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

MARIA MOELLER and RON MOELLER, Plaintiffs, v. THE ALIERA COMPANIES, INC.; TRINITY HEALTHSHARE, INC.; TIMOTHY MOSES, SHELLEY STEELE, CHASE MOSES, and DOES 1-10, Defendants.	Cause No. 6:20-cv-00022-SEH **PLAINTIFFS' REPLY TO ALIERA COMPANIES INC. RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL RELIEF FROM STAY AND ALTERNATIVE MOTION TO BIFURCATE**

Plaintiff's respectfully submit this reply brief in support of their motion for partial relief from stay and alternative motion to bifurcate.

I. REPLY TO ALIERA'S INTRODUCTION AND BACKGROUND

Aliera contends in its opposition to the motion that the "operative issue in this matter is the agreement between Trinity and Plaintiffs" and that the "Parties'

agreement is reflected in Trinity's Member Guides and related documents. . .." Doc. 224 at 3. This assumption, on which Aliera's opposition to the motion rests, is fundamentally flawed for multiple reasons.

First, this Court has already found the Plaintiffs did not agree to the 2019 Trinity Member Guide or to its 2018-219 version. Doc. 213 at 10-11.

Secondly, even if Plaintiffs had agreed to the Trinity Member Guide at some point, it plainly did not apply before June 1, 2019. This undisputed fact was also noted in this Court's recent Order. Doc. 213 at 7.[1]

Thirdly, as discussed in Plaintiffs initial brief on the motion, Aliera employees made all of the sales communications and did all of the claim handling in this case, and Aliera is liable for its own sales and claim handling torts. *See* Doc. 223 at 16-19. Aliera fails entirely to address this point.

Fourth, Aliera also fails entirely to address Plaintiff's authority showing that Aliera is jointly and severally liable for the benefits owed under both the "Aliera/Unity plan" and the "Aliera/Trinity plan." *Id*. at 19-21. For all these reasons, Aliera's assumption that Plaintiff's rights are dictated by the Trinity

[1] "Aliera notified Moellers by email on June 18, 2019, of their transition from the Unity plan to a Trinity plan, effective June 1, 2019. Moellers then made monthly 'contributions' to Trinity/Aliera while enrolled with Trinity until membership terminated, effective December 31, 2019." (citations omitted)

Member Guides is incorrect and fails to support its opposition to Plaintiff's motion for partial relief from the stay.

Aliera also contends at the outset that it was a mere administrator of Trinity, which "operates a HCSM." Doc. 224 at 4. This assertion fails because it runs contrary to this Court's finding that Trinity was, as a matter of law, not an HCSM. Doc. 213 at 6, citing 26 U.S.C. § 5000A(d)(2)(B). This assumption by Aliera also fails though because it runs against substantial evidence showing that Aliera was no mere administrator. As shown repeatedly in the record in this case, Aliera performed all of the sales and claim handling conduct at issue in this case. Indeed, with its two executives, one of whom performed work that was entirely "litigative, legislative and regulatory" in nature (TR 205-206), the other who was a salesman, and no other employees, Trinity barely existed—it was a gossamer façade for Aliera. Moreover, the complaint alleges that defendants Timothy Moses, Shelley Steele, and Chase Moses used the corporate entities of Aliera and/or Trinity as a subterfuge to defeat public inconvenience, justify wrong, or perpetrate fraud. Doc. 216 ¶¶ 5, 126. The record already contains substantial evidence to affirm the truth of this allegation as well.

II. REPLY TO LAW AND ARGUMENT

A. Aliera's appeal does not provide a basis for stay.

As Aliera observes, it has not moved for a stay of this litigation pending resolution of its appeal of this Court's denial of its motion to compel arbitration. Doc. 224 at 2. Without such a motion, this Court has not been asked to stay the litigation on that basis and need not dwell on this issue.

Notwithstanding the absence of a motion, Aliera cites several cases in which the court did grant a stay pending appeal of the denial of a motion to compel arbitration. *Id*. At 5-6. As Plaintiffs noted in their initial brief in support of the motion, however, the majority of courts to have addressed this issue in recent years in the Ninth Circuit have declined to stay the litigation. Doc. 223 at 3-4, citing *Martinez-Gonzalez v. Elkhorn packing co., LLC.,* 2020 US Dist. LEXIS 25385, *3n.1, citing, *Mohamed v. Uber Techs., et al.*, 115 F. Supp. 3d 1024, 1028 (N.D. Cal. 2015). Thus, while district courts within this Circuit have been split on this issue, more of the district courts have allowed the litigation to proceed while the appeal of the denial of the motion to compel arbitration was reviewed by the Ninth Circuit.

