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15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

17 CORLYN DUNCAN, et al.,

18 Plaintiffs,

19 v.

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

25 Defendants.

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

**PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF SETTLEMENT
AGREEMENT**

Hearing

Date: January 11, 2024

Time: 2:00 p.m.

Courtroom: 2

Hon. Troy L. Nunley

I. INTRODUCTION

1 Plaintiffs Corlyn and Bruce Duncan, Rebecca White, Ellen Larson, Jared and Jaime Beard,
2 Hanna Albina and Austin Willard, on behalf of themselves and on behalf of the Settlement Class
3 certified in this matter, move for final approval of the Settlement Agreement.
4

5 The Settlement Agreement provides for financial relief for monthly payments made and
6 uncovered medical expenses related to Unity Healthshare plans sold and administered by The
7 Alera Companies, through and including August 10, 2018. Class Notice has been issued, and
8 Class Counsel have been inundated with calls and emails regarding the lawsuit and claims process.
9 To date, all the communications have been supportive of the efforts by Plaintiffs and Class Counsel
10 to obtain some amount of compensation for Settlement Class members.

11 The claims process is scheduled to conclude on November 12, 2023. Class Counsel
12 anticipates that they will be able to report to the Court on the number and amount of valid,
13 approved claims by December 22, 2023. Accordingly, this Motion will be Supplemented by Class
14 Counsel on or before December 22, 2023, so that the results of the claims process can be included
15 in this Motion for Final Approval, and in the Court's consideration of it.

II. EVIDENCE RELIED UPON

16 Plaintiffs rely upon the Omnibus Declaration of Richard E. Spoonemore in Support of
17 Motions for Final Approval of Settlement Agreement and for Award of Attorney Fees, Costs, and
18 Class Representative Case Contribution Payments ("Spoonemore Decl."), and all attachments
19 thereto.
20

III. FACTS

A. Overview of the Settlement Agreement

21
22 The proposed Settlement resolves claims in three nearly identical class action lawsuits
23 brought against OneShare Health LLC ("OneShare"), formerly known as Unity Healthshare, LLC
24 ("Unity"), on behalf of former members of both Unity and The Alera Companies ("Alera"). *See*
25 *Rebecca Smith, et al. v. The Alera Companies, et al.*, No. 1:20-cv-02130-RBJ, in the United States
26 District Court for the District of Colorado (the "Colorado Lawsuit"), and *Hanna Albina, et al. v.*
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1 *The Alieria Companies, Inc., et al.*, Case No. 5:20-CV-00496-DCR, in the United States District
2 Court for the Eastern District Kentucky (the “Kentucky Lawsuit”), in addition to this case.

3 Alieria is in bankruptcy, and its plan of liquidation was recently confirmed. Spoonemore
4 Decl., ¶8. Recovery for Unity members from Alieria will occur pursuant to the Alieria Plan of
5 Liquidation. *Id.*

6 After years of litigation, the Class and OneShare negotiated a nationwide Settlement
7 Agreement to resolve all claims of Unity members against OneShare that will ensure some
8 financial relief to Class members who submit a claim. Among other responsibilities, the
9 Settlement requires:

- 10 • OneShare to make an initial payment of \$3 million into a Settlement Trust Account;
- 11 • OneShare to pay another \$3-\$7 million to the Trust Account over time according
12 to a detailed payment plan in the Settlement Agreement;
- 13 • Assignment of OneShare’s \$3.75 claim in the Alieria Bankruptcy to the Class; and
- 14 • OneShare must cooperate with the Class and the Alieria Liquidating Trust to obtain
15 further compensation for Class members.

16 Plaintiffs provided a full description of the lengthy history of the case and settlement in
17 their Motion for Certification of Settlement Class and Preliminary Approval of Settlement. ECF
18 No. 100-1.

19 **B. The Class Notice Has Been Issued**

20 On June 15, 2023, this Court preliminarily approved the Settlement Agreement in this
21 matter. ECF No. 111. On July 11, 2023, the Court approved an Amended Order. ECF No. 114.

22 In the Amended Order, the Court appointed BMC Group Inc. (“BMC”) as claims
23 administrator and directed the parties to work with BMC to email and mail the approved Class
24 Notice package to Settlement Class Members. The parties worked with BMC and Alieria’s
25 bankruptcy counsel to locate what is believed to be a list of former Unity/Alieria enrollees. On
26 August 4, 2023, BMC emailed the court-approved class notice package to the list provided by
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1 Alier's bankruptcy counsel. Spoonemore Decl., ¶17. BMC has also mailed the Class Notice
2 package to any Class members for whom it does not have a valid, working email, when a mailing
3 address can be located. *Id.* In the Class's Supplemental Motion for Final Approval, the Class will
4 report in full on the Class Notice and claims process.

