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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 CORLYN DUNCAN and BRUCE DUNCAN,
11 individually and on behalf of all others similarly
situated,

12 Plaintiffs,

13 v.

14 THE ALIERA COMPANIES INC., f/k/a Alieria
15 Healthcare, Inc., and TRINITY
16 HEALTHSHARE, INC., ONESHARE
HEALTH, LLC, f/k/a UNITY HEALTH
17 SHARE, LLC and as KINGDOM
HEALTHSHARE MINISTRIES, LLC,

18 Defendants.
19
20

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

**REPLY IN SUPPORT OF MOTION TO
STAY**

Hon. Troy L. Nunley

21 Defendant The Alieria Companies Inc. (“Alieria”) files this reply in support of its motion to
22 stay.¹ (ECF No. 80.) This Court should stay the case in its entirety pending the resolution of co-
23

24
25 ¹ Defendant OneShare Health, LLC f/k/a Unity Healthshare, LLC (“Unity”) agrees with Alieria that this case
26 should be temporarily stayed in furtherance of judicial efficiency and economy. But because substantive parts of the
27 grounds set forth in Alieria’s motion and this reply brief are based on the relationship between Alieria and Trinity, and
do not involve Unity or information known to Unity, Unity consents to Alieria’s request for stay rather than formally
joining Alieria’s argument.

1 defendant Trinity Healthshare, Inc.’s (“Trinity”) bankruptcy proceeding. In further support, Alera
2 states the following:

3 **I. BACKGROUND**

4 Trinity operates a health care sharing ministry (“HCSM”) that Alera administered on
5 Trinity’s behalf. Under various contracts with Trinity, Alera provided technology services,
6 marketing, sales, and customer-service support for Trinity’s HCSM. Plaintiffs in this case claim
7 that Trinity did not operate a valid HCSM but instead operated an illegal insurance program under
8 California law and that Alera (as Trinity’s administrator) is liable for selling that illegal insurance.
9 (*See generally* ECF No. 19.) Plaintiffs have sued Trinity, Alera, and OneShare Health, LLC
10 (“Unity”), another HCSM that Alera administered.

11 Last month, Trinity filed bankruptcy. *See In re Sharity Ministries, Inc., Debtor*, Case No.
12 21-11001-JTD (Bankr. D. Del.). Since then, courts around the country have stayed similar cases
13 in their entirety due to Trinity’s bankruptcy filing, reasoning that judicial economy and efficiency
14 weigh in favor of a stay—the United States Court of Appeals for the Tenth Circuit stayed appeals
15 filed by Alera and Unity due to Trinity’s bankruptcy “in the interest of judicial efficiency” (*see*
16 ECF No. 83 at Ex. A), the Eastern District of Kentucky stayed a case against Trinity, Alera, and
17 Unity, reasoning that “judicial economy and efficiency weigh in favor of staying this matter in its
18 entirety” (*id.* at Ex. B), and the Montana District Court stayed a similar case due to Trinity’s
19 bankruptcy, *see Moeller v. The Alera Cos.*, Case No. 6:20-cv-00022-SHE, ECF No. 219 (D. Mont.
20 July 16, 2021). This Court should follow suit and stay the entire case pending resolution of
21 Trinity’s bankruptcy.

22 **II. ARGUMENT**

23 Plaintiffs do not dispute that this Court has the inherent power to stay the entire case.² Nor
24 could they. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (holding that a court has the “power

25 _____
26 ² Insofar as Plaintiffs suggest that Alera has asked the Court to extend the bankruptcy automatic stay to them,
27 that is incorrect. Alera’s motion to stay makes clear that Alera asks the Court to stay the case “pursuant to this Court’s
28 *discretionary powers.*” (ECF No. 80 at 2–3 (emphasis added).)

1 to stay proceedings as part of its inherent power to control the disposition of the causes on its
2 docket with economy of time and effort for itself, for counsel, and for litigants”). Indeed, as this
3 Court recognized less than a year ago: “A trial court may, with propriety, find it is efficient for its
4 own docket and the fairest course for the parties to enter a stay of an action before it, pending
5 resolution of independent proceedings which bear upon the case.” *The GEO Grp., Inc., v. Newsom*,
6 No. 2:20-cv-00533-TLN-AC, 2020 WL 5110368, at *1 (E.D. Cal. Aug. 31, 2020) (Nunley, J.). In
7 this case, it is the “fairest” and most “efficient” course to stay the entire case until the resolution
8 of Trinity’s bankruptcy.