More importantly, the factors guiding this Court's discretion with respect to whether to stay proceedings during such an appeal weigh heavily against a stay.

The first and most important factor is whether Aliera has a substantial case for relief on appeal. It does not. Aliera acknowledges this Court's factual finding that "the parties did not enter into an agreement to arbitrate." Doc. 224 at 7.

Aliera then asserts: "if the 9th Circuit disagrees and compels arbitration, then the time, effort, expense, and judicial resources spent litigating this action would be wasted." *Id*. However, the Ninth Circuit is unlikely to disturb this factual finding both because of the deferential standard of review[2] and because the evidence in the record shows clearly that no agreement to arbitrate existed.[3] Therefore, Aliera fails to satisfy the most important factor in the stay analysis.

Aliera then argues: "if the 9th Circuit agrees with this Court that the parties did not enter into an agreement to arbitrate, then there is no enforceable agreement to provide health care between Plaintiffs and Aliera/Trinity." It is unclear whether this statement is tethered to any factor that guides this Court's decision about whether to stay the action pending appeal. In any case, it is wrong on several levels. First, the absence of an agreement to arbitrate does not in any way foreclose the existence of an agreement to provide healthcare cost coverage in return for monthly premium payments. The argument also overlooks the numerous

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[2] The Ninth Circuit reviews findings of fact underlying the District Court's decision to deny a motion to compel arbitration for clear error. *Lim v. TForce Logistics, LLC*, 2021 U.S. App. LEXIS 23998, *10 (9th Cir.), citing, *Bradley v. Harris Rsch., Inc.*, 275 F.3d 884, 888 (9th Cir. 2001), *abrogated in part on other grounds by Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425 (9th Cir. 2015).

[3] As the Court knows, the federal court for the Western District of Washington State sent the *Jackson* case to arbitration, but the American Arbitration Association has already rejected jurisdiction, finding that no arbitration agreement existed for much the same reason that this Court reached that conclusion. The AAA order is attached hereto as Exhibit 1.

tort causes of action that Plaintiffs may continue to pursue against Aliera. The Second Amended Complaint asserts claims against Aliera for unfair claims settlement practices (Count II), fraudulent inducement (Count III), deceit (Count IV), constructive fraud (Count V), negligent misrepresentation (Count VI), common law bad faith (Count VII), negligence (Count VIII), negligence per se (Count IX), breach of fiduciary duty (Count X), violation of the Consumer Protection Act (Count XI), joint tortious enterprise (Count XII), and malice (Count XIII).

Beyond all these tort claims, Plaintiffs may also establish a contract between them *and Aliera* through multiple theories. As this Court has repeatedly observed in this case, a contract may be made up of multiple different documents. *See Wood v. Anderson* , 217 MT 180, ¶ 10-11, 338 Mont. 166, 399 P.3d 304. ("We have held that email or memorandum may consist of several writings, and that it need not be in any particular form, or contain the entire contract. As long as the writing or writings include all the material terms, even if such terms are stated generally, the contract is valid.") Thus, even though Plaintiffs did not enter into a contract with Aliera and Trinity containing an arbitration clause, multiple writings provide evidence of a contract between Aliera and Plaintiffs to provide insurance coverage in return for monthly premiums. These documents include the Aliera/Unity Member Guides and the promise contained in the Plan Update Authorization Form

that the Moellers would move from their "current Aliera/Unity plan to an equivalent Aliera/Trinity plan." Doc. 213 at 6. (citations omitted).

Plaintiffs may also pursue their contract claim against Aliera based on oral contract or implied contract law. *Austin v. New Brunswick Fire Ins. Co.*, 111 Mont. 192, 108 P.2d 1036 (1940) (recognizing an oral contract of automobile insurance); *Grizzly Sec. Armored Express, Inc. v. Bancard Servs*., 216 MT 287, 385 Mont. 307, 384 P.3d 68, citing Mont. Code Ann. § 28-2-1602 (an oral agreement can alter a written contract where it is executed by performance); *Conner v. City of Dillon*, 2012 MT 21, ¶ 9, 364 Mont. 8, 270 P.3d 75. ("a contract may be either express or implied. The terms of an express contract are stated in words while both the existence and terms of an implied contract or manifested by the conduct of the parties, and a party may be estopped by its conduct from denying the existence of a contract. . . . a party is not allowed to take the benefit of a contract and then later repudiate its existence.")[4] Plaintiffs may also establish these contractual rights against Aliera through their causes of action for promissory estoppel (Count XIV) and equitable estoppel (Count XV). Doc. 216 at 44-45.

