

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

SHARITY MINISTRIES, INC.,¹

Debtor.

Chapter 11 (Subchapter V)

Case No. 21-11011 (JTD)

Hearing Date: August 5, 2021 at 1:00 p.m. (ET)

Objection Deadline: July 29, 2021 at 4:00 p.m. (ET)

Related to ECF No. 68

**ALIERACARE PLAINTIFFS' JOINDER IN UNITED STATES TRUSTEE'S MOTION
TO REMOVE THE DEBTOR IN POSSESSION
OR ALTERNATIVELY TO AUTHORIZE THE SUBCHAPTER V TRUSTEE
TO INVESTIGATE THE DEBTOR'S AFFAIRS**

I. INTRODUCTION

Gerald and Roslyn Jackson, Jon and Julie Perrin, Dean Mellom (“Washington Plaintiffs”), Corlyn and Bruce Duncan (“California Plaintiffs”), Rebecca Smith, Ellen Larson, Justine Lund, and Jamie and Jared Beard (“Colorado Plaintiffs”), George T. Kelly, III, and Thomas Boogher (“Missouri Plaintiffs”), and Hanna Albina and Austin Willard (“Kentucky Plaintiffs”), individually and on behalf of similarly situated others, (collectively, “Alieracare Plaintiffs”) by and through their undersigned counsel, respectfully join with Andrew R. Vara, the United States Trustee for Region 3 (“U.S. Trustee”) to move the Court for an order removing the debtor in possession pursuant to 11 U.S.C. § 1185(a) or alternatively authorizing the Subchapter V Trustee to investigate the Debtor’s financial affairs pursuant to 11 U.S.C. § 1183(b)(2).

The Alieracare Plaintiffs and the members they seek to represent are the key constituency in this bankruptcy case, which has been filed without disclosing the underlying fraudulent nature of the illegal health insurance sold to thousands of victims across the country. Put simply, if the

¹ The last four digits of the Debtor’s federal tax identification number is 0344. The Debtor’s mailing address is 821 Atlanta Street, Suite 124, Roswell, GA 30075.

Debtor is left in possession, this case is at risk of being run for the protection of those who engaged in fraud. Consistent with the U.S. Trustee's Motion, the Court should appoint an independent trustee to take control of the bankruptcy estate and investigate the wrongs committed. The Court should additionally direct the trustee to consult with AlierCare Plaintiffs and their counsel to ensure that the interests of the Debtor's members are protected, and that the case is run ultimately for the benefit of its members/victims.

II. PRELIMINARY STATEMENT

The Debtor (referred to herein as "Trinity" since Sharity is the entity's recent DBA) was created by The Alier Companies, Inc. ("Alier") and its principals as a vehicle to sell sham health insurance to consumers across the country. *See* Declaration of Eleanor Hamburger, *Exh. 1*, ¶94.² Regulators in California, Colorado, Connecticut, Iowa, Maryland, New York, New Hampshire, New Jersey, New Mexico, Oregon, Texas, and Washington have taken regulatory action against Alier and Trinity. *See* <http://www.symslaw.com/aliera-and-trinity-litigation/stateregulation> for a compilation of Orders by state insurance regulators.³ Each one of these regulators has concluded that Alier and Trinity sold unauthorized and illegal health insurance under the relevant state insurance laws. The state regulators have generally determined that Alier created Trinity and entered into a contract with it in order to evade insurance regulation and sell illegal, sham health insurance. *See, e.g., id.*, New York Statement of Charges, p. 2.

² All documents referred to as "*Exh. ___*" are exhibits to the Declaration of Eleanor Hamburger unless otherwise identified.

³ The Court may take judicial notice of each of the regulatory actions listed. *See In re Grasso*, No. 14-1741, 2014 U.S. Dist. LEXIS 94274, at *9 (E.D. Pa. July 10, 2014).

AlieraCare Plaintiffs are or were all members of Trinity's healthcare plans and have filed five class action lawsuits against Aliera and Trinity alleging that the Plaintiffs were sold fraudulent and unauthorized health plans under the laws of each state:

- *Jackson et al., v. The Aliera Companies, Inc., Aliera Healthcare Inc., Trinity Healthshare Inc.*, No. 2:19-cv-1281 (J. Rothstein, W.D. Wash.);
- *Duncan v. The Aliera Companies, Inc., Trinity Healthshare Inc., OneShare Health LLC*, No. 2:20-cv-867-TLM-KJM (J. Nunley, E.D. Cal.);
- *Kelly et al. v. The Aliera Companies, Inc, Trinity Healthshare Inc.*, No. 3:20-cv-05038-MDH (J. Harpool, W.D. Mo.);
- *Smith et al., v. The Aliera Companies, Inc., Trinity Healthshare Inc, OneShare Health LLC*, No. 1:20-cv-02130-RBJ (J. Jackson, D. Colo.); and
- *Albina et al. v. The Aliera Companies, Inc. Trinity Healthshare Inc., OneShare Health LLC*, No. 5:20-cv-496-JMH (J. Hood, E.D. Ky.)

