

STEFAN T. WALL
WALL, MCLEAN & GALLAGHER, PLLC
P.O. Box 1713
Helena, MT 59624
(406) 442-1054
stefan@mlfpllc.com

SARAH R. CRAIG (*Pro Hac Vice*)
BURR & FORMAN, LLP - Tampa
201 N. Franklin St., Suite 3200
Tampa, FL 33602
(813) 221-2626
scraig@burr.com

ELIZABETH B. SHIRLEY (*Pro Hac Vice*)
BURR & FORMAN, LLP - Birmingham
420 N. 20th St., Suite 3400
Birmingham, AL 35203
(205) 458-5186
bshirley@burr.com
ATTORNEYS FOR THE ALIERA COMPANIES INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

<p>MARIA MOELLER and RON MOELLER,</p> <p>Plaintiffs</p> <p>vs.</p> <p>THE ALIERA COMPANIES INC.; TRINITY HEALTHSHARE; TIMOTHY MOSES; SHELLEY STEELE, CHASE MOSES and DOES 1-10,</p> <p>Defendants.</p>	<p>CIVIL ACTION NO: 6:20-cv-00022-SEH</p> <p>THE ALIERA COMPANIES INC. RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL RELIEF FROM STAY AND ALTERNATIVE MOTION TO BIFURCATE</p>
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The Alera Companies Inc. (“Alera”) submits its Response in Opposition to Plaintiffs’ Motion for Partial Relief from Stay and Alternative Motion to Bifurcate on the grounds that this matter should be stayed pending resolution of the appeal in the Ninth Circuit Court of Appeals, and it should continue to be stayed pending discharge and dismissal of Trinity Healthshare Inc.’s, n/k/a Sharity Ministries, (“Trinity”) bankruptcy proceedings.

I. INTRODUCTION

On July 9, 2021, Trinity filed a Notice of Bankruptcy Proceedings in this Court. (Doc. 218.) Based on Trinity’s Chapter 11 bankruptcy filing, on July 16, 2021, this Court entered an Order suspending and staying this action “pending dissolution, modification, or lifting of the 11 U.S.C. § 362 automatic stay by order of the United States Bankruptcy Court of the District of Delaware.” (Doc. 219.) The Court did not address the propriety of a stay pending Defendants’ appeal of its Order denying Defendants’ Motions to Compel Arbitration, and this is a separate issue for decision pursuant to a motion to stay pending appeal that may be filed by Defendants.¹ Regardless, should this Court decide to address the propriety of a

¹ “Defendants,” as used herein, refers to Alera and Trinity. Defendants have not yet filed a motion to stay pending appeal because this Court stayed the action on July 16, 2021. Alera’s position is that this action also should be stayed based on Defendants’ appeal.

motion to stay pending appeal that has not yet been filed, this matter should be stayed pending appeal.

Additionally, this Court did not err in staying this action pending Trinity's bankruptcy proceedings, as the operative issue in this matter is the agreement between Trinity and Plaintiffs for member sharing of Plaintiffs' medical expenses and arbitration of the Parties' disputes. The Parties' agreement is reflected in Trinity's member guides and related documents – all of which are based on Trinity's relationship with Plaintiffs and through which Alieria is a third party beneficiary as an administrator and associate of Trinity. Accordingly, this Court should not alter or amend its July 16, 2021 Order staying this action.

II. BACKGROUND

On July 8, 2021, Trinity filed bankruptcy proceedings pursuant to subchapter V of Chapter 11 of the Bankruptcy Code (or the "Trinity Bankruptcy"). Subchapter V was designed to expedite the bankruptcy process for small business debtors to allow them to reorganize quickly, inexpensively, and efficiently, and it includes requirements that the debtor file a plan within 90 days of the order for relief. *In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 336 (Bankr. S.D. Fla. 2020); *see also In re Bonert*, 619 B.R. 248 (Bankr. C.D. Cal. 2020).

Alieria was an administrator of various services for Unity HealthShare, LLC, n/k/a OneShare ("Unity"), which operates a healthcare sharing ministry ("HCSM").

After termination of that business relationship, Alera was an administrator for Trinity, which also operates a HCSM. Alera does not purport to be a HCSM or insurance. Instead, Alera had various contracts with Unity and then Trinity to assist in aspects of operating their sharing ministries – e.g., information technology related services, marketing and brand development services, sales, and ancillary services in interacting with members such as Plaintiffs. (*See* Doc. 5 in the Trinity Bankruptcy, Decl. of Trinity’s Chief Restructuring Officer.²)

Numerous former Trinity members are participating in the Trinity Bankruptcy, seeking to remove Trinity as the debtor in possession and appoint the U.S. Trustee in its place. These former Trinity members assert a right to the share fund contributions by Trinity’s members, among other claims. (*See* Doc. 85 and Docs. 85-1 to 85-4, filed herewith as Exhibit A.) The U.S. Trustee and former Trinity members are directly involving Alera in the Trinity Bankruptcy based on the same ilk of claims that Plaintiffs assert in this action.

