

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NOELLE LECANN, KRISTIN
SELIMO, and TANIA FUNDUK, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

THE ALIERA COMPANIES, INC.,
formerly known as ALIERA
HEALTHCARE, INC.,

Defendants.

CIVIL ACTION FILE

No. 1:20-cv-2429-AT

**THE ALIERA COMPANIES INC.'S RESPONSE TO COURT'S SHOW
CAUSE ORDER AND MOTION TO SET ASIDE CLERK'S ENTRY OF
DEFAULT AND MEMORANDUM OF LAW IN SUPPORT**

COMES NOW Defendant The Alieria Companies Inc. (“Defendant” or “Alieria”) and in response to the Court’s show cause order entered October 4, 2021 and pursuant to Fed. R. Civ. P. 55(c), Alieria shows cause why the clerk’s entry of default should be set aside and moves the Court to set aside the clerk’s entry of default, with this memorandum of law in support. As discussed below, the Court should set aside the default because (1) Alieria has defended against Plaintiffs’ claims, and so default should not have been entered in the first place; and (2) good cause exists to set aside the clerk’s entry of default.

I. PROCEDURAL BACKGROUND

On June 5, 2020, Plaintiffs filed this lawsuit. (Doc. 1.) Alieria timely filed a motion to dismiss, or alternatively, a motion to compel arbitration. (Doc. 12.) On June 22, in an 84-page order, the Court denied that motion and ordered the Parties to confer for purposes of fulfilling their obligations to complete conferences, reports, and disclosures under Local and Federal Rules. The Court further ordered the Parties to file the Joint Preliminary Report and Discovery Plan and Initial Disclosures. (Doc. 49.) The Parties conferred and filed a Joint Preliminary Report and Discovery Plan (Doc. 55), and the Court entered a Scheduling Order (Doc. 56).

On July 20, under 9 U.S.C. § 16(a)(1) and Federal Rules of Appellate Procedure 3 and 4, Alieria timely filed a Notice of Appeal of the Court's June 22 Order denying Defendant's Motion to Dismiss or Alternatively Motion to Compel Arbitration. (Doc. 58.) Alieria then filed a Motion to Stay Pending Appeal, which is currently pending before the Court. (Doc. 63.) The Appeal is currently docketed and pending in the Eleventh Circuit Court of Appeals. (Doc. 61.) Still, on Friday, October 1, with the appeal and motion to stay pending and Alieria showing a clear intent to defend, Plaintiffs filed a Motion for Clerk's Entry of Default. (Doc. 67.) The next business day (today), before Alieria had a chance to file a response brief to that motion, per Local Rule 7.1(B), the clerk entered default. The Court then entered

an Order, directing Alera to show cause as to why default judgment should not be entered against it. (Doc. 69.)

For the reasons discussed below, the Court should not enter default judgment against Alera, and should set aside the clerk's entry of default and direct the clerk to docket the Answer attached hereto as Exhibit A.

II. ARGUMENT AND CITATION OF AUTHORITY

A. Standard for Entering Default.

“Judgments by default are not generally favored. The drastic remedy of a default should not be resorted to where a party has made a clear intent to defend.” *Marques v. JP Morgan Chase N.A.*, 1:16-CV-1215-LMM-AJB, 2018 WL 11344738, at *3 (N.D. Ga. May 29, 2018) (citation and punctuation omitted). “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a) (as amended 2015) (emphasis added). Where there is an intent to defend, default should not be entered.

The Advisory Committee Notes to the 2007 Amendments to Rule 55(a) state:

Former Rule 55(a) directed the clerk to enter a default when a party failed to plead or otherwise defend “as provided by these rules.” The implication from the reference to defending “as provided by these rules” seemed to be that the clerk should enter a default even if a party did something showing an intent to defend, but that act was not

specifically described by the rules. Courts in fact have rejected that implication. **Acts that show an intent to defend have frequently prevented a default even though not connected to any particular rule.** “[A]s provided by these rules” is deleted to reflect Rule 55(a)’s actual meaning. [Emphasis added.]

“Therefore, default is not warranted under Fed. R. Civ. P. 55 solely because Defendant failed to timely respond in accordance with Fed. R. Civ. P. 12(a)(4)(A).” *Marques*, 2018 WL 11344738, at *3. **“The question is whether Defendant showed an intent to defend.** The Court finds Defendant unquestionably possessed such an intent by, among other things, filing a timely motion to dismiss, an answer (albeit untimely), conducting discovery, engaging in a settlement conference, and filing a summary judgment. **Defaults are seen with disfavor** because of the strong policy of determining cases on their merits, and courts in this district have repeatedly emphasized that defaults are not favored in federal court and trials on the merits are the preferred method for resolving disputes.” *Marques*, 2018 WL 11344738, at *3 (citations and punctuation omitted) (emphasis added). *See also Fed. Deposit Ins. Corp. v. Amos*, No. 3:12CV548/MCR/EMT, 2013 WL 12174648, at *1 (N.D. Fla. July 1, 2013) (denying entry of default, finding intent to defend by defendants’ participating in the suit from the beginning, responding to court’s order requiring joint participation in a case management conference, the report of which was filed, and by filing answers to first amended complaint, though untimely).

