

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

NOELLE LeCANN, KRISTIN SELIMO, and  
TANIA FUNDUK, on behalf of themselves  
and others similarly situated,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., formerly  
known as ALIERA HEALTHCARE, INC.,

Defendant.

Civil Action File

No. 1:20-cv-2429-AT

---

**PLAINTIFFS' MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS OR COMPEL ARBITRATION [Doc. 12].**

---

Plaintiffs' hereby move the Court for permission to file a Supplemental Brief in Opposition to Defendants' Motion To Dismiss, Or Alternatively, Compel Arbitration. [Doc. 12]. The grounds of this motion are as follows:

1.

Plaintiff's filed their principal opposition to Defendant's Motion on August 14, 2020. [Doc. 26].

2.

In that brief, Plaintiffs addressed a similar case, *Jackson v. The Alieria Companies*, 2:19-cv-1281-BJR, 2020WL2733722 (W.D. Wash., May 26, 2020) [Doc. 26] at 3-4, 15, 25, 28-29, 38. As pointed out there, the *Jackson* Court had ruled that the arbitration provisions at issue here were unenforceable.

3.

After Plaintiffs' filing, the *Jackson* Court issued a subsequent order that sends to arbitration for a determination the enforceability of the arbitration provisions at issue. *See Jackson*, 2020WL4787990 (W.D Wash. August 18, 2020).

4.

Defendant's reply brief filed in this action on September 4, 2020 [Doc. 28], relies upon this new authority, which is relevant to the instant motion because of the similarity of the documents, parties, and issues involved. Defendant also cites 37 cases not cited in its initial brief.

5.

In addition, Defendant's reply brief tenders five new declarations, each of which apparently was filed in another action, but was not previously introduced here. [Doc. 28-1 to -5].

6.

Plaintiffs' Supplemental Brief addresses the *Jackson* Order and, very briefly, three other points. It also asserts specific objections to some of the new testimony Alera has tendered.

7.

Most importantly, Plaintiffs' Supplemental Brief shows in detail that the August 18, 2020 Order of the *Jackson* court is inconsistent with precedents from the Supreme Court and various circuit courts, including the Ninth Circuit where the *Jackson* court is located.

8.

Plaintiffs' Supplemental Brief is necessary to properly address the issues now before the Court in light of these new authorities that Defendant relies upon.

9.

The proposed Supplemental Brief is as succinct as possible, and undersigned Counsel represent to the Court that the Supplemental Brief is necessary to professionally address the issues that are before this Court.

10.

Furthermore, Plaintiffs' Supplemental Brief will be helpful in assisting the Court in resolving the issues that are involved in Defendant's Motion and, as such, will conserve judicial resources.

WHEREFORE, for the foregoing reasons and based on the entire record in this action, Plaintiffs move that the Court allow the accompanying Supplemental Brief to be filed.

Respectfully submitted this 15<sup>th</sup> day of September 2020.<sup>1</sup>

*/s David F. Walbert*  
\_\_\_\_\_  
David F. Walbert  
Georgia Bar No. 730450  
Jennifer K. Coalson  
Georgia Bar No. 266989  
**Parks, Chesin & Walbert, P.C.**  
75 14th St. NE, 26th Floor  
Atlanta, Georgia 30309  
Telephone: (404) 873 – 8000  
[dwalbert@pcwlawfirm.com](mailto:dwalbert@pcwlawfirm.com)  
[jcoalson@pcwlawfirm.com](mailto:jcoalson@pcwlawfirm.com)

Stephen J. Fearon, Jr.  
Paul Sweeny  
**Squitieri & Fearon, LLP**  
57th St., 12th Floor  
New York, New York 10022

---

<sup>1</sup> Pursuant to Local Rule 7.1(D), undersigned counsel certifies that this filing has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1(C).

Telephone: (212) 421 – 6492

[stephen@sfclasslaw.com](mailto:stephen@sfclasslaw.com)

[paul@sfclasslaw.com](mailto:paul@sfclasslaw.com)

*Attorneys for Plaintiffs and the  
Proposed Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, I served a true and correct copy of PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF by filing the same using the Court's CM/ECF system, which will automatically serve all counsel of record.

Dated this 15<sup>th</sup> day of September 2020.

/s/ David F. Walbert  
David F. Walbert  
Parks, Chesin & Walbert, P.C.  
[dwalbert@pcwlawfirm.com](mailto:dwalbert@pcwlawfirm.com)