5 Class Counsel has received hundreds of emails and other inquiries regarding the Settlement
6 Agreement and claims process, since August 4, 2023. *Id.*, ¶19. All the comments to date have
7 been positive about any potential relief offered to Class members, as a result of this debacle. *Id.*

8 Class Counsel timely established a settlement web page that contained the Class Notice,
9 the Claim Form Materials, and key filings in the litigation. *Id.*, ¶17; *see*
10 <https://www.symslaw.com/unitysettlement>. Class Counsel's Motion for Approval of Attorney
11 Fees, Litigation Costs, and Case Contribution Awards will be posted to the website once the
12 motion is filed.

13 Defendants provided the required notice under the Class Action Fairness Act ("CAFA").
14 ECF No. 112. To date, Defendant reports that it has not received any substantive communications
15 in response to the CAFA notices. The only communications it reports receiving to date are
16 emails—an acknowledgement of receipt, a request for some of the materials to be resent by email
17 (which was obliged), and a request that any further communications be electronically uploaded
18 through a portal site.

19 As noted above, Class Counsel will supplement this Motion with additional information
20 about the claims process on or before December 22, 2023, and will submit a Proposed Order at
21 that time.

22 IV. LAW AND ARGUMENT

23 A. Legal Standards for the Approval of a Class Action Settlement Agreement

24 Compromise of complex litigation is encouraged and favored by public policy. *In re*
25 *Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *In re Pac. Enters. Sec. Litig.*, 47 F.3d
26 373, 378 (9th Cir. 1995). Federal Rule of Civil Procedure 23 governs the settlement of certified
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1 class actions and provides that “[t]he claims, issues, or defenses of a certified class may be settled,
2 voluntarily dismissed, or compromised only with the court’s approval.” Fed. R. Civ. P. 23(e). The
3 Court must consider the settlement as a whole, “rather than the individual component parts,” to
4 determine whether it is fair and reasonable. *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir.
5 2003); see *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (“The settlement must
6 stand or fall in its entirety”).

7 Factors to be considered by the Court should include:

8 [T]he strength of plaintiffs’ case; the risk, expense, complexity, and likely duration
9 of further litigation; the risk of maintaining class action status throughout the trial;
10 the amount offered in settlement; the extent of discovery completed, and the stage
11 of the proceedings; the experience and views of counsel; the presence of a
governmental participant; and the reaction of the class members to the proposed
settlement.

12 *Staton*, 327 F.3d at 959. See ECF No. 54, pp. 11–16 (addressing factors).

13 Some of these factors, such as the reaction of Class members, can only be gauged after
14 preliminary approval and notice is provided to Class members. “[T]he absence of a large number
15 of objections to a proposed class action settlement raises a strong presumption that the terms ...
16 are favorable to class members.” *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal.
17 2007). “In most situations, unless the settlement is clearly inadequate, its acceptance and approval
18 are preferable to lengthy and expensive litigation with uncertain results.” *Nat’l Rural Telecom.
19 Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting 4 A. Conte & H. Newberg,
20 NEWBERG ON CLASS ACTIONS, § 11:50 at 155 (4th ed. 2002)).

21 Here, Class Counsel anticipates that every factor will weigh strongly in favor of approval.

22 **B. All Factors Support Final Approval of the Settlement Agreement**

23 **1. No Objections To Date**

24 The absence of objections establishes a strong presumption in favor of approval. *Nat’l
25 Rural Telecomms. Coop.*, 221 F.R.D. at 529. Where, as here, the class is “nearly silent” regarding
26 the terms of the settlement agreement, “the lack of objection of the Class Members favors approval
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1 of the Settlement Agreement.” *In re Omnivision Techs.*, 559 F. Supp. 2d at 1043 (three objectors
2 appeared out of 57,630 potential class members); *see, e.g., Churchill Vill., L.L.C. v. GE*, 361 F.3d
3 566, 577 (9th Cir. 2004) (45 objections out of 90,000 notices sent); *Rodriguez v. West Publ. Corp.*,
4 2007 U.S. Dist. LEXIS 74767, at *33 (C.D. Cal. Sept. 10, 2007) (54 objections out of 376,000
5 notices). Here, there are no objections to date. Spoonemore Decl., ¶19. Class Counsel will
6 supplement this motion after the deadline for objections to address any that are raised.

