

UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO

Civil Action No. 1:20-cv-02130-RBJ

REBECCA SMITH;  
ELLEN LARSON;  
JUSTINE LUND; and  
JAIME and JARED BEARD, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., formerly known as ALIERA HEALTHCARE, INC.,  
a Delaware corporation;  
TRINITY HEALTHSHARE, INC., a Delaware corporation; and  
ONESHARE HEALTH, LLC, formerly known as UNITY HEALTHSHARE, LLC and as  
KINGDOM HEALTHSHARE MINISTRIES, LLC, a Virginia limited liability corporation.

Defendants.

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**PLAINTIFFS' SECOND NOTICE OF SUPPLEMENTAL AUTHORITY  
IN OPPOSITION TO DEFENDANTS' COMBINED MOTION TO COMPEL**

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Plaintiffs submit as additional supplemental authority the January 28, 2021 Order from the Federal District Court for the Western District of Missouri in *George T. Kelly, III, et al. v. The Alieria Companies, Inc., et. al.*, Case No. 6:20-cv-05038-MDH. A copy of that Order is attached as ***Exhibit A***. That Order was entered after the Defendants' Combined Motion to Compel in this case had been fully briefed (Dkts. 50, 54, and 55).

In *Kelly v. The Alieria Companies*, a case similar to that pursued here, after the federal district court ruled that no agreement to arbitrate was formed (*see* Dkt. 58-1), defendants Alieria and Trinity moved to alter or amend the Court's decision. The district court rejected defendants' motion, concluding 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 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.” *Exhibit A*, at 1-2. Further litigation in the district court in *Kelly* has been stayed while defendants pursue an appeal before the Eighth Circuit Court of Appeals. The order is supplemental authority for Plaintiffs’ argument that no agreement to arbitrate was formed. *See* Dkt. 54, at 5-8.

Respectfully Submitted: February 23, 2021.

          s/ Eleanor Hamburger

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*Attorneys for Plaintiffs*

### **CERTIFICATE OF SERVICE**

I certify that on February 23, 2021, I electronically filed the foregoing SECOND NOTICE OF SUPPLEMENTAL AUTHORITY with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

          s/ Eleanor Hamburger

Eleanor Hamburger  
*Attorneys for Plaintiffs*

**Plaintiffs' Second Notice of  
Supplemental Authority  
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.** )

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

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

**Defendants.** )

**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**