendants filed a motion to stay the case pending the Court's
14 resolution of those motions, (ECF No. 45), which Plaintiffs opposed, (ECF No. 53), and about
15 which Defendants filed a reply, (ECF No. 55).

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

17 Prior to the Court ruling on those motions, Trinity filed a notice of bankruptcy on July
18 9, 2021. (ECF No. 76.) As such, the Court stayed the action as to Plaintiffs' claims against
19 Trinity. (ECF No. 79.) The Court further noted "absent any argument to the contrary,
20 the action may proceed against the other Defendants." (*Id.*) Alera filed [a] motion to
stay the case in its entirety on July 30, 2021. (ECF No. 80.) Unity [OneShare's
predecessor] did not join in the motion but instead consented to a stay. (*Id.* at 2 n.3.)

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

23 The Court ordered the entire case stayed in light of the Trinity Bankruptcy and
24 provided that "[t]he case may be reopened at the request of the parties." (Order, ECF No. 88, at
25 5.) Plaintiffs make that request as to Defendant OneShare through this motion. A plan of
26 liquidation was approved in the Trinity Bankruptcy on December 2, 2021. Through that plan,
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1 all Trinity members were allowed a claim with the liquidating trust, and Trinity itself no
2 longer exists.

3 In December 3, 2021, several parties who had obtained judgments against Alieria filed
4 an involuntary bankruptcy petition against it. (Notice, ECF No. 91); *In re The Alieria Companies,*
5 *Inc.*, No. 21-BK-11548 (Bankr. D. Del.) (“Alieria Bankruptcy”). OneShare is also a creditor in
6 those proceedings, which are pending. *See* Resp. at 2, *In re The Alieria Companies, Inc.*, No. 21-
7 BK-11548 (Bankr. D. Del. July 19, 2022), ECF No. 286. No plan has yet been filed or approved
8 in the Alieria Bankruptcy, although it is anticipated that a proposed plan will be filed soon.

9 OneShare is the only defendant in this litigation that is not in bankruptcy.

1 **THE COURT SHOULD LIFT THE STAY AS TO PLAINTIFFS’**
2 **CLAIMS AGAINST ONESHARE**

3 Important equitable and procedural considerations weigh in favor of lifting the stay as
4 to Plaintiffs’ claims against OneShare. Plaintiffs respectfully request that the Court do so to
5 facilitate a beneficial resolution of those claims.

6 Just as the Court possesses the inherent power to impose a stay of litigation, it has the
7 same ability to exercise its discretion to lift the stay. *Smart Modular Techs., Inc. v. Netlist, Inc.*,
8 No. 12-CV-02319, 2016 U.S. Dist. LEXIS 129070, at *4 (E.D. Cal. Sep. 20, 2016) (Nunley, J.)
9 (citing *Levy v. Certified Grocers of Cal., Ltd.*, 593 F.3d 857, 863–64 (9th Cir. 1979)). In its order
10 staying the case, the Court weighed three factors: “[1] [the] possible damage which may result
11 from the granting of a stay, [2] the hardship or inequity which a party may suffer in being
12 required to go forward, and [3] the orderly course of justice measured in terms of the
13 simplifying or complicating of issues, proof, and questions of law which could be expected to
14 result from a stay.” (Order, ECF No. 88, at 3 (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th
15 Cir. 1962)).) District courts use the same analysis when deciding whether to lift litigation stays.
16 See, e.g., *Morales v. Gamboa*, No. 17-CV-01673, 2019 U.S. Dist. LEXIS 9552, at *2–4 (E.D. Cal. Jan.
17 18, 2019); cf. *Smart Modular Techs.*, 2016 U.S. Dist. LEXIS 129070, at *4 (applying the same
18 factors for imposing and lifting a stay pending IPR in the patent context).

19 Each factor counsels lifting the stay as to Plaintiffs’ claims against OneShare.

20 **I. No damage will result from lifting the stay as to Plaintiffs’ claims against**
21 **OneShare.**

22 Plaintiffs request to lift the stay as to their claims against OneShare to enable the Court
23 to evaluate a settlement agreement that would resolve those claims. As the forthcoming
24 motion for preliminary approval of the settlement will detail, the agreement is the product of
25 hard-fought, arms-length negotiation facilitated by a well-respected mediator and former
26 Judge who served on the U.S. Court of Appeals for the D.C. Circuit for 15 years. What is more,
27 the proposed settlement is mutually agreeable to the parties and stands to provide significant
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1 benefits to the proposed class. Permitting this case to proceed for the limited purpose of
2 resolving Plaintiffs' claims against OneShare through a class settlement poses no risk of harm
3 to any other parties or proceedings. Lifting the stay to permit the resolution of these claims is
4 thus an appropriate exercise of the Court's inherent power "to control the disposition of the
5 causes on its docket with economy of time and effort for itself, for counsel, and for litigants."
6 (Order, ECF No. 88, at 2 (quoting *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936)).)