9 **A. Staying the case is the “fairest course.”**

10 **1. Staying the case prevents prejudice to Alieria.**

11 Plaintiffs allege that Alieria sold illegal health insurance plans *for Trinity*, which purports
12 to be a HCSM. (*See* ECF No. 19, Am. Compl. at ¶ 15 (“Alieria was authorized by Unity and then
13 Trinity to sell illegal health insurance plans to California residents, while representing those plans
14 as from ‘recognized’ HCSMs.”).) If Trinity is a valid HCSM, however, then it necessarily does
15 not provide insurance and Plaintiffs’ claims against both Trinity and Alieria would fail. A key
16 question, then, is whether Trinity is a valid HCSM. Trinity—not Alieria—is in the best position to
17 speak on its status as a HCSM. Alieria is not a HCSM and does not purport to be one. Trinity’s
18 participation is thus integral to Alieria’s defense, and Alieria would be prejudiced without Trinity’s
19 participation in the case.

20 To be sure, as Plaintiffs point out, Alieria kept application records, sharing requests, and
21 membership information for Trinity. (*See* Doc. 85 at 5.) But that information alone will not answer
22 the question of whether Trinity is a valid HCSM. Instead, pursuant to Plaintiffs’ arguments in this
23 matter, determining whether Trinity is a HCSM requires more, including whether Trinity (*not*
24 Alieria) is a 501(c)(3) entity, whether Trinity or its predecessor (*not* Alieria or its predecessor) has
25 been in existence since December 31, 1999, and whether Trinity (*not* Alieria) conducts an annual
26 audit. *See* 26 U.S.C. § 5000A(d)(2)(B)(ii). Alieria “has no access to what Trinity has done through
27 its Board and executive team to secure and defend its HCSM status.” (ECF No. 80 at 8.) Trinity

1 needs to participate in the litigation of this question, which directly impacts Alieria's liability in the
2 case.

3 Plaintiffs contend that obtaining information from Trinity about its HCSM status should
4 not be difficult because, they say, Trinity's bankruptcy does not "preclude Alieria from seeking
5 discovery from Trinity if it believes such discovery is necessary." (ECF No. 85 at 5.) Plaintiffs
6 overstate the ease with which Alieria may be able to obtain information from Trinity while Trinity's
7 bankruptcy remains pending.

8 Although one can serve discovery on a debtor "in furtherance of a claim against a non-
9 debtor," see *Couture Textile, Inc. v. Rue 21, Inc.*, No. CV1605544BROAGR, 2017 WL 10562584,
10 at *4 (C.D. Cal. July 21, 2017) (quoting *In re Miller*, 262 B.R. 499, 507) (B.A.P. 9th Cir. 2001)),
11 that discovery needs to "pertain *only* to a plaintiff's claims against non-debtor defendants," see
12 *Blue Cross of Cal. v. Sonoma W. Med. Ctr., Inc.*, No. CV2184912SJOGJSX, 2019 WL 926329, at
13 *8 (C.D. Cal. Feb. 7, 2019) (emphasis added). If the discovery is "intertwined" with claims against
14 the debtor, propounding it may violate the automatic stay. See *Couture Textile*, 2017 WL
15 10562584, at *4 (rejecting an argument that a stay is not warranted since the defendant can
16 propound discovery on the debtor's bankruptcy trustee because "it is possible that discovery with
17 respect to [defendants] and [the debtor] may be intertwined such that [defendants] or Plaintiff
18 could be prevented from propounding discovery on [the debtor] that is integral to the parties'
19 defenses and claims"). Thus, serving discovery on a debtor (like Trinity) raises sticky questions
20 about whether the discovery is related only to claims against the non-debtor defendants.

21 This is particularly problematic in this case because Alieria has significant indemnity claims
22 against Trinity. (See ECF No. 80 at 6–7); see also *Bradford Techs., Inc. v. Biggers*, No. C 11-
23 04621 EDL, 2014 WL 12641953, at *6 (N.D. Cal. May 27, 2014) (noting that the general rule that
24 permits discovery against a bankruptcy debtor does not apply in unusual circumstances "such as
25 where there is an indemnification agreement between the debtor and non-debtor defendants"). By
26 serving discovery on Trinity, Alieria opens itself up to potential liability for violating the automatic
27 stay.

1 What’s more, there is nothing stopping Trinity from asking the bankruptcy court to prohibit
2 a third party (like Alieria) from serving discovery on it. *See* 11 U.S.C. § 105(a) (permitting the
3 bankruptcy court to issue any “necessary or appropriate” order); *see also In re Kenoyer*, 489 B.R.
4 103, 121 (Bankr. N.D. Cal. 2013) (noting that “it is appropriate for a debtor to seek injunctive
5 relief under 11 U.S.C. § 105 to prevent the pursuit of such [third-party] discovery from the debtors
6 and any harm to such debtors”).

