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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 CORLYN DUNCAN and BRUCE DUNCAN,
13 individually and on behalf of all others similarly
14 situated,

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

[Assigned to the Hon. Troy L. Nunley]

15 Plaintiffs,

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

16 v.

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

[Action Filed: April 28, 2020]

25 Defendants.

26 Plaintiffs Bruce and Corlyn Duncan move for leave to file supplemental authority,¹ and submit their second notice of supplemental authority of an Order from the Federal District Court for the Western District of Missouri in *George T. Kelly, III, et al. v. The Alieria Companies, Inc.*,

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

1 *et. al.*, Case No. 6:20-cv-05038-MDH, this one dated January 28, 2021. A copy of that Order is
2 attached as **Exhibit A**. That Order was entered after the Motions to Compel or Dismiss in this case
3 had been fully briefed.

4 In *Kelly v. The Alieria Companies*, a case similar to that pursued here, after the federal
5 district court ruled that no agreement to arbitrate was formed (*see* Dkt. 57-1), defendants Alieria
6 and Trinity moved to alter or amend the Court’s decision (*see* Dkt. 58-1). The district court there
7 rejected defendants’ motion, concluding that “the issues presented to the Court in the motion to
8 dismiss or compel arbitration, including the formation (or lack thereof) of the agreement to
9 arbitrate, do not create a genuine dispute of material fact requiring a trial. Here, the Court applied
10 the undisputed facts to the applicable law and found that there is not an enforceable agreement to
11 arbitrate.” **Exhibit A**, at 1-2. Further litigation in the district court in *Kelly* has been stayed while
12 defendants pursue an appeal before the Eighth Circuit Court of Appeals.

13 DATED: February 23, 2021.

14 /s/ Eleanor Hamburger

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Attorneys for Plaintiffs

Exhibit A

**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

DOUGLAS HARPOOL
UNITED STATES DISTRICT JUDGE