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15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

17 CORLYN DUNCAN and BRUCE DUNCAN,
18 individually and on behalf of all others similarly
19 situated,

20 Plaintiffs,

21 v.

22 THE ALIERA COMPANIES INC., f/k/a Alieria
23 Healthcare, Inc., and TRINITY
24 HEALTHSHARE, INC., ONESHARE
25 HEALTH, LLC, f/k/a UNITY HEALTH
26 SHARE, LLC and as KINGDOM
27 HEALTHSHARE MINISTRIES, LLC,

28 Defendants.

CASE NO. 2:20-CV-867-TLN-KJN

**DEFENDANT ONESHARE HEALTH,
LLC’S MOTION FOR LEAVE TO FILE
RESPONSE TO PLAINTIFFS’ FOURTH
NOTICE OF SUPPLEMENTAL
AUTHORITY**

HON. TROY L. NUNLEY

Complaint Filed: April 28, 2020
Amended Complaint Filed: June 26, 2020

Defendant OneShare Health, LLC (“Unity”) respectfully requests that the Court consider the following response to Plaintiffs’ Motion for Leave to Submit Supplemental Authority (Doc. 74). While the Court has already granted Plaintiffs’ motion (Doc. 75), Unity seeks to file a response to briefly respond substantively to the supplemental authority.

Unity was not a party to either case submitted by Plaintiffs as supplemental authority, and

1 so did not have the opportunity to respond in those cases to the arguments and representations
2 made about it or its health care sharing program. Accordingly, good cause exists for Unity to be
3 granted leave to respond in this case. Unity therefore requests that the Court consider the following
4 response to Plaintiffs' arguments that *LeCann v. The Alieria Companies, Inc.*, No. 1:20-CV-2429-
5 AT, 2021 WL 2554942 (N.D. Ga. June 22, 2021) and *Moeller. v. The Alieria Companies, Inc.*, No.
6 CV 20-22-H-SEH, 2021 WL 2680159 (D. Mont. June 30, 2021) are "relevant" to this case and
7 concern the "same issues" pending before the Court. (*See* Doc. 74 at 2).

8 First, with respect to the *LeCann* decision, it should not guide this Court's determination
9 of Unity's pending Motion to Compel Arbitration (DN 32) for the following reasons:

- 10 • As Unity explained in the briefing on its Motion to Compel Arbitration (Doc. 37 &
11 47), the Court can and should grant the motion to compel arbitration without
12 reaching the substantive issues to be arbitrated, which include whether Unity is a
13 valid HCSM and whether members of its sharing ministry are purchasing a contract
14 of insurance under California law. But unlike in *LeCann*, *see* 2021 WL 2554942 at
15 *20, if the Court were to reach the issue of whether Plaintiffs' programs constitute
16 a "contract of insurance" under California law, discovery would be required, and,
17 if a fact issue remained, a Section IV trial under the Federal Arbitration Act would
18 need to occur. These merits issues should be decided by the arbitrator consistent
19 with the arbitration clause in Plaintiffs' Unity member guides. But if these issues
20 are reached by this Court, they cannot be decided against Unity on the current
21 record.
- 22 • The *LeCann* court relied heavily on state insurance commissioner reports and
23 orders, but Unity was not the subject of any such investigation or any adverse orders
24 resulting from them. *See* 2021 WL 2554942 at *25–27, 29, 32. With respect to the
25 Maryland order,¹ to which the *LeCann* court frequently cites frequently when
26 discussing Unity, statements in a voluntary consent order from 2018 in which Unity
27 was not a party is not competent evidence of whether Unity is properly categorized
28 as an HCSM or satisfies the criteria of KRS 304.1-120(7). In other words, what
may or may not have been said or accepted for purposes of a 2018 settlement
between other parties concerning activities in Maryland should have no bearing on
this Court's analysis with respect to Unity's pending motion, health care sharing
plan, and arbitration agreements.

