

**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 FIRST AMENDED COMPLAINT**

Plaintiffs hereby moves the Court for permission to file the accompanying First Amended Complaint. The grounds of this motion are as follows:

1.

Plaintiff's filed their Complaint [Doc. 1] on June 5, 2020.

2.

Defendant Alieria has not answered the Complaint, having instead filed a Motion to Dismiss or Compel, or Alternatively, To Compel Arbitration [Doc. 12].

3.

In response to that motion, Plaintiffs' filed a Brief in Opposition that addressed issues of arbitration and delegation of arbitrability. [Doc. 26].

4.

Subsequently, on September 4, 2020, Defendant filed a reply brief and additional evidence. [Doc. 28].

5.

Plaintiffs' First Amended Complaint adds two additional counts, Count IX and Count X, which are set forth in paragraphs 244-68. Two additional prayers for relief corresponding to these two new counts were also added and are paragraphs (i) and (j) of the prayers.

6.

Plaintiffs' original Complaint set forth reasons why Defendant's purported arbitration and delegation provisions were not subject to compelled arbitration.

7.

The new counts in the Amended Complaint set forth in more detail the grounds for Plaintiffs' challenge to the Defendant's contentions that Plaintiff's claims are subject to arbitration and delegation of arbitrability decisions.

8.

Plaintiffs asserted detailed grounds why the arbitration and delegation provisions here are not enforceable under the FAA by an order compelling arbitration when Plaintiffs filed their Brief in Opposition to Defendant's motion to compel. *See* [Doc 26]. As such, they timely raise those claims. *Bridge Fund Capital Corp. v. Fastbucks Franchise Corp.*, 622 F.3d 996, 998, 1002 (9th Cir. 2010).

9.

Nevertheless, it is desirable that Plaintiffs set forth their claims regarding the inapplicability and unenforceability of the arbitration and delegation provision in their complaint as well.

10.

The amendment to Plaintiffs' complaint will not delay the progress of this action. Plaintiffs' First Amended Complaint does not add new arguments not already asserted in their response to Defendant's motion, and there will be no need for Defendant to revise their Motion to Compel or resubmit it.

11.

Requests to amend a party's complaint should be freely granted, *Foman v. Davis*, 371 U.S. 178 (1962), as required by FED. R. CIV. P. 15 (a)(2).

12.

The instant motion should be granted in the interest of justice for the reasons set forth herein and that otherwise appear on the record in this action.

WHEREFORE, Plaintiffs move that this Court allow the accompanying First Amended Complaint to be filed.

Respectfully submitted this 15th day of September 2020.¹

/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
jcoalson@pcwlawfirm.com

Stephen J. Fearon, Jr.
Paul Sweeny
Squitieri & Fearon, LLP
57th St., 12th Floor
New York, New York 10022
Telephone: (212) 421 – 6492
stephen@sfclasslaw.com
paul@sfclasslaw.com

¹ 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).

*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 FIRST AMENDED COMPLAINT by filing the same using the Court's CM/ECF system, which will automatically serve all counsel of record.

Dated this 15th day of September, 2020.

/s/ David F. Walbert
David F. Walbert
Georgia Bar No.
Parks, Chesin & Walbert, P.C.
dwalbert@pcwlawfirm.com