For all these reasons, the fact that Plaintiffs did not enter into a contract with Aliera or Trinity specifically through the 2018-2019 or 2019 Trinity Member

[4] Citing, *CB&F Development Corp. v. Culbertson State Bank,* 256 Mont. 1, 5, 7, 844 P.2d 85, 87, 89 (1992); *Williams v. Schwager*, 2002 MT 107, ¶ 28, 309 Mont. 455, 47 P.3d 839.

Guides is of no consequence to Plaintiff's ability to recover against Aliera under its various asserted causes of action.

Aliera also contends that it will be irreparably injured absent a stay. Doc. 224 at 8. However, the only injury Aliera can identify is being subjected to discovery. It can hardly be said that a company selling insurance or quasi-insurance products to the American public would be irreparably harmed by having to answer written discovery requests or sit through a handful of depositions. Aliera confuses inconvenience with irreparable harm. On the other hand, Maria Moeller has undergone chemotherapy and surgery for cancer and had to undergo surgery again recently. With respect to the risk of Maria dying while the action is stayed, Aliera coldly contends, "that she may die holds true for anyone, at any time," (Docs 224 at 9-10). However, a nuanced medical diagnosis is not required to understand that Maria Moeller's condition is precarious. Moreover, the Ninth Circuit has recognized that delay itself carries prejudice. *Blue Cross & Blue Shield of Ala. v. Unity Outpatient Surgery Ctr., Inc.*, 490 F.3d 718, 724 (9th Cir. 2007). ("Delay inherently increases the risk that witnesses' memories will fade and evidence will become stale.")

Aliera also contends that proceeding now would place it in a position of "purportedly defending Trinity's Health Care Sharing Agreement with Plaintiffs, even though Aliera has no ability to provide evidence or testimony from Trinity

and is not the primary contracting party." Doc. 224 at 10. This statement is disingenuous because, as the record has already made crystal clear, Aliera is the *only* party that can provide evidence or testimony regarding the agreement between Moellers and Trinity. This statement is also off base, however, because, proceeding against Aliera, Plaintiffs would be proving the breach of tort and contract duties by Aliera without regard to Trinity. Should Aliera later have some legally enforceable claim against Trinity for contribution or indemnity (which is doubtful), Aliera and Trinity can resolve that on their own time. Aliera also says proceeding now would place it in a position "to potentially defend Trinity's status as a valid HCSM under Montana law." *Id.* However, as noted above, this Court has already found, as a matter of law, that Trinity was not an HCSM. Moreover, Trinity was fully present and heard prior to that determination. Trinity was also present and heard with respect to this Court's finding, as a matter of law, that the Trinity Member Guide constituted a contract of insurance. *See* Doc. 213 at 11. ("The 2019 Trinity Member Guide was, notwithstanding disclaimer by defendants Aliera and Trinity, an insurance contract (plan) under Montana law.") Contrary to Aliera's claim, there is no "legal conundrum" here.

Lastly, Aliera asserts that the public interest favors a stay, but Aliera fails in this section to mention the public interest at all. Nor does Aliera respond to Plaintiff's argument that the public interest will be served by expeditiously

bringing the truth out about Aliera and stopping them from harming Montana Consumers.

B. Partial relief from the stay during the bankruptcy.

Aliera argues that this entire litigation should "remain stayed because Plaintiffs' claims against Trinity are inextricably intertwined with their claims against Aliera." Doc. 224 at 11. Aliera's argument fails for at least three reasons: 1) Aliera directly and solely committed all the acts and omissions at issue in the case; 2) The wrongful claim denials prior to June 1, 2019 fell under the Aliera/Unity plan and did not involve Trinity; and 3) As to the medical bills incurred after June 1, 2019, and submitted under the Aliera/Trinity plan, Trinity has announced that it is liquidating; it is therefore not going to emerge from the bankruptcy and will never return to this litigation.

Aliera cites authority that recognizes the inherent authority of this Court to exercise its discretion regarding whether to stay this action with respect to parties other than the bankruptcy petitioner. Doc. 224 at 12. As noted in their initial brief, Plaintiffs completely agree that this Court's authority is broad in that regard. Based on the facts of this matter, Plaintiffs respectfully urge the Court to exercise its authority by lifting the stay as to Defendants other than Trinity.