(collectively, the "Lawsuits"). A copy of the operative complaint in the Missouri case is attached as *Exh. 2* to the Declaration of Eleanor Hamburger. The complaints in the other four cases are similar. Consistent with the automatic bankruptcy stay, the claims against Trinity in each of these cases have been stayed. 11 U.S.C. § 362. Hamburger Decl., ¶2.

The AlieraCare Plaintiffs seek to join this action in order to protect their interests and that of similarly situated individuals in this proceeding. They ask that the Court order the relief sought by the U.S. Trustee and that the trustee be directed to consult with the AlieraCare Plaintiffs and their counsel.

III. BACKGROUND

A. Statutory Background

When Congress passed the Patient Protection and Affordable Care Act (the “ACA”) in 2010, it required all individuals to be covered by health insurance or pay a penalty. Congress allowed for a handful of exceptions to that requirement, set out in 26 U.S.C. § 5000A. One of those exceptions was for members of existing Health Care Sharing Ministries (“HCSMs”). Congress, however, established specific and rigorous requirements to ensure that only legitimate *existing* entities with a history of administering these shared plans to those of a common religious faith would qualify as an HCSM. Those requirements limit the exception to an entity that meets all five of the following statutory prongs:

1. It is a tax-exempt § 501(c)(3) organization;
2. its members “share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs;”
3. its members “retain membership even after they develop a medical condition;”
4. it (or its predecessor) must have “been in existence at all times since December 31, 1999,” and medical expenses of its members must have “been shared continuously and without interruption since at least December 31, 1999;” and
5. it conducts an annual audit by an independent CPA made available to the public upon request.

26 U.S.C. § 5000A(d)(2)(B)(i)(I)-(V). The 1999 cutoff date in the fourth prong serves two important legislative purposes: (1) it ensures reliability of care that comes with historical practice, and (2) it prevents “opening the flood gate” to groups seeking to circumvent the requirements of the ACA. *Liberty Univ. v. Lew*, 733 F.3d 72, 102 (4th Cir. 2013).

If an entity qualifies as an HCSM under 26 U.S.C. § 5000A, then it must also determine whether it is required to obtain a certificate of authority issued by the relevant state’s insurance commissioner, or, as in approximately half of the states, whether it qualifies under state law as an

exempt HCSM. *See e.g.*, Revised Code of Washington (“RCW”) 48.43.009 (Washington permits genuine HCSMs to sell products in the state). Under each state’s law, if an entity meets the definition of “insurance” and is not otherwise exempt, it must be authorized by the state regulator before it may sell its health plans. *See e.g.*, RCW 48.05.030.

The founders of Alieria, however, exploited the HCSM exemption in the ACA and claimed to be exempt from insurance regulation by creating a phony HCSM, duping vulnerable people into purchasing what looked like insurance, and then refusing to pay their medical expenses. According to the Washington Office of the Insurance Commissioner, instead of paying \$0.80 out of every dollar collected from monthly payments on health benefits, (as required for health insurance under 42 U.S.C. § 300gg-18(b)(1)(A)(i)), *the AlieriaCare plans spent only \$0.16 out of every dollar on health benefits*. *Exh. 3*, p. 21 of 41. The rest went to for-profit, privately-owned Alieria and its affiliates for various fees and reimbursements. *Id.* As alleged by AlieriaCare Plaintiffs, the AlieriaCare plans are a fraudulent scheme designed to enrich Alieria’s owners, while providing almost no health benefits for AlieriaCare’s members. Trinity, as a captive sham HCSM, is critical to Alieria’s scheme.

B. Alieria’s Creation by a Convicted Felon.

Timothy Moses, Alieria’s founder, was convicted of felony securities fraud and perjury in federal court in Georgia. *See United States v. Moses*, 219 Fed. App’x 847 (11th Cir. 2017) (affirming his conviction). He was sentenced to over six years in prison. *Exh. 1*, at 8-9, ¶49. After he was released, he was subject to supervision for five years. *Exh. 4*. Shortly after his release, Mr. Moses misled his supervising probation officer about his financial affairs and failed to disclose bank account information and new lines of credit. *Id.* Mr. Moses’ supervised release was terminated in April 2015, approximately six months prior to Alieria’s creation. *Id.*

Mr. Moses' wife, Shelley Steele, incorporated Defendant Alieria, a for-profit corporation in Delaware, with its headquarters in Atlanta, Georgia, in 2015. *Exh. 5*. Alieria's original scope of business was "to engage in the business of providing all models of Health Care to the general public," and "[t]o buy, own or acquire other businesses, to market and in any way improve the commercial application to the betterment and pecuniary gain of the corporation and its stockholders...." *Id.* It later amended its Articles to include a broader scope of business: "The purpose for which the Corporation is formed is to engage in any lawful act or activity for which corporations may be organized..." *Exh. 6*. Alieria has never been and does not claim to be an HCSM.