III. LAW AND ARGUMENT

A. This Action Should Be Stayed Pending Resolution Of Defendants’ Appeal Of The Court’s Denial Of Motion To Compel Arbitration In The Ninth

² Alera requests that the Court take judicial notice of the federal bankruptcy filings cited herein, available on PACER. *Foster v. Montana State Prison*, No. CV 09-14-H-DWM, 2009 WL 2948531, at *2 (D. Mont. Sept. 8, 2009) (taking judicial notice of record in Ninth Circuit Court of Appeals and noting that it “may take judicial notice of matters of public record, including court records available to the public through the PACER system via the internet.”)

Circuit Court Of Appeals.

1. Applicable Law In Support Of Stay Pending Appeal.

In determining whether to grant a motion to stay pending appeal, courts in this district and other district courts within the Ninth Circuit consider four (4) primary factors. These four factors include: (1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Burgan v. Nixon*, No. CV 16-61-BLG-CSO, 2016 WL 6584478, at *4-5 (D. Mont. Nov. 7, 2016) (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009) and granting motion to stay all proceedings pending appeal). *See also Hoffman v. Cingular Wireless, LLC*, No. 06-CV-1021 W (BLM), 2007 WL 9702952, at *3 (S.D. Cal. June 14, 2007) (granting motion to stay pending appeal of motion to compel arbitration); *In re Wirecomm Wireless, Inc.*, No. 2:07-CV-02451-MCE, 2008 WL 3056491, at *6 (E.D. Cal. Aug. 1, 2008) (staying bankruptcy court adversary proceeding pending appellate court's resolution of motion to compel arbitration).

In *Jones v. Deutsche Bank AG*, the court granted the defendant's motion to stay pending appeal of motion to compel arbitration and explained that "if the Ninth Circuit finds that arbitration is the proper forum for this dispute, the Court's and the parties' resources will have been needlessly expended on continuing preparations

for trial.” *Jones*, No. C 04 05357 JW, 2007 WL 1456041, at *3 (N.D. Cal. May 17, 2007). The district court also relied on *International Ass’n of Machinists & Aerospace Workers v. Aloha Airlines*, 776 F.2d 812, 815 (9th Cir. 1985), which stated: “Specifically, arbitration provides the parties with an ‘inexpensive and expeditious means of resolving the dispute’ – if a litigant must endure the ‘expense and delay of a trial’ before being able to appeal the district court’s denial, it forever loses the speed and economy advantages of arbitration.” *Jones*, 2007 WL 1456041, at *2 (quoting *Aloha Airlines*, 776 F.2d at 815)). *See also Sample v. Brookdale Senior Living Communities, Inc.*, No. 11-CV-5844-RJB, 2012 WL 195175, at *1-2 (W.D. Wash. Jan. 23, 2012) (citing *Alascom, Inc. v. ITT N. Elec. Co.*, 727 F.2d 1419, 1422 (9th Cir. 1984)) (granting defendant’s motion for stay of proceedings pending appeal of order denying arbitration and explaining that a stay “ensures that the issue of whether a dispute is to be resolved through arbitration is decided before excess time, money, and judicial resources are spent in litigation.”).

2. The Relevant Factors Favor Entering A Stay Pending Appeal.

The Court here should stay proceedings, including discovery, because: (a) Defendants have made a strong showing that they are likely to succeed on the merits; (b) Defendants will be irreparably injured absent a stay; (c) issuance of a stay will not substantially prejudice Plaintiffs or Trinity; and (d) the public interest favors a stay.

a. *Defendants Have Made A Strong Showing That They Are Likely To Succeed On The Merits.*

Under the plain language of the governing agreement, Plaintiffs agreed to resolve "*any dispute* [they] have with or against Trinity HealthShare, its associates, or employees" through alternative dispute resolution, including binding arbitration, in conjunction with their Trinity membership. While this Court found that the Parties did not enter into an agreement to arbitrate, if the Ninth Circuit disagrees and compels arbitration, then the time, effort, expense, and judicial resources spent litigating this action would be wasted. If the Ninth Circuit agrees with this Court that the Parties did not enter into an agreement to arbitrate, then there is no enforceable agreement to provide healthcare between Plaintiffs and Alieria/Trinity. The arbitration provisions are set out in Plaintiffs' Trinity member guide. The member guide also sets out the language upon which Plaintiffs claim they relied in believing that they participated in an insurance program and that their medical expenses regarding cancer treatment would be paid. Thus, should the arbitration agreement continue to be rejected as a binding agreement, then the basis of Plaintiffs' claims against Alieria and Trinity similarly is due to be rejected. Accordingly, even if the Ninth Circuit affirms this Court's denial of Defendants' motion to compel

arbitration, Defendants are likely to succeed on the merits because Plaintiffs would have no viable substantive claims.