Under such circumstances, “default on the basis of a failure to timely respond in accordance with Fed. R. Civ. P 12(a)(4)(A) is not warranted under Fed. R. Civ. P. 55.” *Marques*, 2018 WL 11344738, at *3; *Cornelius v. JP Morgan Chase Bank, N.A.*, 1:16-CV-4394-ELR-JFK, 2017 WL 2903362, at *2 (N.D. Ga. May 19, 2017), *report and recommendation adopted*, 1:16-CV-04394-ELR, 2017 WL 4897016 (N.D. Ga. July 7, 2017) (setting aside clerk’s entry of default); *Clowers Commc’ns, LLC v. SkyCom USA, LLC*, 1:14-CV-0291-ODE, 2014 WL 12629947, at *3 (N.D. Ga. Oct. 7, 2014) (“[M]otions to stay have been recognized as appropriate subjects for pre-answer resolution.”).

B. The Clerk Should Not Have Entered Default Because Alera Has Shown an Intent to Defend.

From the beginning of this case through present, Alera has demonstrated an intent to defend. To be sure:

- On July 16, 2020, Alera timely filed its Motion to Dismiss or Alternatively to Compel Arbitration. (Doc. 12.)
- On August 7, 2020, Alera and Plaintiffs jointly filed a Motion to Stay Discovery. (Doc. 23.)
- On September 4, 2020, Alera filed its Reply Brief in support of its Motion to Dismiss or Compel Arbitration. (Doc. 28.)
- On September 28, 2020, Alera filed its Opposition to Plaintiffs’ request to file a First Amended Complaint. (Doc. 33.)

- On September 28, 2020, Alieria filed its Opposition to Plaintiffs' Motion to File a Surreply. (Doc. 34.)
- On February 2, 2021, Alieria jointly filed with Plaintiffs the Parties' Stipulation on Responsive Pleading and Briefing regarding First Amended Class Action Complaint (Doc. 40), which the Court granted (Doc. 42) after counsel for the Parties participated in a telephone conference with the Court (Doc. 41).
- On February 12, 2021, Alieria filed its Supplemental Brief in Support of its Motion to Compel Arbitration in response to Plaintiffs' First Amended Complaint. (Doc. 43.)
- On February 26, 2021, Alieria filed its Reply Brief in further support of its Supplemental Brief in Support of its Motion to Compel Arbitration. (Doc. 45.)
- On July 6, 2021, Alieria filed its Notice of Filing Preliminary Report and Discovery Plan. (Doc. 52.)
- Alieria timely filed an Appeal of the Court's Order denying Alieria's Motion to Dismiss or Compel Arbitration with the Eleventh Circuit Court of Appeals. *See, e.g.*, July 20, 2021 letter from Eleventh Circuit Clerk filed with this Court. (Doc. 61.)
- On August 9, 2021, Alieria filed a Motion to Stay pending Appeal, seeking a stay of all proceedings and discovery in this action. (Doc. 63.)
- And, as recently as September 2, 2021, Alieria filed its Reply Brief in further support of its Motion to Stay pending Appeal. (Doc. 66.) Alieria's Motion to Stay is under consideration by the Court.

Before Plaintiffs filed their motion for clerk's entry of default, there were 66 docket entries in this case, showing Alieria's vigorous defense. Most recently, Alieria

sought a stay of this action pending resolution of the interlocutory appeal in the Eleventh Circuit. This is similar to *Clowers Commc'ns*, 2014 WL 12629947, at *3, in which:

Defendants in this case have filed neither an answer nor a pre-answer motion under the Federal Rules. Instead, Defendants moved to stay the federal action pending the resolution of the Oklahoma action. Defendants' motion is the quintessential candidate for pre-answer consideration due to the issues of judicial efficiency and resources it raises. **Moreover, Defendants should not be subject to default as a result of moving to stay, in lieu of filing an answer.** Such a result would frustrate the strong federal policy of resolving disputes on the merits. The Court holds that **Defendants' motion tolled the period in which to file an answer** and, accordingly, denies Plaintiff's motions for entry of default and for default judgment.

Clowers Commc'ns, 2014 WL 12629947, at *3 (citations and punctuation omitted) (emphasis added).

At the end of the day, the standard of whether default should have been entered is whether Alieria has shown an intent to defend. *See Marques*, 2018 WL 11344738, at *3. The foregoing procedural history more than shows that Alieria has evidenced an intent to defend. "As a result, default on the basis of a failure to timely respond in accordance with Fed. R. Civ. P 12(a)(4)(A) is not warranted under Fed. R. Civ. P. 55." *Id.* at *4. Thus, default should not have been entered and should therefore be set aside.

C. Standard for Entering Default.

Setting aside the fact that default should not have been entered in the first place, good cause exists to set aside such default. FED. R. CIV. P. 55(c) (“The court may set aside an entry of default for good cause”). “Good cause is a mutable standard that is not susceptible to a precise formula, and it is therefore within a court’s discretion to grant or deny a motion to set aside default.” *S. Timber Co. v. Ellis*, 4:07-CV-0215-HLM, 2008 WL 11470727, at *2 (N.D. Ga. Jan. 22, 2008) (citations and punctuation omitted). “In the Eleventh Circuit, [] courts generally consider several common factors in determining whether a party has made the requisite showing of good cause: (1) whether the default was culpable or willful; (2) whether setting it aside would prejudice the adversary; (3) whether the defaulting party presents a meritorious defense; (4) whether the public interest was implicated; and (5) whether the defaulting party acted promptly to correct the default.” *Id.* (quoting *Compania Interamericana Export-Import, S.A.*, 88 F.3d 948, 951 (1996)).