After Alieria's formation, Timothy Moses convinced Anabaptist Healthshare, a small nonprofit with a letter of recognition as an HCSM from the federal government, to allow Alieria to market HCSM plans through a subsidiary that Anabaptist would create solely for that purpose, Unity Healthshare.⁴ *Exh. 1*, at 4-5, ¶¶18-24. Mr. Moses admitted in sworn testimony that he played a substantial role in the relationship between Anabaptist and Alieria. *Id.*, *Exh. 7*, ¶¶20-27, and its attached Exhibits A and B (signing as "Executive Director" of Alieria).

The relationship between Alieria and Anabaptist soured by May 2018 when Anabaptist discovered that Mr. Moses had misappropriated Unity funds. *Exh. 1*, at 13, ¶71. Anabaptist terminated its agreement with Alieria on August 10, 2018, and the parties sued each other in state court in Georgia, *Alieria Healthcare v. Anabaptist Health Share, et al.*, No. 2018-cv-308981 ("Georgia Litigation"). *See generally, Alieria Healthcare, Inc. v. Anabaptist Healthshare*, 844 S.E. 2d 268 (Ga. App. 2020).

⁴ In *LeCann v. The Alieria Companies*, No. 1:20-cv-2429-AT, 2021 U.S. Dist. LEXIS 115827, at *82 (N.D. Ga. June 22, 2021), the court also found the Alieria/Unity arrangement to be unauthorized health insurance and a sham HCSM under the ACA.

C. Trinity Was Created in 2018 as a Sham HCSM by Alieria.

With Alieria's relationship with Anabaptist coming to an end, Alieria created Trinity Healthshare, Inc. as a Delaware nonprofit entity on June 27, 2018. *Id.*, *Exh. 8* at 5. Alieria installed William Thead, a former employee and close personal friend of the Moses family, as Trinity's CEO. *Id.*, *Exh. 9*, ¶¶62, 63. Trinity initially had only one other board member – Mr. Thead's brother. *Id.*, *Exh. 10*, at 7 and 33 of 43. Trinity had no members when it was formed. *Id.*, *Exh. 9*, at 19, ¶65. On or about July 3, 2018, *Alieria's* attorney (Burr Forman LLP) filed an application with the IRS on behalf of Trinity seeking recognition as a 501(c)(3) tax exempt entity. *Id.*, *Exh. 11*. Trinity represented to the IRS that it was applying for 501(c)(3) status as "a newly formed entity," and answered "no" to the question, "are you a successor to another organization?" *Id.*, at 18 of 52.

In August 2018, Alieria and Trinity entered into a Management and Administration Agreement. *Exh. 12*. Under that Agreement, Trinity delegated to Alieria the exclusive right to design, market, enroll, administer and prepare financial and tax statements for the joint AlieriaCare/Trinity healthcare plans. *Id.*, at 4-5. Under that Agreement, Alieria was to have exclusive control over the member list, and all member payments were to be made directly to a bank account in Alieria's name. *Id.*, at 4, ¶2.e., and at 5, ¶3.c. Alieria would retain 65% of the total member share contributions for the type of plans most of the AlieriaCare Plaintiffs purchased. Of the 35% that would be allotted to Trinity, only 44.3% (just 15.5% of the amount members paid) would be placed in a reserve account for payment of members' claims. *Exh. 12, Ex. B.*⁵

The enrollment forms that members sign lay out certain details about the various plans. *See Exh. 14*, at 5 (listing limitations of various plans), and *Exh. 17*, at 1 (listing what is covered under

⁵ Trinity reported to the IRS that in 2019 it paid Alieria \$32,138,105 for "a variety of management services." *Exh. 13*, at 31 of 41.

the plan). Greater details of coverage under each plan are provided in “sell sheets” available to potential purchasers. *See Exh. 16*. Trinity’s webpage also outlined the various types of healthcare plans offered and advertised them as comparing favorably with traditional health insurance.

Exh. 24. The plans offered included:

- ***AlieraCare comprehensive program offered at the Bronze, Silver, and Gold levels***, described as “great for those who simply want to have peace of mind knowing that they will be able to receive the healthcare services they need, when they need them.” *Exh. 24*, at 24 of 31. This program provided telemedicine, unlimited wellness and preventive services, primary care, urgent care, specialty care, prescription discounts, maternity care, emergency room, hospitalization and surgical services. *Id.* The comprehensive program is described as providing members “with options that look and feel like more traditional healthcare plans but at a fraction of the price.” *Id.*, at 15 of 31.
- ***AlieraCare standard program offered at the Value, Plus, and Premium levels***, described as comparable to catastrophic health insurance and that “allow members to achieve comparable cost assurances for catastrophic healthcare services (including preventative care and immediate access to doctors through office visits, urgent care, and telemedicine) at a much lower cost ...” *Exh. 24*, at 22 of 31. It was designed to “include” costs for hospitalization, in-patient surgery, out-patient surgery, and emergency room; to cover wellness and preventive care and telemedicine at 100%; and to cover X-rays, primary care, specialty care, and urgent care with consult fees or copays. *Exh. 16*, at 1 of 7.