As to Plaintiffs' claims that the Court should bifurcate this proceeding so they may proceed against Alera with regard to Plaintiffs' Unity membership, Unity is not a party to this action. Alera was an associate of Unity, just as it was an associate of Trinity. Thus, the same active participation of Unity is required in this action as is required of Trinity in order for Plaintiffs to proceed against Alera.

b. *Alera Will Be Irreparably Injured Absent A Stay.*

Absent a stay pending appeal, Alera is in the untenable position of being required simultaneously to preserve its right to arbitration by refusing to engage in extensive discovery or litigation, on the one hand, and to comply with Federal Rules of Civil Procedure governing scheduling and discovery, on the other hand. The FAA was enacted precisely so that parties would not be put in a position where they must choose between pursuing their arbitration rights and defending against lawsuits in court. *See, e.g., Southland Corp. v. Keating*, 465 U.S. 1, 16 n.11 (1984) (observing that "placing arbitration agreements 'upon the same footing as other contracts'" is a critical purpose of the FAA) (citation omitted).

Even if Plaintiffs stipulated not to use discovery as a sword to argue waiver of arbitration, Alera still would be prejudiced because discovery provided by the Federal Rules of Civil Procedure is not equally available in arbitration. If the Ninth

Circuit determines arbitration is appropriate, then the Parties would have to start over in arbitration and proceed pursuant to the AAA's Rules and Regulations. If Alieria must endure the "expense and delay of a trial" before being able to resolve its appeal of the Court's denial of its Motion to Compel Arbitration, "it forever loses the speed and economy advantages of arbitration." *Jones*, 2007 WL 1456041, at *2.³

c. *Issuance Of A Stay Will Not Substantially Prejudice Plaintiffs Or Trinity.*

A stay pending appeal would not prejudice Plaintiffs or Trinity. A stay to preserve judicial resources and prevent duplicative or unnecessary discovery is not prejudicial. Instead, a temporary stay pending appeal would allow the appellate court to determine the correct forum for Plaintiffs' claims and allow the action to proceed in an equitable, efficient, and orderly manner. As to Plaintiffs' contentions that Maria Moeller would be prejudiced by a stay, this fails to account for Ron Moeller's testimony at the evidentiary hearing that he and his wife are covered by insurance and are no longer members of Trinity's sharing program. As to Plaintiffs' desire to bring this matter to resolution prior to Ms. Moeller's death, there is no evidence in the record as to her current medical state. Moreover, that she may die holds true for

³ As to Plaintiffs' contention that this action may be bifurcated to proceed with Alieria and Unity, this is not feasible because Unity is not a party to this action. Thus, Alieria is in the same prejudicial predicament with regard to Unity as it is with regard to Trinity.

anyone, at any time. This is not a persuasive argument in support of partially lifting the stay, and it should be disregarded.

A stay pending appeal also would not prejudice Trinity. In fact, partially lifting the stay pending appeal with regard to Alieria would prejudice Trinity in light of its on-going bankruptcy proceedings. Plaintiffs recognize that a stay is appropriate as to Trinity due to the automatic stay. Should this action move forward with only Plaintiffs and Alieria – and not Trinity – Alieria alone would be placed in a position of purportedly defending Trinity’s healthcare sharing agreement with Plaintiffs, even though Alieria has no ability to provide evidence or testimony from Trinity and is not the primary contracting party. Trinity purportedly may be bound to a decision in which it did not participate. Similarly, if Alieria is placed in a position to potentially defend Trinity’s status as a valid HCSM under Montana law – without Trinity’s participation – Trinity purportedly may be bound to a decision in which it did not participate. Or, if Trinity is not bound, then when it is able to participate in this action (assuming the Ninth Circuit affirms the denial of arbitration), Trinity may successfully defend its agreement with Plaintiffs and that it is a valid HCSM. However, if the Court had reached a different conclusion with regard to Alieria when this action was stayed as to Trinity, then Alieria potentially would be placed in the peculiar and untenable position of competing judgments: (1) If Alieria alone was participating in the action – the Court may find that Trinity is not a valid HCSM and

is insurance, and therefore Alieria improperly sold insurance; versus (2) If Trinity and Alieria are participating in the action – the Court may find that Trinity is a valid HCSM and is not insurance, and therefore Alieria did not be engaged in the improper sale of insurance. This legal conundrum may be avoided simply by staying this matter until Trinity may fully participate in its defense.