“It is also important for a court to consider the general principle that **defaults are seen with disfavor** because of the strong policy of determining cases on their merits. Because of this, **any doubt as to whether a default should be granted or vacated should be resolved in favor of a judicial decision on the merits of a**

case.” *Ellis*, 2008 WL 11470727, at *2 (citations and punctuation omitted) (emphasis added).

D. Good Cause Exists To Set Aside The Clerk’s Entry Of Default.

Applying the above factors, the Court should set aside the default. First, the entry of default is inconsistent with Federal Rule of Civil Procedure 55, as discussed *supra* in Sections II.A. & B. Next, as in *Ellis*, and assuming *arguendo* that default were proper under Rule 55, “the evidence in the record indicates that the alleged default resulted from, at most, negligence on the part of [] counsel, and **not from culpable or willful conduct.**” *See id.* (emphasis added). Here, likewise, there was no “culpable or willful conduct” – immediately after the denial of the motion to dismiss, Alieria continued with its defense of the case, conferred with Plaintiffs’ counsel regarding the Joint Preliminary Report and Discovery Plan, entered same, timely filed a Notice of Appeal, as was its statutory right under the Federal Arbitration Act, and moved the Court to stay the action pending resolution of the appeal.

As this court has held, it does not further judicial economy or the Parties’ resources to brief the appeal—which could dispose of the case—while simultaneously litigating in the district court. *See Walker v. City of Calhoun*, 4:15-CV-170-HLM, 2017 WL 11630277, at *2 (N.D. Ga. Aug. 17, 2017) (“Granting a

stay will also conserve judicial resources, as an appeal may impact and narrow the issues that the Court must resolve when addressing the merits of this action.”). The foregoing procedural history and conduct is a far cry from the high bar required to show that any default was culpable or willful. *See generally Clowers Commc’ns*, 2014 WL 12629947, at *3.

Second, setting aside the clerk’s entry of default will not prejudice Plaintiffs. The forum in which Plaintiffs’ claims is to be determined is currently before the Eleventh Circuit Court of Appeals. If the Eleventh Circuit disagrees with this Court’s order denying Alieria’s Motion to Dismiss or Compel Arbitration, then all on-going proceedings in this Court while the appeal is pending—including any Answer served by Alieria—would have been for naught. Indeed, Alieria filed a Motion to Stay, which is currently pending before this Court and should be granted pursuant to controlling law. However, regardless of the pending appeal and the pending motion to stay, “[a] mere delay in the ultimate resolution of the issues on the merits does not constitute prejudice to a plaintiff.” *Garneaux v. Kym Ventures LLC*, 1:16-CV-3012-AT, 2017 WL 11068768, at *2 (N.D. Ga. July 13, 2017) (Totenberg, J.). Indeed, Plaintiffs, in their motion, have not claimed any prejudice. (Doc. 67); *see, e.g., Lewis v. Home Depot*, 1:14-CV-03871-AT-CMS, 2015 WL 11978530, at *3 (N.D. Ga. Sept. 30, 2015), *report and recommendation adopted sub nom. (Totenberg, J.) Lewis*

v. Depot, 1:14-CV-3871-AT, 2015 WL 12086092 (N.D. Ga. Oct. 26, 2015) (declining to enter default where, among other things, “Plaintiff has pointed to no specific way in which he would be prejudiced if Defendants are taken out of default”). Having to defend on the merits does not constitute prejudice. *See id.* (citing *Cobb v. Dawson, Jr.*, 5:06CV066 HL, 2007 WL 3027399, at *4 (M.D. Ga. Oct. 15, 2007)).

Third, “[Alieria] has submitted a proposed Answer . . . that sets forth meritorious defenses.” *See id.* (Exhibit A hereto.) “When evaluating defenses, likelihood of success is not the measure. A defendant’s allegations are meritorious if they contain even a hint of a suggestion which, proven at trial, would constitute a complete defense. The movant must only make a bare minimum showing to support a claim for relief.” *Branch Banking & Tr. Co. v. Peretz*, 1:18-CV-760-AT, 2019 WL 3519012, at *3 (Totenberg, J.) (N.D. Ga. Apr. 18, 2019).

Here, Alieria has exceeded the low bar of a “bare minimum showing” setting forth a meritorious defense. As a threshold matter, Alieria’s Answer attached hereto as Exhibit A raises numerous affirmative defenses and denies the material allegations in the operative complaint. *See, e.g., id.* at *3 (setting aside an entry of default where, among other things, “Defendant denies liability and that he owes the amount claimed”). Although some defenses may be disputed and some are currently

pending before the Eleventh Circuit, such defenses are enough to prevent entry of default.

Such defenses include, but are not limited to:

- Alieria is not a healthcare sharing ministry (HCSM) and does not purport to be one.
- Alieria is not an insurance company and does not purport to be one.
- Plaintiffs failed to join necessary parties, specifically, Unity HealthShare, LLC, n/k/a OneShare Health ("Unity"), and Trinity Healthshare, Inc. ("Trinity"), which is under the jurisdiction of the bankruptcy court as of the time of this filing.
- Alieria's pending appeal of the Court's Order denying Alieria's Motion to Compel Arbitration justifies the stay of this action, as argued in Docs. 63 and 66.
- Trinity is a necessary party, and it is subject to the bankruptcy court's automatic stay.
- Unity and Trinity's HCSM programs are qualified pursuant to O.C.G.A. § 33-1-20 (2014).
- Alieria is not responsible for the claims Plaintiffs attempt to assert in the operative complaint.
- Alieria and Plaintiffs entered into valid arbitration agreements that Alieria is still trying to enforce via its pending appeal in the Eleventh Circuit Court of Appeals.