Members are instructed to present their membership cards to their health care providers when they receive medical services. *Exh. 29*, at 8 (“Keep your Member Card with you at all times; ...”), and at 14 (“Upon arrival at a clinic, present your Membership Card and one photo ID.”) The providers send a bill directly to Aliera, which then determines whether and how much will be paid. *Exh. 24*, at 16 of 31. (“How does my doctor or hospital get paid? Once your medical provider has properly processed your medical claim to be shared by the membership, the medical need is adjudicated and payment is issued directly to the provider.”) Aliera/Trinity provide their members with an Explanation of Benefits (“EOB”) that looks just like EOBs from actual health insurers. *See Exh. 28*. Under the heading, “Important Information About Your Appeals Rights,”

the EOBs warn about insurance fraud and instruct the members to contact the state *insurance* regulator if they suspect fraudulent billing. *Id.*, at 2, 4, and 6.

D. AlierCare Plaintiffs Each Enrolled in an Unauthorized Health Insurance Plan from Alier/Trinity.

Alier's plan to create and use Trinity to sell coverage that offered the "look and feel" of health insurance while providing few actual benefits worked. Thousands of people signed up for these plans thinking they were buying something that would provide coverage for their health needs. In reality, many claims were never paid.

Each of the AlierCare Plaintiffs was sold a health plan by Alier/Trinity, transferred into an AlierCare/Trinity plan from an Alier/Unity plan, or received paperwork indicating that they were enrolled as an AlierCare/Trinity member. All have been harmed by the sale of unauthorized and illegal health insurance, either by making monthly payments for sham coverage, or worse, by incurring uncovered medical expenses that would have been covered, had the AlierCare plans complied with the minimum requirements of state insurance law:

Gerald and Roslyn Jackson (Washington Plaintiffs). The Jacksons purchased an AlierCare Gold plan from Alier and Trinity on December 15, 2018. *Exh. 14*. They selected the plan with the most robust benefits (and the most expensive). They signed an enrollment form agreeing, *inter alia*, that Alier could immediately bill their credit card for the first monthly fee (\$401.02 for the Trinity portion, plus \$804.75 for the Alier portion of the plan), and the one-time application fees totaling \$125, and agreeing that Alier could collect the monthly amount as a "recurring monthly transaction." *Id.* They allege that Ms. Jackson's claims for a monthly infusion to treat her arthritis were denied in full forcing them to pay out-of-pocket for services that would have been covered had AlierCare complied with state insurance law. *Exh. 15*, ¶¶97-103.

Jon and Julie Perrin (Washington Plaintiffs). The Perrins purchased an AlierCare Premium plan from Alier and Trinity on December 20, 2018. Before they purchased, an Alier representative sent Mr. Perrin a “sell sheet” and described the plan as “an affordable alternative to the ACA” that was “not subject to an enrollment period.” *Exh. 16*. Mr. Perrin signed an enrollment form agreeing, *inter alia*, that Alier could immediately bill his credit card for the first monthly fee (\$203.67 for the Trinity portion, plus \$378.24 for the Alier portion of the plan), and the one-time application fees of \$125, and agreeing that Alier could collect the monthly amount as a “recurring monthly transaction.” *Exh. 17*. The enrollment form stated:

“Hospitalization, Emergency Room, In-Patient, and Out-Patient procedures are covered, once the [MSRA] has been met. The Per Incident limit is \$500,000 sharing amount, capped at \$1,000,000 lifetime sharing amount.”

Id., at 1. The Perrins alleged that they were forced to pay, out-of-pocket for medical services that would have been covered by AlierCare, had it complied with state insurance law. *Exh. 15*, ¶108. The Perrins appealed the denial but received a letter denying their appeal (more than 3 months after the appeal was received). *Id.*, ¶¶109-110. The denial letter indicated that certain claims, called “share requests” were “processed and paid” but the Perrins’ providers did not receive most of payments identified as “paid” by AlierCare. *Id.*, ¶¶110-121.

Dean Mellom (Washington Plaintiff). Mr. Mellom originally purchased an AlierCare Value Plan, effective January 1, 2018, when Alier was selling plans through its then-partner Unity. *See id.*, ¶88. On September 26, 2018, shortly after Trinity was formed, he signed a form approving termination of the AlierCare/Unity Value plan, effective September 30, 2018, authorizing activation of the AlierCare Premium Plan effective October 1, 2018, and authorizing payment. *Id.*, ¶89. Mr. Mellom’s monthly premiums were approximately \$473.88 per month. *Id.*, ¶90. AlierCare denied coverage for various health care procedures, asserting that they were incurred during a 24-month waiting period. *Id.*, ¶95.

Jared and Jaime Beard (Colorado Plaintiffs). In August 2018, Mr. Beard spoke on several occasions with an AlierCare representative regarding the AlierCare plans. The representative explained that AlierCare worked like insurance. *Exh. 18*, ¶ 2. She emailed a summary of the various plans, which presented the plans as comparable to insurance. *Id.*, *Exh. 1*. The Beards enrolled in AlierCare with the AlierCare representative on August 8, 2018. Mr. Beard provided a credit card number to pay for the initial enrollment fee (\$125) and the first month's premium (\$694.32) for a total of \$819.32. *Id.*, ¶ 4, *Exh. 2*.

