

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

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

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

Plaintiffs,

v.

THE ALIERA COMPANIES, INC., f/k/a Alieria Healthcare Inc., a Delaware corporation,
TRINITY HEALTHSHARE INC., a Delaware corporation, and
ONESHARE HEALTH, LLC, f/k/a Unity Healthshare, LLC and as Kingdom Healthshare
Ministries, LLC, a Virginia limited liability corporation,

Defendants.

ORDER ON DEFENDANTS' MOTION TO ALTER OR AMEND THE COURT'S PRIOR
ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION

On April 16, 2021 this Court denied defendants' motion to compel arbitration. ECF No. 67. Defendants now move pursuant to Fed. R. Civ. P. 59(e) to alter or amend the prior order and again ask the Court to compel arbitration. A court may grant a Rule 59(e) motion, often called a motion to reconsider, when "the court has misapprehended the facts, a party's position, or the controlling law." *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Such motions are "not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Id.* The grounds that warrant granting such a motion "(1) an

intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.” *Id.* Because defendants have not established any of these grounds, their motion is DENIED.

Defendants argue that this Court erred in interpreting the facts and the law. I disagree. Defendants advance the same arguments in their motion to alter or amend as they did in their motion to compel arbitration, namely that the arbitration clauses in the member guides bind plaintiffs because the member guides say so, and because the member guides were incorporated by reference into the applications plaintiffs signed. They also insist again that plaintiffs accepted all the terms of the member guides by choosing to “submit monthly sharing contributions” after receiving the guides. I have already addressed and rejected these arguments in my prior order. *See* ECF No. 67 at 16–22. Defendants present no new evidence that renders my original analysis incorrect, and the new legal authorities they cite are factually distinguishable for the same reasons I distinguished similar cases in my original order.

Defendants also contend that the Court erred in finding that “the parties’ contract consists only of the application emails signed by each Plaintiff, and unidentified conversations with various Alera representatives about the sharing programs.” ECF No. 69 at 3. This is not what the Court found. In its prior order the Court specifically stated that it was *not* addressing the scope of the agreements into which plaintiff entered. ECF No. 67 at 18. Defendants make much of the apparent contradiction between plaintiffs’ rejecting the arbitration clause in the member guides while basing their claims on other provisions of the member guides. I am well aware of this tension. From the beginning of this case, I have gleaned that both parties are trying to have it both ways, adopting provisions of the various documents that support their interests while

rejecting other provisions. In pointing to the non-binding language of the member guides, plaintiffs have created an uphill battle for themselves in proving their case on the merits. This does not, however, render the Court's prior order incorrect.

ORDER

Defendants motion to alter or amend the Court's prior order on arbitration, ECF No. 69, is DENIED.

DATED this 16th day of June, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "R. Brooke Jackson", written in a cursive style. The signature is positioned above a horizontal line.

R. Brooke Jackson
United States District Judge