See also Exhibit A hereto.

“Fourth, setting aside the default will not be adverse to the public interest. Fifth, it is clear that counsel for [Alier] acted promptly to correct the alleged default, by filing a [motion to set aside default] and a proposed Answer on the [next business] day following the filing of the Motion [for Clerk’s Entry of Default]” and on the same day that the clerk entered default and that the Court entered its Order to show cause. *See Ellis*, 2008 WL 11470727, at *2. “Under those circumstances, and keeping in mind that **defaults are not favored by the law**, the Court finds that good cause exists to decline to enter a default in this case.” *Id.* (emphasis added); *see also Peretz*, 2019 WL 3519012, at *3 (Totenberg, J.) (“Based on the totality of the circumstances presented here, the Court concludes that Defendant has shown good cause for setting aside the default.”).

For those same reasons, the Court should also extend the deadline to file an answer under Fed. R. Civ. P. 6(b) and direct the clerk to docket the Answer attached hereto as Exhibit A. *See, e.g., Cambridge Educ. Ctr., Inc. v. Kim*, 1:11-CV-03350-AT, 2011 WL 13221073, at *2 (N.D. Ga. Nov. 10, 2011) (Totenberg, J.) (“[A]lthough Defendant [] did not request an after-the-fact extension pursuant to Federal Rule of Civil Procedure 6(b), the Court finds an extension is warranted in light of the Court’s policy favoring determination of cases on their merits.”).

III. CONCLUSION

As shown above, the Parties have extensively litigated this matter, and Alera has repeatedly set out its defenses. Plaintiffs are well aware of Alera's defenses and that its appeal is pending in the Eleventh Circuit. The plain text of Rule 55 shows that default is improper where a party has "otherwise defend[ed]" against the asserted claims. Such is the case here. Moreover, good cause exists to set aside the default. Accordingly, the Court should grant this motion and set aside the clerk's entry of default and permit the filing of Alera's Answer attached hereto as Exhibit A.

This the 4th day of October, 2021.

Respectfully submitted,

/s/ Elizabeth B. Shirley _____
Elizabeth B. Shirley (pro hac vice)
Burr & Forman LLP
420 20th Street North, Suite 3400
Birmingham, Alabama 35203
Telephone: 205-251-3000
Email: bshirley@burr.com

Kevin R. Stone
Georgia Bar No. 830640
Burr & Forman LLP
171 17th Street NW, Suite 1100
Atlanta, Georgia 30363
Phone: (404) 815-3000
Email: kstone@burr.com

**Counsel for Defendant The Alera
Companies Inc.**

CERTIFICATE OF COMPLIANCE

Counsel certifies that this document has been prepared with Times New Roman 14 type, one of the font and point selections approved by the Court in LR 5.1.

/s/ Elizabeth B. Shirley
Elizabeth B. Shirley

CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 4th day of October, 2021 via the Court's CM/ECF system, which will send notification of such filings to all parties of record via electronic mail.

/s/ Elizabeth B. Shirley
OF COUNSEL

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
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**NOELLE LECANN, KRISTIN
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Plaintiffs,

v.

**THE ALIERA COMPANIES, INC.,
formerly known as ALIERA
HEALTHCARE, INC.,**

Defendant.

CIVIL ACTION FILE

No. 1:20-cv-2429-AT

**THE ALIERA COMPANIES, INC.’S
ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

COMES NOW Defendant The Alieria Companies, Inc. (“Alieria” or “Defendant”), and files this Answer to the allegations in the First Amended Complaint (“FAC”).¹ To the extent that any particular allegation in the FAC is not expressly admitted below, it is hereby denied.

¹ Because the First Amended Complaint supersedes the original complaint, this answer is to the First Amended Complaint. *See generally Suber v. Cancer Treatment Centers of Am. Glob., Inc.*, 321CV00003TCBRGV, 2021 WL 2639044, at *1 (N.D. Ga. May 13, 2021) (citations and punctuation omitted) (“An amended complaint supersedes the initial complaint and becomes the operative pleading in

Aliera hereby responds to the individually numbered paragraphs of Plaintiffs' complaint as follows:

RESPONDING TO: NATURE OF THE ACTION

1. Denied.
2. Denied.
3. Denied.
4. Denied.
5. Denied.
6. Denied. Aliera does not take “premiums” with regard to Unity HealthShare, LLC, n/k/a OneShare Health (“Unity”) and Trinity Healthshare, Inc., n/k/a Sharity Ministries (“Trinity”). Additionally, this paragraph implies that Aliera engaged in some fraud, and Aliera denies this allegation.
7. Aliera acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 7, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

the case.”). Out of an abundance of caution, however, to the extent that an answer to the original complaint is also required, all allegations therein are denied.

RESPONDING TO: THE PARTIES

A. Plaintiff Noelle LeCann

8. Alieria is without knowledge and on that basis, denies.

9. Denied.

10. Denied.

11. Alieria admits that sharing contributions were processed on behalf of Unity and/or Trinity and denies that they were “premiums.” Any remaining allegations in this paragraph are denied.

12. Admit; however, this action was taken on behalf of the respective HCSM.

13. Denied.

14. Denied.

15. Denied.

16. Denied; Plaintiff makes a voluntary choice to participate in the Unity and/or Trinity HCSM programs, which she can terminate at any time.