7 **II. No party will be harmed if the stay is lifted as to Plaintiffs' claims against**
8 **OneShare.**

9 OneShare does not oppose this motion to lift the stay.

10 All claims that members have against Trinity were resolved in the plan approved in the
11 Trinity Bankruptcy, and the settlement with OneShare will have no effect on those claims.
12 Concerns about prejudice to Trinity are no longer relevant.

13 Although OneShare had a relationship with Alieria until August 2018, it has no
14 relationship with Alieria now, and is a wholly separate entity from Alieria. A settlement with
15 OneShare here will have no effect on the Alieria Bankruptcy or any plan proposed in that
16 Bankruptcy.³ Alieria's concern identified in its motion to stay that the claims against Alieria
17 and Trinity, then the sole bankrupt party, were "inextricably intertwined" are not relevant to
18 this Court's consideration of the class settlement between Plaintiffs and OneShare, with Alieria
19 in bankruptcy.

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26 ³ Alieria's counsel filed a motion to withdraw from this case on October 19, 2021, (ECF No. 89),
27 which the Court granted on April 13, 2022, (ECF No. 93.) The Court's order gave Alieria 45
28 days to acquire new counsel and file a notice of appearance, (*id.*), but Alieria did not appear
through other counsel.

1 **III. Lifting the stay as to Plaintiffs' claims against OneShare will further the orderly**
2 **course of justice.**

3 Permitting the case to proceed as to Plaintiffs' claims against OneShare for the purpose
4 of evaluating their settlement agreement and ultimately resolving those claims would promote
5 judicial economy. In fact, lifting the stay to allow court approval of the proposed class
6 settlement is the only efficient means of resolving the claims against OneShare. As a general
7 matter, in the Ninth Circuit, "there is a strong judicial policy that favors settlements,
8 particularly where complex class action litigation is concerned." *Briseño v. Henderson*, 998 F.3d
9 1014, 1031 (9th Cir. 2021) (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015)).
10 Furthering that policy by returning to the procedural posture required for a settlement to
11 proceed is an appropriate use of the Court's inherent power to manage its dockets.

12 The Court previously concluded that a general stay was warranted because the issues in
13 this case are "overlapping," requiring participation of all Defendants "to prevent inconsistent
14 decisions and wasted effort." (Order, ECF No. 88, at 4.) Lifting the stay as to Plaintiffs' claims
15 against OneShare only will not lead to that result. As the motion for preliminary approval will
16 detail, the settlement agreement contemplates Plaintiffs dismissing their claims against
17 OneShare. The settlement does not affect the claims against the other parties. Should the Court
18 approve the settlement, there will be no need for a decision on the merits of those claims
19 against OneShare or for the Court to expend effort in crafting one. The "issues, proofs, and
20 questions of law" remaining for the Court to adjudicate would be "simplif[ied]." *CMAX*, 300
21 F.2d at 268. Granting Plaintiffs' motion would therefore further judicial economy.

22 **CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully request that the Court lift the stay
24 currently in place in this case as to Plaintiffs' claims against OneShare.

26 Dated: May 26, 2023

/s/ *Nina Wasow*

Nina R. Wasow

Catha Worthman

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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

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' UNOPPOSED MOTION TO
LIFT THE STAY**

Hearing

Date: June 29, 2023

Time: 2:00 p.m.

Courtroom: 2

Hon. Troy L. Nunley

1 Plaintiffs Corlyn Duncan and Bruce Duncan (“Plaintiffs”) and Defendant OneShare
2 Health, LLC (“OneShare”) have filed a motion to lift the stay imposed by the Court’s
3 September 10, 2021, order. (ECF No. 8.) The Court’s order provided that “[t]he case may be
4 reopened at the request of the parties.” (*Id.* at 5.) Plaintiffs’ motion requests that the Court lift
5 the stay as to their claims against Defendant OneShare Health, LLC (“OneShare”), advising the
6 Court that they and OneShare have reached a settlement. As Plaintiffs explain, OneShare is the
7 only defendant in this case that is not in bankruptcy. OneShare does not oppose Plaintiffs’
8 motion.

9 The Court has read and considered the motion and concludes that it is an appropriate
10 exercise of its discretion to lift the stay as to Plaintiffs’ claims against OneShare so that
11 Plaintiffs may submit the settlement for the Court’s decision on preliminary approval. No
12 damage will result from lifting the stay, no party will suffer hardship or inequity in being
13 required to go forward, and lifting the stay as to Plaintiffs’ claims against OneShare will
14 further the orderly course of justice by simplifying the remaining issues in the case.

15 Therefore, Plaintiffs’ Motion to Lift the Stay is **GRANTED**. The stay in this action is
16 **LIFTED** as to Plaintiffs and OneShare, and the clerk is directed to **ADMINISTRATIVELY**
17 **REOPEN** the case as to Plaintiffs and OneShare.

18 **IT IS SO ORDERED.**

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21 Dated: _____

22 HON. TROY L. NUNLEY
23 UNITED STATES DISTRICT JUDGE
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