In October 2018, the Beards' daughter needed surgery. *Id.*, ¶ 5. After the surgery was scheduled, AlierCare denied coverage claiming that the treatment was for a "pre-existing condition." *Id.*, *Exh. 6*. AlierCare also refused to pay for emergency transportation via ambulance for the Beards' son. *Id.*, ¶ 7.

Ellen Larson (Colorado Plaintiff). Ms. Larson enrolled in AlierCare/Unity on June 18, 2018. *Exh. 19*, ¶ 2. She was charged \$477 for both her initial \$125 enrollment fee and her first monthly premium. She received an email on June 18, confirming her payment and enrollment in an AlierCare plan. *Id.*, *Exh. 2*.

Ms. Larson was assaulted and seriously injured on August 3, 2018, with resulting medical bills for over \$53,000. In November, Ms. Larson learned from the hospital that AlierCare refused to pay. *Id.*, ¶ 4. On November 15, 2018, while she was trying to resolve the unpaid hospital bill with AlierCare, she received an email that her plan would transfer from Unity to Trinity, and that the only thing that would change would be the name. *Id.*, ¶ 6, *Exh. 8*. She received a new Member Guide with the Trinity logo on it, *Exh. 9*, and a new member card with the Trinity HealthShare name on it, showing she had been a member with Trinity since July 1, 2018. *Exh. 10*. She received

an Explanation of Benefits (“EOB”) dated February 8, 2019, with the Trinity logo on it on. *Id.*, *Exh. 11*.

Ms. Larson appealed AlierCare’s denial of coverage for her hospital charges related to the assault. After multiple calls and letters, Ms. Larson received a letter dated February 11, 2019 stating that her claim was denied because her injuries were “self-inflicted.” *Id.*, *Exh. 6*.

Rebecca Smith (Colorado Plaintiff). Ms. Smith was sold an AlierCare/Unity policy by an insurance broker on April 12, 2018. *Exh. 20*, ¶2, *Exh. 1*. She received a welcome email showing that her first payment of \$655.10 had been completed. She received a Member Guide in the mail sometime in May. *Id.*, ¶3. On November 15, 2019, she received an email explaining that her plan would automatically transfer to Trinity on January 1, 2019. *Id.*, ¶4, *Exh. 3*. She then received an AlierCare/Trinity Member Guide. *Id.*, *Exh. 4*.

Justine Lund (Colorado Plaintiff). Ms. Lund spoke several times with an AlierCare representative by telephone about the AlierCare plans. *Exh. 21*, ¶ 2. She provided a credit card number to enroll in the AlierCare Gold plan and was charged \$658.87 for both a \$125 enrollment fee and the first month’s premium. *Id.* She received an email acknowledging receipt of the payment on January 16, 2019. *Id.*, *Ex. 1*. Although Ms. Lund enrolled in a Trinity plan, AlierCare sent her a Unity Member Guide and a temporary ID card with a Unity logo. *Id.*, *Exs. 3, 4*.

Bruce and Corlyn Duncan (California Plaintiffs). The Duncans signed up for the AlierCare Gold healthcare plan while AlierCare was selling Unity plans. *See Exh. 22*, ¶4. Ms. Duncan needed surgery in March 2018. *Id.*, ¶5. Her healthcare provider contacted AlierCare and obtained preauthorization of both the surgery and the facility where it was to be performed. *Id.* Nevertheless, after the surgery was completed, AlierCare refused to pay, claiming the surgery was for a pre-existing condition. *Id.*, ¶6. The Duncans have been billed over \$100,000 for the surgery.

See id., Exh. 1, p. 1. They attempted to appeal AlierCare's denial. They called AlierCare at least thirty times beginning in December 2018. *Id.*, ¶8. Their provider also appealed. *Id.* One of the surgery-related bills went to collections, and the Duncans were forced to pay it. *Id.*, ¶7. Even though AlierCare indicated by telephone on January 23, 2019 that the claims would be paid, they never were. *See id., Exh. 1*, p.2.

On May 3, 2019, AlierCare sent the Duncans an email requesting that they authorize the transfer of their account to Trinity. *Id., Ex. 2*. The email promised that their plan services "will remain the same" and that "medical history and historical claims" as well as amounts spent toward the MSRA (deductible) would "continue to track." *Id.* At no time were the Duncans told that any prior claims would be the sole responsibility of Unity, or that Trinity would later deny these claims that they represented "would continue to track."

George T. Kelly III (Missouri Plaintiff). Mr. Kelly enrolled with AlierCare/Trinity effective November 1, 2018. *Exh. 2*, ¶65. After enrolling, in February and March 2019, Plaintiff Kelly incurred \$1,723 of medical costs identified as covered in his Member Guide, all of which AlierCare/Trinity refused to pay. *Exh. 2*, ¶¶70-71. In November 2019, Plaintiff Kelly sought preauthorization to have surgery performed at a hospital with physicians who AlierCare listed as in-network providers. *Exh. 2*, ¶72. Defendants denied the pre-authorization, claiming these providers were not in the network. *Id.* Unable to find an in-network provider, Mr. Kelly was forced to pay out-of-pocket for his surgery. *Exh. 2*, ¶73.