Plaintiffs noted above and detailed in earlier briefing the acts and omissions at issue in this case. The corporate deposition of Trinity conducted in November

2020, and other documents in the record of this Court, show that Trinity had only a CEO, a salesman who was a family friend of the Moses, and a COO, who served as a lobbyist and litigation manager. Every action that forms the basis for Plaintiffs' claims was performed–or not performed–by Aliera and its principals.

Moreover, staying the action against the remaining defendants while the Trinity bankruptcy proceeds can serve no constructive purpose in this case because Trinity has elected to liquidate and distribute its few remaining assets to its members. Attached hereto as Exhibit 2 is the status report of Trinity filed September 1, 2021, in the United States Court of Appeals for the Tenth Circuit. In this status report, Trinity states: "On or about July 19, 2021, Trinity's board of directors made the decision to cease operating as a going concern, wind down its business, and use its assets to pay creditors and members." Ex. 2 ¶ 4. Further, Trinity states: "Upon confirmation of the liquidating plan, oversight of Trinity will, most likely, be transitioned to a post- confirmation Liquidating Trustee." *Id.* ¶ 5.

In its status report to the Tenth Circuit, Trinity also asks for the Court to continue to "abate" (stay) the appeal with respect to Trinity but expressly notes that the bankruptcy stay does not apply to parties other than Trinity (such as Aliera):

> Abatement of this appeal, with respect to Trinity, should continue as this action and the underlying action against Trinity continue to be stayed by the operation of 11 U.S.C. § 362. The statutory automatic stay only applies to protect Trinity and property of Trinity, as Trinity is the party that petitioned for relief from the United States Bankruptcy Court.

Two things are clear from Trinity's status report to the Tenth Circuit: 1) Trinity is liquidating; and 2) Trinity does not object to litigation proceeding against Aliera. Both of those points hobble Aliera's contention that the stay should continue until Trinity can rejoin this litigation.

Aliera claims that Trinity must be present for the determination of whether its product is insurance. Doc. 224 at 13. This argument fails for the same reasons. First, this Court (like other Courts and regulators across America) has already determined that the product sold by Aliera and Trinity *is insurance*. Second, Aliera and Trinity both presented their evidence and argument to the Court prior to that determination. Third, Aliera can present any further arguments it wishes on that issue without any limitation related to Trinity's absence. Fourth, Trinity will not return to this litigation anyway because it is liquidating.

Next, Aliera makes a cryptic argument that due to indemnification provisions that are being litigated in the Trinity bankruptcy, "[t]he landscape of Plaintiffs' claims and the alleged facts on which they are based changed dramatically based on the rulings and resolution of the Trinity bankruptcy." Aliera does not explain this thinking, but the indemnification arrangement between Aliera and Trinity is of no consequence to Moellers. The liability of Aliera and its principals will be determined based on the acts and omissions of Aliera and its principals. The Billings Division of this Court recently rejected similar arguments

when it granted Plaintiffs' motion to sever a third-party claim in a short-term medical insurance case. *See*, *Butler v. Unified Life Ins. Co.,* 2020 U.S. Dist. LEXIS 42450, 2020 WL 1164863.

Aliera then contends that the action should remain stayed as to them, because Plaintiffs have an interest in the funds in the Trinity bankruptcy estate. Doc. 224 at 14-15. Plaintiffs do, in fact, have an interest in those funds, but Aliera does not explain how that weighs in favor of delaying Plaintiffs' efforts to obtain relief that is due from Aliera. *See*, *Chugach Timber Corp. v. N. Stevedoring & Handling Corp.,* 23 F.3d 241, 246 (9th Cir. 1994) (citing cases in which courts permitted litigation to proceed against co-defendants who were potentially liable for the same damages as the debtor).

Finally, Aliera makes a series of cursory statements about prejudice and hardships that it and Trinity will suffer if the stay is partially lifted and about the orderly course of justice. *Id.* at 15-16. None of these points withstands scrutiny because: 1) Aliera is the primary tortfeasor, while Trinity was a shell corporation that did practically nothing; 2) Aliera is jointly and severally liable for all tort, contract and quasi-contract claims alleged by Plaintiffs; 3) Aliera received the great bulk of the money taken from Plaintiffs and other members and its tool, Trinity, was left with a fraction of the funds as it was sent into bankruptcy; 4) Trinity is liquidating and is not going to emerge from the bankruptcy; 5) In the

Tenth Circuit, Trinity made clear it does not seek a continued stay as to Aliera and other parties.