17. Alieria is without knowledge and on those grounds, denies.

B. Plaintiff Kristin Selimo

18. Alieria is without knowledge and on those grounds, denies.

19. Denied.

20. Alieria admits that sharing contributions were processed on behalf of Unity and/or Trinity. Alieria denies that these sharing contributions were “premiums” and denies that Alieria maintains a “plan.” Any remaining allegations in this paragraph are denied.

21. Denied. Alieria did not “demand” “premiums” from Plaintiff.

22. Denied.

23. Denied.

24. Denied.

C. Plaintiff Kristin Funduk

25. Alieria is without knowledge and on those grounds, denies. Alieria denies that its HCSM was or ever has been “putative.”

26. Denied.

27. Alieria admits that sharing contributions were processed on behalf of Unity and/or Trinity. Alieria denies that these sharing contributions were “premiums” and denies that Alieria maintains a “plan.” Any remaining allegations in this paragraph are denied.

28. Denied. Alieria did not “demand” “premiums” from Plaintiff.

29. Denied.

30. Denied.

31. Denied.

D. Defendant

32. Denied, except Alieria admits that Alieria Healthcare, Inc. was incorporated in Delaware and is now known as The Alieria Companies Inc., pursuant to the filing of an amended certificate of incorporation with the Delaware Secretary of State.

33. Denied.

34. Denied.

35. Denied.

RESPONDING TO: JURISDICTION AND VENUE

36. Alieria denies that jurisdiction is proper in this Court because Plaintiffs agreed to arbitrate any disputes with Alieria, Unity, and/or Trinity.

37. Alieria is without knowledge and on those grounds, denies.

38. Alieria is without knowledge and on those grounds, denies.

39. Denied.

40. Denied. Plaintiffs agreed to arbitrate any disputes with Alieria, Unity and/or Trinity.

41. Alieria denies the allegations of this paragraph as characterized by Plaintiffs, but admits that Alieria has done business in the state of Georgia. Alieria

denies that jurisdiction is proper in this Court because the Parties agreed to arbitrate any disputes with Alieria, Unity, and/or Trinity.

42. Alieria denies the allegations of paragraph 42 as stated and denies that venue is proper in this Court because Plaintiffs agreed to arbitrate any disputes with Alieria, Unity, and/or Trinity.

43. Alieria admits that it does business in Georgia and denies any remaining allegations in this paragraph.

RESPONDING TO: FACTUAL ALLEGATIONS

44. Denied.

45. Alieria is without knowledge and on those grounds, denies.

46. Alieria is without knowledge and on those grounds, denies.

47. Denied.

48. The allegations in the first sentence of paragraph 48 are denied as stated. The allegations in the second sentence of paragraph 48 are admitted.

49. Admit.

50. Admit.

51. Denied.

52. Denied.

53. Denied.

54. The allegations of paragraph 54 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

55. The allegations of paragraph 55 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

56. Denied.

57. The allegations of the first sentence of paragraph 57 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations. Alieria denies the allegations of the second sentence of paragraph 57.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Alieria admits that it filed a lawsuit, *Alieria Healthcare v. Anabaptist Health Share et al.*, No. 2018-cv-308981 (Ga. Sup. Ct. 2018), against Anabaptist and other related entities in Superior Court of Fulton County, Georgia, in late

2018, and the defendants filed counterclaims. Any remaining allegations in this paragraph are denied.

64. Denied.

65. Denied.

66. Alieria is without knowledge and on those grounds, denies.

67. Denied.

68. The allegations of paragraph 68 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

69. Denied.

70. Alieria is without knowledge and on those grounds, denies.

71. Alieria is without knowledge and on those grounds, denies.

72. The referenced documents speak for themselves. Alieria denies the remaining allegations in this paragraph.

73. Alieria admits that it and Trinity entered into an agreement. Alieria denies Plaintiffs' characterization of the substance of the agreement.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Alera denies the allegations of paragraph 78 as written.

79. The allegations of paragraph 79 are legal conclusions to which no response is required; to the extent a response is required, Alera denies the allegations.

80. Denied.

81. The allegations of paragraph 81 are legal conclusions to which no response is required; to the extent a response is required, Alera denies the allegations.

82. The allegations of paragraph 82, including subparagraphs (a) through (c), are legal conclusions to which no response is required; to the extent a response is required, Alera denies the allegations.

83. The allegations of paragraph 83, including subparagraphs (a) through (f), are legal conclusions to which no response is required; to the extent a response is required, Alera denies the allegations.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. The allegations of paragraph 89 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

90. The allegations of paragraph 90 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

91. Denied.

92. The allegations of paragraph 92 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

93. Denied.

94. Denied.

95. Denied.

96. Alieria denies the allegations of paragraph 96, including subparagraphs (a) through (f).

97. The referenced documents speak for themselves. Alieria denies any remaining allegations in this paragraph.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. The allegations of paragraph 103 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

104. Denied. The allegations regarding punitive damages are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

**RESPONDING TO: TRINITY'S SHAM DISPUTE RESOLUTION
PROCEDURES**

105. Denied.

106. The allegations of paragraph 106 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

107. The allegations of paragraph 107 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

112. Denied.

113. Denied.

**RESPONDING TO: DEFENDANT IS SANCTIONED AND ENJOINED
IN SEVERAL STATES BUT CONTINUES
SELLING ILLEGAL PLANS TO CONSUMERS**