Thomas Boogher (Missouri Plaintiff). Mr. Boogher bought an AlierCare Unity health plan effective June 1, 2018. *Exh. 2*, ¶75. The AlierCare agent represented that the AlierCare plan worked "just like a Blue Cross" plan and would "smell, taste and act like health insurance." *Id.* In November 2018, AlierCare announced that it would no longer partner with Unity, but would instead

partner with Trinity, which it falsely represented was an HCSM. *Id.*, ¶77. Alieria sent him a new membership card and Member Guide, which were virtually identical to those he had received before, except that Trinity's name had replaced Unity's name. *Id.*, ¶78. Mr. Boogher agreed to move his plan from Unity to Trinity in May 2019. *Id.*, ¶80. His premiums increased to \$936.52 per month for his Alieria/Trinity health plan. *Id.*, ¶81. Mr. Boogher continued to enroll in AlieriaCare after he learned it was sham coverage because he was unable to obtain genuine health insurance until the next open enrollment period. Ultimately, he paid over \$19,000 in health care premiums to Alieria before he terminated his coverage in December 2020. *Id.* Defendants' scheme has forced Mr. Boogher to be unwittingly uninsured in the middle of a pandemic.

Hanna Albina (Kentucky Plaintiff). Mr. Albina learned about the AlieriaCare policy from an insurance agent who reassured him that it was similar to health insurance plans offered on the ACA exchange, but cheaper. *Exh. 23*, ¶2. He was provided with a "sell sheet" that listed similar tiers of coverage to that of genuine health insurance. *Id.*, ¶4. After enrolling, Mr. Albina was provided with a card that he believed was the functional equivalent of an insurance card. *Id.*, ¶9. Mr. Albina was induced to transfer to AlieriaCare through Trinity with a promise of a free month of coverage. *Id.*, ¶13. Mr. Albina's family had seen providers that appeared to be in-network based upon the representations on the AlieriaCare website, only to be denied coverage because the providers were out-of-network. *Id.* ¶18. Almost none of the claims submitted by Mr. Albina were covered by AlieriaCare. *Id.*, ¶¶19-21. Mr. Albina and his family began to postpone and forgo medical treatment since they did not believe that AlieriaCare would cover it. *Id.*, ¶22.

Austin Willard (Kentucky Plaintiff). Mr. Willard purchased AlieriaCare because he understood it would provide coverage similar to traditional health insurance. *Exh. 30*, ¶3. Mr. Willard signed up because he thought it would provide coverage for his family, apart from a pre-

existing condition 24-month waiting period for his existing neurological condition. *Id.*, ¶4. The “sell sheet” Mr. Willard was provided made it appear that he would have coverage similar to the coverage provided under ACA insurance plans. *Id.*, ¶6. In April 2019, Mr. Willard was informed that his health coverage could change to AlierCare through Trinity and that all his “historical claims” would “continue to track.” *Id.*, ¶7, *Ex. 5*. After the 24-month waiting period expired, Mr. Willard expected that treatment for his neurological condition would be covered. *Id.*, ¶10. He submitted bills for the treatment but was told that the treatment was excluded under the AlierCare policy, apart from any 24-month waiting period. *Id.* Mr. Willard’s neurologist wrote AlierCare explaining the medical necessity of the treatment, to no avail. *Id.* He appealed the AlierCare denial but received no response from AlierCare or Trinity. *Id.*, ¶12. The AlierCare plan also denied multiple other claims for benefits totaling thousands of dollars, including for the birth delivery of his son. *Id.*, ¶14.

E. The Lawsuits

The allegations in each of the five class actions are nearly identical: The health plans designed, marketed and sold by AlierCare and Trinity were unauthorized and illegal “insurance” under each state’s insurance law. *See Exh. 2*. AlierCare and Trinity deceptively marketed the coverage as “ACA compliant” and providing the “look and feel like more traditional healthcare plans but at a fraction of the price.” (*Exh. 24*, p. 15). AlierCare and Trinity described the coverage as comparable to catastrophic health insurance allowing “members to achieve comparable cost assurances for catastrophic healthcare services (including preventative care and immediate access to doctors through office visits, urgent care, and telemedicine) at a much lower cost ...” *Exh. 24*, at 22.

Neither Trinity nor AlierCare obtained a certificate of authority to engage in the business of insurance in any state in which it sold these health plans. The AlierCare plans were never reviewed, recognized, or authorized by any state insurance regulator. The AlierCare plans did not

comply with a myriad of federal or state insurance laws and consumer protections. Instead, Trinity agreed to allow AlierCare to spend only \$0.16 out of every dollar on health benefits. *Exh. 3*, p. 18. The majority of the remaining monthly payments from members was spent on exorbitant fees to AlierCare. *Id.*

AlierCare Plaintiffs filed the Lawsuits seeking a declaration that the AlierCare health plans were “insurance” and that AlierCare and Trinity breached the contract of insurance when they designed, marketed, sold, and administered unauthorized insurance. On behalf of thousands of enrollees in each state in which the Lawsuits were filed, the AlierCare Plaintiffs seek either the remedy of rescission (return of premiums paid), or for members with debts from uncovered health services, reformation (payment of benefits as if the AlierCare plan complied with mandatory coverage minimums in the state).