7 If no objections are received, this factor weighs strongly in favor of approval.

8 **2. Class Members with Valid, Approved Claims Will Receive Some**
9 **Financial Compensation**

10 If litigation continued, Class members were faced with several more years of litigation.
11 OneShare is ably represented by experienced class action counsel, and it is clear that absent a
12 settlement, OneShare was prepared to pursue its motions to compel arbitration through the
13 appellate courts, which would likely have stayed all litigation. OneShare would then mount a
14 vigorous challenge to class certification and on the merits. The litigation was certain to take many
15 years to reach final judgment, and there was a substantial possibility that years of litigation would
16 affect the ability to collect a judgment from OneShare. This Settlement ensures that at least some
17 financial compensation is available for Class members without further delay. Unfortunately, this
18 compensation will only be for a fraction of Class members’ losses. But continued litigation did
19 not appear likely to increase the compensation available to Class members, and could have resulted
20 in no recovery at all.

21 Common fund settlements where a fractional recovery is obtained are often approved. *See*
22 *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 628 (9th Cir. 1982) (“It is well-settled law
23 that a cash settlement amounting to only a fraction of the potential recovery will not *per se* render
24 the settlement inadequate or unfair.”); *see, e.g., In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS
25 13555 (C.D. Cal. June 10, 2005) (approving a settlement fund that compensated class members at
26 36% of their losses). Here, while Class Members with approved claims may only be compensated
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1 for a *pro rata* portion of their losses, Class Counsel believes that the settlement is preferable to
2 continued litigation both before this court and in bankruptcy.

3 **3. Strength of Plaintiff Class’s Case, Risk, Expense, and Duration of**
4 **Further Litigation**

5 Plaintiffs believe that, on the substantive merits, their case was strong. But they faced years
6 of appeals related to the validity of the arbitration clause included in the Unity/Aliera member
7 guides before a court could get to the merits of the dispute. After the Class prevailed on its position
8 that the dispute is not subject to arbitration, the Class would then engage in years of intensive
9 litigation on class certification issues and on the merits. Questions of federal and state insurance
10 regulation, consumer protection law, damages calculations, and class certification issues would
11 have required adjudication by the Court. In sum, the case could involve expensive, motion-
12 intensive litigation over the span of several years just to obtain a judgment, which, in the end,
13 might render OneShare insolvent. Given the bankruptcy of Aliera and Trinity, Class Counsel was
14 cognizant of the risk that, even after extraordinary and successful effort here, it could be difficult
15 to collect against OneShare.

16 **4. Stage of Discovery and Proceedings**

17 This litigation was settled after years of litigation, and extensive informal discovery via the
18 bankruptcy process and informally from OneShare. Although this Lawsuit did not reach the formal
19 discovery phase, Plaintiffs obtained access to significant discovery through the bankruptcies of
20 Trinity Healthshare, Inc. and Aliera, as well as through their own diligent investigation. Plaintiffs
21 also obtained extensive publicly available information from previous litigation between OneShare
22 and Aliera, as well as other litigation. It also received documents from state insurance
23 commissioners and attorneys general through public record requests. Spoonemore Decl., ¶9. The
24 Class had obtained all the discovery it needed to settle the case and much of what it needed to
25 litigate the case, and was prepared to do so. The informal discovery obtained was sufficient to
26 reach a settlement in this matter that ensured meaningful financial compensation for Class
27 members who submit claims.

1 (c) authorize the disbursement of the Settlement Amount to pay approved claims,
2 consistent with the approved Settlement Agreement; and

3 (d) order Class Counsel to submit a final report regarding the distribution of the
4 Settlement Amount.

5 DATED: August 24, 2023.

6 /s/ Richard E. Spoonemore

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18 UNITED STATES DISTRICT COURT
19 EASTERN DISTRICT OF CALIFORNIA

20 CORLYN DUNCAN, et al.,

21 Plaintiffs,

22 v.

23 THE ALIERA COMPANIES, INC., f/k/a ALIERA
24 HEALTHCARE, INC., a Delaware corporation;
25 TRINITY HEALTHSHARE, INC., a Delaware
26 corporation; and ONESHARE HEALTH, LLC,
27 formerly known as UNITY HEALTHSHARE, LLC
28 and as KINGDOM HEALTHSHARE MINISTRIES,
LLC, a Virginia limited liability corporation,

Defendants.

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

**NOTICE OF MOTION OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF SETTLEMENT
AGREEMENT**

Hearing

Date: January 11, 2024

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 January 11, 2024, at 2:00 p.m., or as soon thereafter
3 as 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 District
5 Court for the Eastern District of California, located at 501 I Street, Sacramento, CA 95814, for an
6 order granting final approval of the settlement agreement.

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

11 DATED: August 24, 2023.

12 /s/ Richard E. Spoonemore

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