III. Conclusion

For all of the reasons set forth above and in other briefing, Plaintiffs respectfully urge this honorable Court to: a) grant their motion to partially lift the stay, entered July 16, 2021 (Doc. 219), as to Defendants other than Trinity; b) reinstate this Court's Order that the parties appear for status conference (Doc. 215); c) schedule a preliminary pretrial conference pursuant to Local Rule 16.2 for purposes of establishing a pre-trial schedule and setting a trial date; and d) allow the parties to conduct their Rule 26(f) conference and proceed with discovery.

DATED this 3rd day of September 2021.

By: /s/ John M. Morrison
John M. Morrison
MORRISON SHERWOOD WILSON DEOLA PLLP
Attorney for Plaintiff

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 2016 for Mac is **3217** excluding caption, tables, and certificate of compliance.

DATED this 3rd day of September 2021.

MORRISON SHERWOOD WILSON DEOLA, PLLP

BY: /s/ John M. Morison
John M. Morrison
Attorney for Plaintiffs

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In the Matter of the Arbitration between

Case Number: 01-21-0001-0892

Gerald and Roslyn Jackson,

Dean Mellom,

Jon and Julie Perrin

-vs-

The Aliera Companies, Inc.

f/k/a Aliera Healthcare, Inc.

and

Trinity Healthshare, Inc.

n/k/a Sharity Ministries, Inc.

ARBITRATION AWARD

This matter is in arbitration pursuant to the Orders of United States District Court Judge Barbara Rothstein. On April 13, 2021, the American Arbitration Association appointed the undersigned to serve as arbitrator.

Claimants enrolled in health care coverage plans offered by Respondents The Aliera Companies, Inc. ("Aliera") and Trinity Healthshare, Inc. ("Trinity"). The parties dispute the enforceability of an arbitration clause in Respondents' Member Guide which called for disputes to be resolved "in accordance with the Rules and Procedure of the American Arbitration Association." Judge Rothstein's Orders of August 18, 2020 and October 6, 2020 provide that Claimants' challenge to the enforceability of the arbitration clauses must be decided by the arbitrator.

This matter has been stayed as to Trinity because of its Suggestion of Bankruptcy dated July 9, 2021.

Claimants' Motion to Determine Jurisdiction provided evidence and legal authority to establish they never agreed to arbitrate disputes with Respondents. They asserted they signed enrollment forms which authorized Aliera to immediately bill their credit cards for the first monthly fees due and the one-time application fee. The forms provided that Aliera could collect the monthly amount as a "recurring monthly transaction." The enrollment form did not mention arbitration. After enrolling and making their

initial payments, Claimants received an email which indicated a Member Guide would be mailed within 14 days of the plan's effective date. The disputed arbitration clause could be found near the end of the Member Guide.

The enrollment forms provide under the heading "Terms and Conditions" that "This is not a contract" and the Member Guide provides that the guidelines ". . . do not create a legally enforceable right on the part of any contributor."

Claimants' Motion cited legal authority to establish there is no mutual assent to an arbitration clause in an agreement if the clause is not provided until after the agreement is established. *Burnett v. Pagliacci Pizza, Inc.,* 196 Wn. 2d 38 (2020), *Norcia v. Samsung Telcoms. Am., LLC*, 845 F.3rd 129 (9th Cir. 2017). The motion asserted there was no evidence that the Claimants received, reviewed, or acknowledged the arbitration clause set out in the Member Guide prior to their enrollment in and payment for the Respondents' health care plans.

Aliera submitted two pleadings in response to Claimants' Motion to Determine Jurisdiction: The Aliera Companies Inc.'s Motion to Stay, or in the Alternative, Response, and in the Alternative Response to Claimants' Motion to Determine Jurisdiction, dated July 19, 2021 and The Aliera Companies Inc.'s Response in Opposition to Claimants' Motion to Determine Jurisdiction dated August 12, 2021.

