

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

**GEORGE T. KELLY, III, and,** )  
**THOMAS BOOGHER, individually and** )  
**on behalf of all others similarly situated,** )  
 )  
**Plaintiffs,** )  
 )  
**v.** )  
 )  
**THE ALIERA COMPANIES, INC.,** )  
**et al.,** )  
 )  
**Defendants.** )

**Case No. 6:20-cv-05038-MDH**

**ORDER**

Before the Court is Defendants’ Motion to Alter or Amend Order Denying Defendants’ Motion to Dismiss or Stay Pending Arbitration (Doc. 74) and Defendants’ Motion to Stay (Doc. 76). The motions are ripe for review.

On November 23, 2020, this Court entered its Order denying Defendants’ Motion to Dismiss or Alternatively to Compel Arbitration. (Doc. 62). Defendants now move pursuant to Rule 59(e) of the Federal Rules of Civil Procedure to alter or amend the Court’s Order.

Federal Rule of Civil Procedure 59(e) serves a “limited function of correcting manifest errors of law or fact or to present newly discovered evidence and cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment.” *Ryan v. Ryan*, 889 F.3d 499, 507 (8th Cir. 2018). After a review of the issues raised in Defendants’ motion the Court finds no basis to amend or alter its prior Order. The Court further finds that the issues presented to the Court in the motion to dismiss or compel arbitration, including the formation (or lack thereof) of the agreement to arbitrate, do not create a genuine dispute of a material fact requiring a trial. Here, the Court applied the undisputed facts to

the applicable law and found that there is not an enforceable agreement to arbitrate. The Court finds no error of law, newly discovered evidence, or new legal theories that provide a basis to alter the Court's prior determination. Wherefore, the Court **DENIES** Defendants' Motion to Alter or Amend its prior Order.

In addition, Defendants move to stay the proceedings in this case pending resolution of their motion to alter or amend. This Court's ruling herein, denying the motion to alter or amend, renders the motion to stay based on that argument moot. However, Defendants have also filed a Notice of Appeal to the Eighth Circuit regarding this Court's Order denying the motion to dismiss or compel arbitration. The Court finds based on the appeal to the Eighth Circuit this case should be stayed pending resolution of the appeal. As a result, the Court **GRANTS** the motion to stay.

**IT IS SO ORDERED.**

Dated: January 28, 2021

*/s/ Douglas Harpool*  
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**DOUGLAS HARPOOL**  
**UNITED STATES DISTRICT JUDGE**