7 Plaintiffs also argue that their claims against Unity and Alieria (as the administrator for
8 Unity’s HCSM) can and should proceed without Trinity and that no prejudice will result to Alieria
9 if those claims proceed. (*See* ECF No. 85 at 3.) But Plaintiffs have not asked that only their claims
10 against Alieria (as Unity’s administrator) proceed; they ask for much more—they want their claims
11 against Alieria (as Trinity’s administrator) to proceed as well. In addition, proceeding without
12 Trinity (even if the case proceeds only as to Plaintiffs’ claims against Unity and Alieria (as Unity’s
13 administrator)) would not serve the interests of judicial economy for the reasons explained below.
14 *See infra* Part II.B.

15 **2. Staying the case prevents prejudice to Trinity.**

16 Another reason that this Court should stay the entire case is that Trinity would likely be
17 prejudiced if the case against Alieria proceeds without it. Notably, Plaintiffs make no argument to
18 the contrary. (*See generally* ECF No. 85.)

19 Simply put, any decision by this Court on Alieria’s pending motion to compel arbitration
20 will effectively bind Trinity. If this Court denies Alieria’s motion to compel (which is based in part
21 on Trinity’s membership guide) and Alieria appeals, then the appellate court will have to
22 consider—without Trinity—whether Trinity’s membership guide contains a binding arbitration
23 provision. If Trinity’s bankruptcy resolves and Trinity resumes participation in this case, that
24 appellate decision about Trinity’s membership guide will practically bind Trinity. In other words,
25 an appellate decision on the arbitration clause in Trinity’s membership guide made in an appeal
26 without Trinity will likely govern any future appeal by Trinity concerning that same arbitration
27 clause. Staying the entire case would prevent any such prejudice to Trinity.

1 Moreover, should this action move forward without Trinity, Alera alone would be placed
2 in the position of having to defend *Trinity's* agreement with Plaintiffs and *Trinity's* status as a valid
3 HCSM under California law. Trinity should be able to participate in the litigation of these issues,
4 which directly impact its sharing ministry.

5 **3. Staying the case does not prejudice Plaintiffs.**

6 As to the potential prejudice that a stay may cause them, Plaintiffs point only to “the danger
7 of prejudice to Plaintiffs resulting from the loss of evidence, including the inability of witnesses
8 to recall specific facts.” (ECF No. 85 at 5.) But Plaintiffs fail to identify a specific harm to them if
9 the case is stayed. *See Couture Textile*, 2017 WL 10562584, at *4 (“In the absence of any *specific*
10 *harm* that a delay may cause in this case, the Court finds that staying these proceedings until [the]
11 bankruptcy stay is lifted is unlikely to significantly prejudice Plaintiff.” (emphasis added)). And
12 their general concerns about delaying the case are unfounded for a couple of reasons.

13 First, Plaintiffs’ claims are directly implicated in Trinity’s bankruptcy proceeding in any
14 event. These very Plaintiffs (along with their counsel and other former Trinity members) have
15 asked the bankruptcy court to allow them to join the bankruptcy case “in order to protect their
16 interests.” (*See Trinity Bankruptcy*, Case No. 21-22001-JTD, ECF No. 85 at 3.) And they assert
17 that they “are creditors of the Debtor,” which would likely be true if Plaintiffs are correct that
18 Trinity’s sharing program is insurance. (*Id.* at 18.) This is an issue to be determined by the
19 bankruptcy court in allocating Trinity’s assets to various creditors.³ Second, if Plaintiffs feel so
20 strongly about proceeding with the case, then they can ask the bankruptcy court to lift the stay.

21 Besides that, any prejudice to Plaintiffs by the imposition of a stay is outweighed by the
22 prejudice to Alera (and Trinity) if the case proceeds without Trinity, for the reasons explained
23 above. *See supra* Part II.A.1–2.

24 **B. Staying the case is the most efficient course.**

25 ³ Plaintiffs contend that Alera’s liability in this case “is not dependent on claims and decisions that may be
26 made in the bankruptcy court.” (ECF No. 85 at 2.) Alera agrees that neither a decision by the bankruptcy court nor a
27 decision by any other tribunal (like the decisions from insurance commissioners, other district courts, or administrative
28 law judges that Plaintiffs cite (*id.* at 7)) binds this Court.

1 This Court has a strong interest in ensuring the “orderly course of justice” and preventing
2 the “inefficient use of judicial resources.” *GEO Grp.*, 2020 WL 5110368, at *2 (Nunley, J.)
3 (staying a case for, among other things, “the Court’s own interest in judicial economy”). Plaintiffs
4 argue that “[t]here is no efficiency in delaying this action further.” (ECF No. 85 at 7.) But they are
5 simply wrong, and a few examples prove it.