114. Denied.

115. Alieria denies the allegations of paragraph 115. The public records speak for themselves.

116. Alieria denies the allegations of paragraph 116. The public records speak for themselves.

117. Alieria denies the allegations of paragraph 117. The public records speak for themselves.

118. Alieria denies the allegations of paragraph 118. The public records speak for themselves.

119. Alieria denies the allegations of paragraph 119. The public records speak for themselves.

120. Alieria denies the allegations of paragraph 120. The public records speak for themselves.

121. Alieria denies the allegations of paragraph 121. The public records speak for themselves.

122. Alieria denies the allegations of paragraph 122. The public records speak for themselves.

123. Alieria denies the allegations of paragraph 123. The public records speak for themselves.

124. Alieria denies the allegations of paragraph 124. The public records speak for themselves.

125. Alieria denies the allegations of paragraph 125. The public records speak for themselves.

126. Denied.

RESPONDING TO: CLASS ACTION ALLEGATIONS

127. Alieria denies that any class should be certified in this case.

128. Alieria acknowledges that Plaintiffs seek to represent the class identified in paragraph 128 but denies that Plaintiffs have any right to do so or that any class should be certified in this case.

129. Alieria acknowledges that Plaintiffs seek to exclude from the class definition all persons identified in paragraph 129 but denies that any class should be certified in this case.

130. Alieria is without knowledge and on those grounds, denies.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

135. Denied.

Rule 23(b)(1)

136. Denied.

137. Denied.

138. Denied.

139. Denied.

Rule 23(b)(2)

140. Alieria acknowledges that Plaintiffs seek declaratory and injunctive relief but denies that Plaintiffs are entitled to that relief or any relief whatsoever. Alieria denies the remaining allegations of paragraph 140.

141. Denied.

142. Denied.

Rule 23(b)(3)

143. Alieria denies the allegations in paragraph 143, including the allegations in subparagraphs (a) through (g).

144. Alieria denies the allegations in paragraph 144, including the allegations in subparagraphs (a) through (f).

145. Denied.

146. Alieria is without knowledge and on those grounds, denies.

147. Alieria denies that any class should be certified in this case and denies any remaining allegations in this paragraph.

RESPONDING TO: COUNT I
MONEY HAD AND RECEIVED

148. Alieria incorporates its responses to paragraphs 1–147.

149. Alieria acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 149, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

150. Alieria denies the allegations of paragraph 150 as written.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

157. Alieria is without knowledge and on those grounds, denies.

158. Denied.

RESPONDING TO: COUNT II
UNJUST ENRICHMENT

159. Alieria incorporates its responses to paragraphs 1–158.

160. Alieria acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 160, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

161. Alieria denies the allegations of paragraph 161 as written.

162. The allegations of paragraph 162 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

163. Denied.

164. Denied.

165. Denied.

166. Denied.

167. Denied.

168. Denied.

169. Denied.

RESPONDING TO: COUNT III
BREACH OF CONTRACT AND
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

170. Alieria incorporates its responses to paragraphs 1–169.

171. Alieria acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 171, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

172. The allegations of paragraph 172 are so vague that Alieria cannot formulate a response; Alieria denies the allegations on that basis.

173. Denied.

174. Denied.

175. Denied.

RESPONDING TO: COUNT IV
CONVERSION

176. Alieria incorporates its responses to paragraphs 1–175.

177. Alieria acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 177, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

178. Alieria denies the allegations of paragraph 178 as written.

179. The allegations of paragraph 179 are so vague that Alera cannot formulate a response; Alera denies the allegations on that basis.

180. The allegations of paragraph 180 are legal conclusions to which no response is required; to the extent a response is required, Alera denies the allegations.

181. Denied.

182. Alera is without knowledge and on those grounds, denies.

183. Alera is without knowledge and on those grounds, denies.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

RESPONDING TO: COUNT V
BREACH OF FIDUCIARY DUTY/CONFIDENTIAL RELATIONSHIP

188. Alera incorporates its responses to paragraphs 1–187.

189. Alera acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 189, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

190. Denied.

191. Denied.

192. Denied.

193. Denied.

194. Denied.

195. Denied.

196. Denied.

197. Denied.

198. Denied.

199. Denied.

200. Denied.

201. Denied.

202. Denied.

203. Denied.

204. Alieria is without knowledge and on those grounds, denies.

205. Denied.

RESPONDING TO: COUNT VI
INTENTIONAL, OR IN THE ALTERNATIVE, NEGLIGENT
MISREPRESENTATION

206. Alieria incorporates its responses to paragraphs 1–205.

207. Alieria acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 207, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

208. Denied.

209. Alieria denies the allegations of paragraph 209, including the allegations of subparagraphs (a) through (d).

210. The allegations of paragraph 210 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

211. Denied.

212. Denied. The remaining allegations of paragraph 212 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

213. The allegations of paragraph 213 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

214. Denied.

215. Denied.

216. Denied.

217. Denied.

218. Alieria is without knowledge and on those grounds, denies.

219. Denied.

RESPONDING TO: COUNT VII
VIOLATION OF THE GEORGIA FAIR BUSINESS PRACTICES ACT,
O.C.G.A. § 10-1-390 et seq.