¹ Available at <https://insurance.maryland.gov/Pages/newscenter/NewsDetails.aspx?NR=2020249>

- 1 • The *LeCann* court failed to acknowledge that the Superior Court of Fulton County, Georgia, recognized that Unity and its parent, Anabaptist Healthshare (“AHS”), are valid HCSMs.
- 2
- 3 • The *LeCann* court’s conclusory and broad reasoning, if accepted, would invalidate most, if not all, HCSMs operating in California and the United States. *See, e.g.*, 4 2021 WL 2554942 at *27 (for example, stating that the mere fact that the programs “operate to distribute individual losses” render them “insurance,” even though it is 5 impossible to “share” health care costs among an HCSM’s members without individual losses being distributed).
- 6
- 7 • In multiple parts of its opinion, *see* 2021 WL 2554942 at *29–30, 33, the *LeCann* court incorrectly focused on Unity’s contractual relationship with Alieria when 8 determining whether Unity qualifies as an HCSM under state or federal law. Nowhere does 26 U.S.C. § 5000A(d)(2)(B)(ii), Georgia’s HCSM safe harbor law (O.C.G.A. § 33-1-20), or California law say that health care sharing ministries are 9 prohibited from contracting with third party administrators. That is not the law. Utilizing the assistance of a third party administrator is a typical, professional, and 10 efficient way for the larger HCSMs to facilitate the sharing of medical expenses among members. And Unity’s objection to and litigation against Alieria in the 11 Georgia state court action over Alieria’s actions as its administrator cannot be the basis to deny Unity’s legitimacy as an HCSM.
- 12
- 13 • When the *LeCann* court discusses whether Unity “limits participants to those of similar faith,” the court conflates Unity with Trinity. *See* 2021 WL 2554942 at *31. 14 The *LeCann* court almost entirely cites evidence relating only to Trinity and applies it to Unity without analysis or explanation. *Id.* at *31–32. Furthermore, the *LeCann* 15 court cited no legal authority supporting its imposition of narrow definitions for “faith” and “religion,” and failed to recognize that requiring too narrow of a 16 definition for such concepts raises Establishment Clause concerns. The *LeCann* court should not have engaged such a sweeping religious purity analysis, but having 17 ventured into such forbidden territory, it should have at least looked harder at Unity, its Biblical foundation, and its formation by AHS rather than judging Unity based 18 on Trinity or whatever may have been said *about Trinity* by an online marketer or producer having no relationship with Unity or authority to speak for Unity. *See* 19 2021 WL 2554942 at *32. If the *LeCann* court had carefully considered this issue and heeded First Amendment concerns with adjudging religious beliefs, it would 20 have seen that Unity is a Biblically-based HCSM.
- 21
- 22

23 Second, the *Moeller* opinion is not relevant to Unity’s Motion to Compel Arbitration and
24 for the following reasons:

- 25 • The majority of the *Moeller* opinion concerns a unique situation of mutual assent that is not applicable here. According to that opinion, the *Moeller* plaintiffs—who 26 are not seeking to represent a class—contended that the Unity Member Guide they received did not contain an arbitration provision. *See* 2021 WL 2680159 at *1.
- 27

1 Because the Unity Member Guide at issue here does contain an arbitration
2 provision, the *Moeller* opinion is wholly distinguishable and has no relevance to
3 the issues before this Court. Because Trinity's 2019 Member Guide at issue in
4 *Moeller* did include an arbitration provision, the *Moeller* court also analyzed the
5 import of communications that extended, and then withdrew, an offer to transition
6 the plaintiffs to Trinity's program. *Id.* at *4. Similar communications are not at
7 issue here, and so the *Moeller* court's mutual assent analysis is not pertinent to this
8 case.

6 Thus, for the foregoing reasons, the *LeCann* and *Moeller* decisions do not demonstrate that
7 Unity's Motion to Compel Arbitration should be denied. The Court should reject Plaintiffs'
8 attempt to interject issues that are distinguishable from the specific facts and law applicable to this
9 case. For the reasons provided in Unity's Motion and Reply, this Court should enforce the parties'
10 agreements to arbitrate and to delegate all issues of arbitrability to the arbitrator by dismissing this
11 action and compelling individual arbitrations.

12 DATED: July 13, 2021

Respectfully submitted,

13 /s/ Shane G. Smith
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CERTIFICATE OF SERVICE

A copy of the foregoing **DEFENDANT ONESHARE HEALTH, LLC’S RESPONSE TO PLAINTIFFS’ FOURTH NOTICE OF SUPPLEMENTAL AUTHORITY** has been filed through the Court's CM/ECF system, which will send notification of such filing to all parties of record. All parties may access the foregoing via the Court's CM/ECF system.

Dated: July 13, 2021.

/s/ Shane G. Smith
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MCCORMICK BARSTOW LLC

*Attorney for Defendant
OneShare Health, LLC*

ATTESTATION

I hereby attest that I have obtained concurrence of the above noted signatories as indicated by a “conformed” signature (/s/) within this e-filed document.

Dated: July 13, 2021

/s/ Shane G. Smith
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