AlierCare Plaintiffs estimate that their claims, and those of similarly situated others, far exceed the debt limit under Subchapter V. *Hamburger Decl.*, ¶3. For example, in the Colorado Case, Trinity represented that the claims on behalf of Colorado AlierCare enrollees alone represented more than \$5,000,000.00. *See Exh. 25*. In Washington, the proposed class totals approximately 3,058 persons. *See Exh. 26*, pp. 6-7 (Trinity’s Answer to Plaintiffs’ ROG No. 2). The California Department of Insurance estimated that AlierCare/Trinity had approximately 11,000 members. *Exh. 27*, p. 2, ¶11. AlierCare Plaintiffs estimate the proposed classes in the other cases to be of similar size.⁶ *Hamburger Decl.*, ¶3.

Trinity’s litigation strategy in each case has been to delay reaching the merits of whether the coverage is “insurance” and therefore unauthorized and illegal, for as long as possible. For

⁶ Trinity claims that it had approximately 10,000 members as of June 30, 2021. Former AlierCare/Trinity members, including the AlierCare Plaintiffs, were not included in that estimate, although they have claims against the estate for unpaid medical bills and for premiums paid for sham insurance. The total number of claimants far exceeds the number of members as of June 30, 2021.

example, in each case, Trinity filed a Motion to Compel Arbitration, asserting that an arbitration provision buried within a Member Guide provided to the Plaintiffs after they enrolled was a binding agreement to arbitrate. *Id.*, ¶4. In the Missouri and Colorado cases, the trial court rejected Trinity’s Motions. *See Kelly v. Alieria Cos.*, No. 6:20-cv-05038-MDH, 2020 U.S. Dist. LEXIS 219472 (W.D. Mo. Nov. 23, 2020); *Smith v. Alieria Cos.*, No. 1:20-cv-02130, 2021 U.S. Dist. LEXIS 96349, *27 (D. Colo. April 16, 2021). Trinity then exercised its statutory right to interlocutory appeal pursuant to 9 U.S.C. § 16(a)(1)(A). *See Kelly et al., v. The Alieria Companies, Inc.*, Eighth Circuit Appeal No. 20-3702; *Smith et al., v. The Alieria Companies, Inc.*, Tenth Circuit Appeal No. 21-1185. In the Washington case, the trial court concluded that an arbitrator must determine arbitrability. *See Jackson v. The Alieria Cos.*, No. 19-cv-01281-BJR, 2020 U.S. Dist. LEXIS 185339, at *21 (W.D. Wash. Oct. 6, 2020). The Washington parties were in the middle of briefing that issue before an AAA Arbitrator when Trinity filed for bankruptcy. Hamburger Decl., ¶5. Trinity’s Motions to Compel Arbitration are fully briefed and pending in the Kentucky and California cases. *Id.*, ¶6. All of those actions are now stayed as to Trinity.

IV. ARGUMENT

A. **Trinity Should be Removed as the Debtor in Possession.**

Trinity is not now and never was a genuine HCSM – it is a fraud. It cannot be “reorganized” to function more effectively since it was created as a vehicle for Alieria to evade insurance regulation and to enrich Alieria’s owners. Trinity cannot meet the definition of an HCSM under federal law because it was not created until 2018. *See* 26 U.S.C. § 5000A(d)(2)(B)(ii)(IV) (requiring HCSMs to have been in existence and sharing members’ healthcare expenses continuously since 1999). The real parties of interest in this proceeding are the Trinity members, like the AlieriaCare Plaintiffs and those they seek to represent. The U.S. Trustee should be empowered to pursue and safeguard the millions of dollars paid monthly by AlieriaCare members,

and protect those assets for the benefit of AlierCare current and past members. Trinity's Board of Directors and employees who were, at the very least, complicit in the AlierCare scheme, must be removed.

Trinity's refusal to consider the tens of thousands of current and past members as parties deserving of notice of the bankruptcy proceeding justifies the removal of the Debtor in possession. They are creditors of the Debtor. If, as AlierCare Plaintiffs allege, Trinity and AlierCare sold members unauthorized health insurance, then members have a right, at their election, to either (a) rescission in the form of a refund of the monthly payments (*see, e.g., Scott v. Cingular Wireless*, 160 Wn.2d 843, 851, 161 P.3d 1000 (2007) (in Washington, where enforcement of a contract is contrary to public policy, the contract may be rescinded); or (b) reformation of the unauthorized plan and payment of benefits according to the reformed contract. *See e.g., RCW 48.15.510; Denaxas v. Sandstone Court of Bellevue, L.L.C.*, 148 Wn.2d 654, 669, 63 P.3d 125 (2003) (in Washington there is both a statutory and common law right to reformation of an illegal insurance contract). Other state laws provide similar remedies.