6 Consider, for example, if this Court denies Alier’s pending motion to compel arbitration
7 (which is based in part on the arbitration provision in Trinity’s membership guide). Alier would
8 likely appeal and the appellate court would have to decide (without Trinity) whether Trinity’s
9 membership guide compels arbitration. Suppose the appellate court affirms this Court’s denial and
10 Plaintiffs’ case against Alier proceeds. The parties will conduct discovery and they will likely
11 bring discovery disputes to this Court for resolution. Then, imagine that Trinity’s bankruptcy
12 resolves, and it resumes participation in the litigation. At that time, this Court would likely deny
13 Trinity’s motion to compel arbitration (probably for the same reasons that it denied Alier’s
14 motion), and Trinity would likely appeal. If the appellate court affirms the denial, Trinity would
15 be starting discovery months (if not years) after Plaintiffs and Alier started discovery. The parties
16 would probably have to re-do some discovery. This Court would probably have to re-litigate some
17 discovery disputes once Trinity gets involved. And any case schedule would probably have to be
18 extended to give Trinity time to conduct discovery. This will not only delay the ultimate resolution
19 of the case, but it will result in this Court (and the parties) having to do additional work that likely
20 could have been avoided with a stay of the entire case.⁴

21 To give another example, if the case proceeds without Trinity on the issue of whether
22 Trinity operates a valid HCSM, Alier (an entity that has never purported to be a HCSM) would
23 be defending Trinity’s HCSM status. Suppose the Court rejects Alier’s arguments on this issue,
24 but then Trinity resumes its participation in the litigation and is able to convince the Court that it

25
26 ⁴ On the other hand, if this Court grants the motion to compel arbitration and the arbitration proceeds without
27 Trinity, the same problems occur—a disjointed arbitration schedule and a delay to the ultimate resolution of the
28 dispute.

1 is, in fact, a valid HCSM. Alieria would then be placed in the peculiar and untenable position of
2 competing rulings: (1) when Alieria alone was participating in the action, the Court ruled that
3 Trinity is not a valid HCSM and is insurance, and therefore Alieria improperly sold insurance; but
4 when (2) Trinity participated in the action, the Court ruled that Trinity is a valid HCSM and is not
5 insurance, and therefore Alieria did not be engaged in the improper sale of insurance. Which ruling
6 binds? This legal conundrum could be avoided by simply staying this matter until Trinity may
7 fully participate.

8 Plaintiffs argue that “Alieria is independently liable to Plaintiffs for violations of
9 California’s Unfair Competition and False Advertising Law” and for breaching “its fiduciary duty”
10 and unjust enrichment. (ECF No. 85 at 2.) Therefore, Plaintiffs say, these claims should go
11 forward. But the litigation of these claims without Trinity results in the same problems—a
12 disjointed case schedule and inefficiency for the parties and this Court. The adjudication of
13 Plaintiffs’ statutory claims necessarily requires the adjudication of whether Trinity’s sharing
14 program is illegal insurance. Plaintiffs plead as much. (*See, e.g.*, ECF No. 19 at ¶ 85 (alleging that
15 “Defendants’ creation, marketing, sale and administration of *unauthorized health insurance*
16 *plan(s)* to class members are illegal under . . . California’s Unfair Competition Law” (emphasis
17 added)); *id.* at ¶ 91 (alleging that Defendants misled residents to “purchase Defendants’ *sham*
18 *insurance* coverage instead, in violation of California’s False Advertising Law” (emphasis
19 added).) And the adjudication of Plaintiffs’ common law claims requires an understanding of how
20 Trinity’s sharing program works—something with which the parties and the Court will likely need
21 Trinity’s help in understanding. (*See, e.g., id.* at ¶ 102 (alleging that Alieria and Trinity breached
22 their fiduciary duties by making certain coverage claims); *id.* at ¶ 119 (alleging that Alieria and
23 Trinity “arbitrarily den[ied] medical claims” and “has been unjustly enriched”).)

24 In the end, staying the entire case until Trinity can participate makes the most sense. A stay
25 prevents a disjointed case schedule. It prevents potential inconsistent adjudications. And it
26 prevents this Court from having to duplicate work when Trinity’s stay is lifted. As other courts
27

1 have held in similar cases involving Alieria, Trinity, and Unity, “judicial economy and efficiency
2 weigh in favor of staying this matter in its entirety.” (See ECF No. 83 at Ex. B.)

3 **III. CONCLUSION**

4 For these reasons, and the reasons explained in Alieria’s motion to stay (ECF No. 80), the
5 Court should stay this case in its entirety pending discharge and dismissal of Trinity’s bankruptcy.

6 DATED: August 26, 2021

Respectfully submitted,

7 /s/ Alan D. Leeth

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CERTIFICATE OF SERVICE

A copy of the foregoing **REPLY IN SUPPORT OF MOTION TO STAY** has been filed this 26th day of August, 2021 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: August 26, 2021

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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.

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