d. *The Public Interest Favors A Stay.*

The public interest favors a stay pending resolution of appeal. If the Court lifts the stay as to Alieria while the Ninth Circuit considers Defendants’ appeal of the motions to compel arbitration and the Ninth Circuit reverses the denial and compels arbitration, then the time, resources, and availability of judicial resources to address other matters properly in court would be wasted. This is not in the interest of the allocation of judicial resources to other pending cases, which is in the public’s interest.

B. This Action Should Remain Stayed Pending Dissolution, Modification, or Lifting of the Bankruptcy Automatic Stay.

This action should remain stayed because Plaintiffs’ claims against Trinity are inextricably intertwined with their claims against Alieria. Moreover, Alieria is impacted by the Trinity Bankruptcy in that Trinity has rejected its contracts with Alieria or its subsidiaries for the services that Plaintiffs challenge in this action.

1. Applicable Law Supports The Stay Due To Trinity’s Bankruptcy Proceedings.

It has long been recognized that a court has the “power to stay proceedings as part of its inherent power to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *The GEO Grp., Inc. v. Newsom*, No. 2:20-cv-00533-TLN-AC, 2020 WL 5110368, at *1 (E.D. Cal. Aug. 31, 2020) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)); *see also id.* at *2 n.1 (noting that “it is within the Court’s inherent power to determine whether to impose a stay”). “A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear up the case.” *Id.* (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863–64 (9th Cir. 1979)).

In deciding whether to grant a stay, “the competing interests which will be affected by granting or refusal to grant a stay must be weighed.” *Id.* (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). “Those competing interests include [1] possible damage which may result from the granting of a stay, [2] the hardship or inequity which a party may suffer in being required to go forward, and [3] the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay.” *Id.*; *see also Abington Emerson Cap., LLC v. Adkins*, No. 2:17-CV-143, 2018 WL 2454601, at *2 (S.D. Ohio June 1, 2018) (citations omitted) (staying action pursuant to court’s inherent authority pending the resolution of bankruptcy proceedings

against some but not all defendants). *See also Dos Cabezas*, 995 F.2d at 1491 n.3. (extending stay against codefendants because it “contributes to the debtor’s efforts of rehabilitation.”)

2. This Action Should Continue To Be Stayed.

Aliera is inextricably intertwined with Plaintiffs’ claims against Trinity. Indeed, on July 22, 2021, the U.S. Trustee filed a motion to oversee the Trinity Bankruptcy in place of Trinity, discussing generally that the backlog of member contributions – at issue in this action – must be resolved in the Bankruptcy Case. (*See* Doc. 68 in the Bankruptcy Case.) Plaintiffs’ claims are based on and derive from the proposition that Trinity operates an insurance program and is not a valid HCSM under applicable law. Any finding in Trinity’s absence would either prejudice Trinity, because it could not participate in its defense, or not be binding on Trinity because it would not have been an active participant. Plaintiffs further claim that Aliera misrepresented Trinity’s sharing program to mislead members into believing that Trinity provides insurance, which forms the basis for their unfair competition and false advertising counts. Plaintiffs claim that Trinity – through Aliera as administrator – improperly denied Plaintiffs’ claims for medical expenses, which forms the basis for their bad faith denial of claims, unjust enrichment, and breach of fiduciary duty claims. If Trinity operates a valid HCSM program, then it is necessarily not insurance, and Plaintiffs’ substantive counts fail. As to Trinity, this

issue is in the purview of the Bankruptcy Court.

Additionally, Alieria's role as an administrator of Trinity's sharing program is directly at issue in the Trinity Bankruptcy and in this action. In the Trinity Bankruptcy, Trinity's primary objective is to reject its agreements with Alieria. These agreements contain indemnification provisions to Alieria for Trinity's breach. (*See* Doc. 13 in the Trinity Bankruptcy, Trinity's Motion to Reject Nunc Pro Tunc Contracts with Alieria.) It is pursuant to these contracts that Alieria performed the services for Trinity that Plaintiffs challenge and claim are illegal. The landscape of Plaintiffs' claims and the alleged facts on which they are based change dramatically based on the rulings and resolution of the Trinity Bankruptcy. Moreover, Alieria has causes of action against Trinity in the Trinity Bankruptcy based on the same agreements that establish the relationship Plaintiffs challenge in this action.