220. Alieria incorporates its responses to paragraphs 1–219.

221. Alieria acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 221, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

222. The allegations of paragraph 222 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

223. The allegations of paragraph 223 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

224. The allegations of paragraph 224 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

225. Denied.

226. Denied.

227. Denied.

228. Denied.

229. Denied.

230. Denied.

231. Alera acknowledges that Plaintiffs seek injunctive relief, attorney's fees, and other available relief but denies that Plaintiffs are entitled to any relief or fees.

232. The allegations of paragraph 232 are legal conclusions to which no response is required; to the extent a response is required, Alera denies the allegations.

RESPONDING TO: COUNT VIII
VIOLATION OF THE GEORGIA UNIFORM DECEPTIVE TRADE
PRACTICES ACT, O.C.G.A. § 10-1-370, et seq.

233. Alera incorporates its responses to paragraphs 1–232.

234. Alera acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 234, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

235. The allegations of paragraph 235, including the allegations of subparagraphs (a) through (d), are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

236. Denied.

237. Denied.

238. Denied.

239. Denied.

240. Alieria denies the allegations of paragraph 240, including the allegations of subparagraphs (a) through (g).

241. Denied.

242. Denied.

243. Alieria acknowledges that Plaintiffs have made a judicial declaration that Alieria has violated the UDPTA and an injunction but denies that Plaintiffs are entitled to any judicial declaration or any relief, injunctive or otherwise.

RESPONDING TO: COUNT X
NO ARBITRATION PROVISIONS APPLIES TO
PLAINTIFFS' CLAIMS BUT, IF IT DID, IT WOULD BE
UNENFORCEABLE AS A MATTER OF LAW

244. Alieria incorporates its responses to paragraphs 1–243.

245. Alera acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 245, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

246. Denied.

247. Denied.

248. Denied.

249. Denied.

250. Denied.

251. Denied.

252. Denied.

253. The allegations of paragraph 253 are legal conclusions to which no response is required; to the extent a response is required, Alera denies the allegations.

254. The allegations of paragraph 254 are legal conclusions to which no response is required; to the extent a response is required, Alera denies the allegations.

255. Denied.

RESPONDING TO: COUNT XI
NO ARBITRATION DELEGATION APPLIES TO
PLAINTIFFS' CLAIMS BUT, IF IT DID, IT WOULD BE
UNENFORCEABLE AS A MATTER OF LAW

256. Alieria incorporates its responses to paragraphs 1–255.

257. Alieria acknowledges that Plaintiffs have filed this lawsuit but denies the allegations of paragraph 257, denies that Plaintiffs may represent a class, and denies that Plaintiffs are entitled to any relief whatsoever.

258. Denied.

259. Denied.

260. Denied.

261. Denied.

262. Denied.

263. Denied.

264. Denied.

265. Denied.

266. The allegations of paragraph 266 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

267. The allegations of paragraph 267 are legal conclusions to which no response is required; to the extent a response is required, Alieria denies the allegations.

268. Denied.

RESPONDING TO: PRAYER FOR RELIEF

Alieria denies that Plaintiffs are entitled to the requested relief or any other relief.

RESPONDING TO: DEMAND FOR JURY TRIAL

Alieria denies that Plaintiffs are entitled to a jury trial, having agreed to arbitrate their claims.

RESIDUAL DENIAL

Alieria denies each and every one of Plaintiffs' allegations unless they have been specifically admitted herein.

AFFIRMATIVE DEFENSES

Alieria asserts the following additional defenses to the FAC, but Alieria does not assume the burden of proof on any such defense except as required by applicable law. Alieria further reserves the right to amend these defenses or assert additional defenses and/or supplement its Answer as the Court and the Federal Rules of Civil Procedure permit.

FIRST DEFENSE

Plaintiffs' claims are barred because there is insufficient evidence to satisfy all of the required elements of each of the causes of action asserted against Alera.

SECOND DEFENSE

Plaintiffs' claims must fail because Plaintiffs have failed to mitigate any damages by, *inter alia*, voluntarily remaining members of Unity and/or Trinity's HCSM programs.

All or some of the damages claimed by plaintiffs are speculative in nature and thus barred.

THIRD DEFENSE

Any and all damages claimed to have been suffered by Plaintiffs as a result of Alera's alleged actions were instead caused by Plaintiffs' own actions and/or those of necessary parties that have not been included in this action by Plaintiffs.

FOURTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the statute of limitations and/or laches.

FIFTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

SIXTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrines of waiver, release, acquiescence, and estoppel.

SEVENTH DEFENSE

Plaintiffs' claims are barred in whole or in part by accord and satisfaction.

EIGHTH DEFENSE

Plaintiffs' claims are barred because Plaintiffs engaged in fraudulent acts and representations, upon which Alera reasonably relied to its detriment.

NINTH DEFENSE

Alera is not liable for the amounts and damages claimed by Plaintiffs because Plaintiffs' claims are based on the HCSM programs of third-parties, which are necessary parties to this action. Further, one of those third-parties – Trinity – has filed bankruptcy proceedings. Accordingly, Alera is unable to fully respond to Plaintiffs' claims, is not responsible for the alleged misconduct, and this action should be stayed because Trinity is subject to the bankruptcy court's automatic stay.

TENTH DEFENSE

Class certification under Federal Rule of Civil Procedure 23(b)(2) is inappropriate because Plaintiffs seek individualized awards of money damages for

themselves and putative class members. “Rule 23(b)(2) applies only when a single injunction of declaratory judgment would provide relief to each member of the class.” *Walmart Stores, Inc. v. Dukes*, 564 U.S. 338, 360–61 (2011). Thus, Plaintiffs’ claims for injunctive and declaratory relief must fail.