Neither pleading, nor the exhibits attached to the pleadings, provided factual or legal authority to dispute the Claimants' assertion that they never agreed to arbitrate their disputes with Respondents. The July 19, 2021 pleading asserts Judge Rothstein "has already determined that there is an enforceable arbitration agreement among the Parties." Judge Rothstein did not order that the arbitration clause is valid and enforceable. Aliera's assertion misreads Judge Rothstein's Orders which state:

> Claimants' "challenge to the arbitration clause . . . must be decided by the arbitrator" and ". . . the arbitrator must decide the threshold issue of whether the arbitration clause is enforceable" [August 18, 2020 page 7] and plaintiffs' ". . . challenge to the arbitration clause must be decided by the arbitrator." [October 6, 2020 pages 14-15]

Claimants' enrollment in and payment for Respondents plans was complete before they were presented with the arbitration clause. Aliera has submitted no evidence of an offer and acceptance by the Claimants or consideration for the alleged arbitration clause. At best, Respondents' presentation of the arbitration clause after Claimants enrolled was an offer which Claimants did not accept.

Claimants have established that I have no jurisdiction to hear this arbitration. Therefore, Claimants' Motion to Determine Jurisdiction is granted, this arbitration is dismissed, and this matter is returned to proceed in the United States District Court for the Western District of Washington.

Dated September 2, 2021

Charles Burdell, Arbitrator

EXHIBIT 1

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Rebecca Smith; Ellen Larson; Justine Lund; and Jaime and Jared Beard, individually and on behalf of all others similarly situated.

Plaintiffs/Appellee

v.

Trinity Healthshare Inc., a Delaware corporation,

Defendant/Appellant

and

The Aliera Companies, Inc., f/k/a Aliera Healthcare, Inc., a Delaware Corporation, and Oneshare Health, LLC, f/k/a Unity Healthshare, LLC and as Kingdom Healthshare Ministries, LLC, a Virginia limited liability corporation.

Defendants.

Case No. 21-1187

(D.C. No. 1:20-cv-02130-RBJ)

(D. Colo.)

APPELLANT TRINITY HEALTHSHARE INC.'S STATUS REPORT

EXHIBIT 2

Pursuant to this Court's August 2, 2021 Order, Appellant Trinity Healthshare, Inc. *d/b/a* Sharity Ministries, Inc. ("Trinity"), by and through its undersigned counsel, provides the following status report:

1. Trinity filed a petition for relief under Title 11, United States Code, in the United States Bankruptcy Court for the District of Delaware, which bears the case number 21-11001. Relief was ordered on July 8, 2021. Trinity's proposed Plan of Reorganization, contemplated Trinity's reorganization and continued operations, but also provided that if Trinity's board of directors deemed it to be in the interest of the health care sharing ministry's members, Trinity may cease operations and elect to liquidate.

2. Trinity filed a Suggestion of Bankruptcy on July 9, 2021, suggesting that this action and the underlying action against Trinity have been stayed by the operation of 11 U.S.C. § 362.

3. On August 2, 2021, construing the suggestion as a motion to abate proceedings, upon consideration, this Court granted the motion to abate as construed and, pending further order of the Court, Appeal No. 21-1187 has been abated pursuant to 11 U.S.C. § 362. Consolidated appeals, Appeal Nos. 21-1185 and 21-1186, were also abated by the Court in the interest of judicial efficiency. All pending deadlines were vacated. But Trinity was ordered to file, within 30 days of the August

2, 2021 Order, "a written report advising this [C]ourt as to the status of the bankruptcy proceedings and whether the abatement should continue."

4. On or about July 19, 2021, Trinity's board of directors made the decision to cease operating as a going concern, wind down its business, and use its assets to pay creditors and members.

5. An Official Committee of Members (the "Committee") was appointed on August 20, 2021. Trinity is in discussions with the Subchapter V Trustee and various other constituents regarding an agreed-upon structure for a liquidating Chapter 11 plan and anticipates timely filing the same. Upon confirmation of the liquidating plan, oversight of Trinity will, most likely, be transitioned to a post-confirmation Liquidating Trustee.

6. No motion seeking relief from the automatic stay for this appeal, Case No. 21-1187, or any other pending matter against Trinity, has been filed in the United States Bankruptcy Court.

7. Abatement of this appeal, with respect to Trinity, should continue as this action and the underlying action against Trinity continue to be stayed by the operation of 11 U.S.C. § 362. The statutory automatic stay only applies to protect Trinity and property of Trinity, as Trinity is the party that petitioned for relief from the United States Bankruptcy Court.

Dated this 1st day of September 2021.

By: Laurin D. Quiat

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Status Report was served on September 1, 2021 via CM/ECF:

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/s/ Laurin D. Quiat

(*See* Fed. R. App. P. 25(b)) (Signature)

EXHIBIT 2