AlierCare Plaintiffs' claims are likely to prevail – already two courts have concluded that AlierCare was a form of illegal insurance. *See LeCann v. AlierCare Cos.*, No. 1:20-cv-2429-AT, 2021 U.S. Dist. LEXIS 115827, at *6 (N.D. Ga. June 22, 2021); *Moeller v. AlierCare Cos.*, No. CV 20-22-H-SEH, 2021 U.S. Dist. LEXIS 122532, at *9 (D. Mont. June 30, 2021). The undisputed evidence and the law together demonstrate that AlierCare Plaintiffs and members of AlierCare/Trinity paid in advance in return for the promise of reimbursement of benefits later. This is the very definition of “insurance.” *See e.g., <https://thelawdictionary.org/insurance/>* (last visited 7/27/21) (Insurance is “[a] contract whereby, for a stipulated consideration, one party

undertakes to compensate the other for loss on a specified subject by specified perils.”). As the Court in *LeCann* concluded:

After thorough review of the record and evidence presented by the Parties, the Court concludes that the language of the member guides, the findings of insurance commissioners and departments across the country that have been furnished as part of the record to the Court, and Alieria's own admissions demonstrate that *Alieria's plans are insurance* under Georgia law.

...

In exchange for accurately filling out the application and payment of monthly fees, an AlieriaCare member has her expenses paid upon certain determinable contingencies. The member guides detail “unlimited” urgent care visits and primary care visits, and “zero out of pocket expense” for “any scheduled preventive care service or routine in-network check-up, pap smear, [or] flu shot.” Certain care, however, is not covered until a member has met her “Member Shared Responsibility Amounts” (“MSRA”) which operates like a typical health insurance deductible. The plans define the MSRA as “[t]he amounts of an eligible need that do not qualify for sharing because the member is responsible for those amounts.” A member must meet her MSRA before certain care is covered, for example, diagnostic lab and pathology, hospice services, or cardiac rehabilitation. As another example, after a member has met her MSRA, Alieria *promises to pay* for hospitalization coverage[.]

Id., 2021 U.S. Dist. LEXIS 115827, at *56-60 (internal citations omitted; emphasis in original and added). More than a dozen state regulators have reached the same conclusion. *See* <http://www.symslaw.com/aliera-and-trinity-litigation/stateregulation>. That may be why Trinity’s management prefers to keep its members in the dark about their rights as long as possible. AlieriaCare Plaintiffs agree with the U.S. Trustee that an independent fiduciary should be appointed immediately to protect their interests and take control of the estate for their benefit.

B. Alternatively, the Court Should Expand the Subchapter V Trustee’s Duties.

Should the Court decline to remove the Debtor in possession, AlieriaCare Plaintiffs join with the U.S. Trustee to request that the Subchapter V Trustee be ordered to investigate the acts, conduct, assets, liabilities, and financial condition of Trinity and the role that Alieria and its principals have played in such conduct. The Trustee should be directed to consult with AlieriaCare

Plaintiffs and their counsel as part of the investigation. Once such an investigation is completed, the Trustee should file a report on the investigation, including any cause(s) of action available to the estate against Trinity's Board and management, Alieria, and/or Alieria's principals. Upon the filing of the report, the Court should consider again whether to remove the Debtor as debtor in possession.

The Trustee should investigate whether Trinity's bankruptcy filing under Subchapter V was in good faith, or is merely a subterfuge designed to discharge the claims of AlieriaCare members, allowing Alieria and its owners to proceed to the next stage of this fraud. The bankruptcy filing and the proposed liquidation by Trinity – if they occur without considering the interests of the AlieriaCare members and without examining the substantial sums of money paid to and presently in the hands of Alieria and its principals – will not benefit the AlieriaCare members that Trinity purports to serve. Rather, a rapid liquidation and discharge only protects those who have engaged in the wrongdoing.

Counsel for the AlieriaCare Plaintiffs receive daily calls and emails from AlieriaCare members concerned that they will never receive the benefits that were promised. Hamburger Decl., ¶7. Without such payments, many AlieriaCare members will be subjected to unwarranted collection actions, garnishment, and even medical bankruptcy. *Id.* While regulators have taken action to order Alieria and Trinity to halt the sale of the sham AlieriaCare coverage in certain states, those actions do not compensate AlieriaCare members for their lost monthly payments or uncovered medical debt.

Ultimately, AlieriaCare Plaintiffs seek in the Lawsuits and by participating in this proceeding what the various state regulators have not been empowered to order – a make-whole remedy that would either (a) return the premiums they paid for the illegal health insurance, or

(b) pay the medical benefits they should have received, had the coverage complied with state requirements. They seek this remedy even if it can only be delivered on a *pro rata* basis, given the dissipation of funds by Alieria and Trinity. The Court should direct the Trustee to consult with AlieriaCare Plaintiffs to protect the rights and interests of the thousands of AlieriaCare members harmed by Trinity.

V. CONCLUSION

The Court should remove the Debtor as debtor in possession and direct the appointment of a trustee to oversee and take control of this case. Alternatively, if this Court does not order the removal of the Debtor as debtor in possession, then this Court should expand the duties of the Subchapter V Trustee to include an investigation of the Debtor and Alieria. Finally, the Court should direct the Trustee to consult with AlieriaCare Plaintiffs and their counsel.

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Wilmington, Delaware.

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