ELEVENTH DEFENSE

The Unity and Trinity Member Guides’ arbitration agreements are valid and encompass each claim in this action.

TWELFTH DEFENSE

Plaintiffs’ claims are barred because they failed to satisfy the mandatory dispute resolution prerequisites laid out in the Member Guides, which include mediation and arbitration.

THIRTEENTH DEFENSE

Class certification under Federal Rule of Civil Procedure 23(a) is inappropriate because Plaintiffs’ failure to mediate and/or arbitrate their disputes with Alera. LeCann, Selimo, and Funduk’s claims are not typical of claims of putative class members. The proposed class therefore cannot meet the requirements of Rule 23(a)(3). Class certification also is inappropriate because Plaintiffs’ claims are not typical of Unity and/or Trinity members because some members do not have complaints about their HCSM programs. Additionally, the

reasons for denial of sharing differ substantially, and many qualified medical expenses have been shared and have not been denied. Alieria reserves the right to set out additional reasons that this action is inappropriate for any class certification.

FOURTEENTH DEFENSE

Class certification is inappropriate as to claims III, V, VI, VII, and VIII, each of which are based on alleged misrepresentations made by Alieria. Each claim would require, for each putative class member, an inquiry of which statements were fraudulent, how those statements were interpreted, and whether there was justifiable and detrimental reliance. Such inquiries inherently are unique to each class member, making class treatment impossible because Plaintiffs cannot show commonality.

FIFTEENTH DEFENSE

Claims III, V, VI, VII, and VIII are subject to Federal Rule 9(b)'s heightened pleading standard and fail to state with particularity the circumstances constituting fraud.

SIXTEENTH DEFENSE

Alieria is not a healthcare sharing ministry (HCSM) and does not purport to be one. Alieria is not an insurance company and does not purport to be one.

SEVENTEENTH DEFENSE

Plaintiffs fail to state a claim upon which relief may be granted against Alieria because Alieria is not the same entity as Unity and/or Trinity, and Alieria is not responsible for alleged wrongs by Unity and/or Trinity.

EIGHTEENTH DEFENSE

This action is due to be stayed because of Alieria's appeal of the Court's Order denying Alieria's Motion to Compel Arbitration, which is pending before the Eleventh Circuit Court of Appeals.

NINETEENTH DEFENSE

This action is due to be stayed because Trinity is a necessary party, and it is subject to the bankruptcy court's automatic stay.

TWENTIETH DEFENSE

Unity and Trinity's HCSM programs are qualified pursuant to GA Code § 33-1-20 (2014).

TWENTY-FIRST DEFENSE

Alieria and Plaintiffs entered into valid arbitration agreements that are due to be enforced.

TWENTY-SECOND DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the terms of their agreement to join Unity and/or Trinity's HCSM programs.

TWENTY-THIRD DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they agreed to join a healthcare sharing ministry that does not guarantee payment of any healthcare expense.

TWENTY-FOURTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they made voluntary contributions to share the healthcare expenses of the other members of a healthcare sharing ministry.

TWENTY-FIFTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because neither Alera nor Unity and/or Trinity is engaged in the "business of insurance" that is subject to the Georgia insurance code.

TWENTY-SIXTH DEFENSE

Plaintiffs' claims for injunctive relief are barred for lack of standing to the extent their Unity and/or Trinity memberships terminated before they filed suit.

TWENTY-SEVENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs lack standing to assert claims based on plans in which they did not enroll.

TWENTY-EIGHTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by their failure to tender back any payments for healthcare expenses that other members of the Unity and/or Trinity HCSM paid on their behalf.

TWENTY-NINTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the absence of any justifiable or reasonable reliance by Plaintiffs.

THIRTIETH DEFENSE

Plaintiffs' GFBPA claims are barred by O.C.G.A. § 10-1-399(b).

WHEREFORE, Alera denies that Plaintiffs are entitled to any relief whatsoever and prays that the Court (1) compel arbitration of this dispute in accordance with the Parties' agreements and (2) stay this action pursuant to the Federal Arbitration Act and pending Alera's appeal to the Eleventh Circuit Court of Appeals for the Court's denial of Alera's Motion Dismiss, or Alternative to Compel Arbitration.

This 4th day of October, 2021.

Respectfully submitted,

/s/ Elizabeth B. Shirley

Elizabeth B. Shirley (pro hac vice)
Burr & Forman LLP
420 20th Street North, Suite 3400
Birmingham, Alabama 35203
Telephone: 205-251-3000
bshirley@burr.com

Kevin R. Stone
Georgia Bar No. 830640
Burr & Forman LLP
171 17th Street NW, Suite 1100
Atlanta, Georgia 30363
Phone: (404) 815-3000
kstone@burr.com

Sarah R. Craig
Georgia Bar No. 463578
scraig@burr.com
Burr and Forman LLP
201 N. Franklin St., Suite 3200
Tampa, FL 33602
Phone: 813-209-5043

**Counsel for Defendant The Alera
Companies, Inc.**

CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 4th day of October, 2021 via the Court's CM/ECF system, which will send notification of such filings to all parties of record via electronic mail.

/s/ Elizabeth B. Shirley
Elizabeth B. Shirley (pro hac vice)

BURR & FORMAN, LLP
420 20th St. N.
Suite 3400
Birmingham, Alabama 35203
Telephone: (205) 251-3000