Next, Plaintiffs' sharing contributions are impacted by the Trinity Bankruptcy. Former Trinity members are participating in the Trinity Bankruptcy, including record testimony by attorneys representing these Trinity members' interests. (*See also* Ex. A.) Trinity's Chapter 11 Petition reflects that Trinity has total assets of \$4,436,932. Of that amount, it appears that \$80,230 is allocated to the members' sharing contributions (in the Sharebox Savings), and \$1,353,098 is cash on deposit in a Trinity account. (Doc. 1 in the Trinity Bankruptcy, at ECF No. 14.) Plaintiffs have an interest not only in the Sharebox amount containing allocated

member contributions, but also potentially in Trinity's remaining assets in various other accounts, such as cash accounts. Indeed, Plaintiffs claim that Trinity's sharing program is insurance – if they are correct, then they are creditors. This is an issue to be determined by the Bankruptcy Court in allocating assets and determining sources of the assets. (*See* Doc. 68 in the Bankruptcy Case.)

The factors that weigh in favor of a stay pending appeal of the denial of Defendants' Motions to Compel Arbitration also weigh in favor of continuing the stay based on the Trinity Bankruptcy.

a. *Plaintiffs Will Not Be Prejudiced By Maintaining The Court's Stay Order.*

Continuing the stay entered by this Court on July 16 will not result in damages to Plaintiffs, as discussed above in Section III.A.2.b.-c., which is incorporated herein by reference. Additionally, Trinity will not be damaged, and in fact, lifting the stay as to Alieria will cause potential damages to Trinity and Alieria. *See* Section III.A.2.b.-c.

b. *Alieria And Trinity May Suffer Hardship Or Inequity By Lifting The Stay As To Alieria.*

As set out above in Section III.A.2.b.-c., incorporated herein, Alieria and Trinity may suffer hardship, inequity, and/or prejudice if the stay Order is lifted as to Alieria.

c. *Maintaining The Stay Order Furthers The Orderly Course Of Justice In Terms Of Simplifying Issues, Proof, And Questions*

Of Law.

As set out above in Section III.A.2.c., incorporated herein, maintaining this Court's stay Order furthers the orderly course of proceedings and justice, and it simplifies issues of proof, as well as questions of law.

IV. CONCLUSION

Wherefore, Alieria opposes Plaintiffs' request to lift the stay as to Alieria or to bifurcate proceedings.

Respectfully submitted this the 20th day of August, 2021.

/s/ Elizabeth B. Shirley
Elizabeth B. Shirley (admitted *pro hac vice*)
BURR & FORMAN, LLP -
Birmingham
420 North 20th Street, Ste. 3400
Birmingham, Alabama 35203
Telephone: (205) 251-3000
bshirley@burr.com

/s/ Stefan T. Wall
Stefan T. Wall
WALL, MCLEAN & GALLAGHER,
PLLC
P.O. Box 1713
Helena, MT 59624
(406) 442-1054
stefan@mlfpllc.com

Sarah R. Craig (admitted *pro hac vice*)
BURR & FORMAN, LLP - Tampa
One Tampa City Center

201 North Franklin Street, Ste. 3200
Tampa, Florida 33602
Telephone: (813)367-5766
scraig@burr.com

*Attorneys for Defendant The Alera
Companies Inc.*

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(d)(2)(E) of the Montana Federal Local Rules of Procedure, I certify that the foregoing document is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double-spaced, and the word count calculated by Microsoft Word is 3647.

/s/ Elizabeth B. Shirley

Elizabeth B. Shirley (admitted *pro hac vice*)
BURR & FORMAN LLP – Birmingham,
Alabama

CERTIFICATE OF SERVICE L.R. 5.2(b)

I hereby certify that, on August 20, 2021, a copy of the foregoing document was served upon the following persons by the following means:

1,2,3,4,5 CM/ECF

1. Clerk, U.S. District Court
2. John M. Morrison
Morrison, Sherwood, Wilson & Deola, PLLP
401 North Last Chance Gulch; P.O. Box 557
Helena, MT 59624
3. Nathan Bilyeu
Sean Slanger

Jackson Murdo & Grant, P.C.
203 North Ewing
Helena, MT 59601

4. Nathan A. Schacht, Montana Bar No. 46224074
Baker & Hostetler – Denver
1801 California Street, Suite 4400
Denver, CO 80202
5. Jeffrey R. Baxter
Jacqueline T. Menk
Baker & Hostetler - Georgia
1170 Peachtree Street, Suite 2400
Atlanta, GA 30309

*/s/ Elizabeth B. Shirley*_____