

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

HANNA ALBINA and AUSTIN WILLARD,
individually and on behalf of others similarly
situated,

Plaintiffs,

vs.

THE ALIERA COMPANIES, INC.,
TRINITY HEALTHSHARE, INC., and
ONESHARE HEALTH, LLC d/b/a UNITY
HEALTHSHARE, LLC,

Defendants.

Case No.: 5:20-CV-00496-JMH

ELECTRONICALLY FILED

**NOTICE OF FILING
SECOND DECLARATION OF NEIL LURIA
REVISED PROPOSED DEFAULT JUDGMENT**

COME the Plaintiffs, individually and on behalf of the class they represent, and hereby give notice of filing of the following documents related to Plaintiffs' pending Motion for Default Judgment (D.E. 64):

- 1) **Second Declaration of Neil Luria.** This declaration *supplements* Mr. Luria's previous declaration (D.E. 64-5).
- 2) Revised **Proposed Default Judgment Against The Alieria Companies, Inc.** This proposed judgment *replaces* the proposed default judgment previously submitted (D.E. 64-19).

This supplemental filing is for a single purpose: to more accurately state the damages owed to the class on default judgment. Mr. Luria's first Declaration and Plaintiffs' previously-tendered proposed default judgment reflected both the total rescission damages for the entire

class, and the total reformation damages for the entire class. However, each individual class member should be allowed to elect which of the two measures of damages is in that individual's best interest, which would be the greater of the two amounts available to each individual. However, the class members likely cannot recover both measures of damages because some portion of the damages would overlap. Therefore, the actual amount damages incurred by the class is an amount that is greater than either the aggregate rescission damages or the aggregate reformation damages, but less than the sum of the two aggregate amounts. (The sum of those two aggregate amounts was the amount stated on Plaintiff's earlier proposed default judgment).

The Second Supplemental Declaration of Neil Luria solves this problem. Mr. Luria has examined the rescission damages and the reformation damages for each class member, selected the higher of the two amounts on an individual basis, and aggregated that amount to arrive at a precise sum of damages for all class members based on the information available to Trinity Healthshare, Inc. (Now known as Sharity Ministries, Inc.). The revised Proposed Default Judgment tendered herewith reflects that total amount of damages. The total proposed judgment is in an amount less than the amount on the proposed judgment submitted before (D.E. 64-19), but more accurately reflects the actual damages incurred by the class members.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF

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CERTIFICATE OF SERVICE

I hereby certify that, on November 11, 2021, I have served this document on all counsel of record through the Court's CM/ECF system, and in addition I have mailed by United States Postal Service the document to the following non-CM/ECF participants, as well as electronically mailed to Katie Goodman:

The Alieria Companies Inc.
990 Hammond Dr. NE, Suite 700
Atlanta, GA 30328

The Alieria Companies Inc.
c/o CT Corporation System, Registered Agent
306 W. Main Street, Suite 512
Frankfort, Ky 40601

Assignee for The Alieria Companies, Inc., *et al.*
c/o Katie Goodman Asset Recovery Associates Alieria, LLC
3155 Roswell Road NE, Suite 120
Atlanta, GA 30305
kgoodman@gggpartners.com

I further certify that I have electronically mailed the document to the Alieria's former counsel:

Benjamin B. Coulter, bcoulter@burr.com

BY: /s/ Jerome P. Prather
Jerome P. Prather, Esq.

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Defendants.

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SECOND DECLARATION OF NEIL LURIA

I, Neil F. Luria, declare under penalty of perjury and in accordance with the laws of the United States that:

1. I am appointed as the Chief Restructuring Officer (“CRO”) in the bankruptcy proceeding *In re Sharity Ministries, Inc.*, No. 21-11001 (JTD) (Bankr. D. Del.). Sharity is the same company formerly known as Trinity Healthshare, Inc. My qualifications were further set out in a declaration previously filed in this matter on November 4, 2021 (D.E. 64-5).

2. In conjunction with my work as CRO of Sharity, I have access to certain data and records that were provided by affiliates of the Alieria Companies, Inc., which were the basis of my previous declaration in this matter.

3. At the request of Mr. Albina’s and Mr. Willard’s counsel, Jerome Prather, I reviewed Sharity’s records in order to supplement my previous declaration. Mr. Prather requested that I review the Sharity records, and for each enrollee who was a Kentucky resident,

determine which was higher: (1) the enrollee's unpaid gross medical expenses or (b) the enrollee's monthly payments received by Alera/Trinity (Sharity). This calculation is known in the bankruptcy proceeding as "Class 4" claims.

4. Taking the higher of the two numbers for each enrollee as the amount of damage sought by that enrollee, the sum of the damages for all Kentucky enrollees is \$4,696,124.

5. This total could increase in the future if any Kentucky enrollees submit additional claims for unpaid medical expenses before the proof of claim deadline of January 4, 2022. This total is not expected to decrease.

DATED: November 11, 2021, at Evanston, Illinois.



NEIL F. LURIA

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**DEFAULT JUDGMENT AGAINST
THE ALIERA COMPANIES, INC.**

** ** * ** * ** * ** * ** * ** * ** * ** *

It appearing that Defendant the Alieria Companies, Inc., is in default by the failure to appear before the Court by counsel (DE 69), the Clerk having previously noted Alieria's default on the docket by order of the Court (D.E. 70), and seven or more days having elapsed since entry of the default and notice of Plaintiffs' motion for default judgment, without any appearance of Alieria by counsel, the Court having previously certified this matter as a class action pursuant to Fed. R. Civ. P. 23(2) and 23(b)(3) (D.E. 68), the Court having reviewed the motion, memoranda, and evidence submitted by Plaintiffs, the Court now finds as follows.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Alieria Companies, Inc. ("Alieria") entered into contracts with Plaintiffs and various Kentucky residents defined in the class herein to pay medical expenses on the determination of certain contingencies. Pursuant to KRS 304.1-030, those contracts constituted

“insurance” and are therefore subject to the Kentucky insurance code. There is an exception to application of the Kentucky insurance code afforded to certain religious organizations by KRS 304.1-120(7), but that exception does not apply to the plans sold by Alieria because, *inter alia*, Alieria is not a nonprofit religious association, Alieria did not limit the sales of its plans to participants who were members of the same denomination or religion, Alieria did not match specific participants who have financial, physical, or medical needs with participants who choose to assist with those needs, the contractual amounts paid to Alieria were not voluntary, and Alieria and Trinity, through its member guide, did assume specific risks or make specific promises to pay certain medical expenses that were not discretionary with Alieria and/or Trinity.

2. Alieria held itself out as providing health care sharing ministry (“HCSM”) products of Trinity HealthShare, Inc. (“Trinity”) (no known as Sharity Ministries, Inc.), but Trinity did not qualify as an HCSM under United States law, 26 U.S.C. § 5000A(d)(2), because, *inter alia*, Trinity or its predecessors have not been in continuous existence since December 31, 1999, and Trinity did not conduct an annual audit performed by an independent certified public accounting firm at all times during its existence. According to the declaration of Neil Luria, no outside audit was performed for the year 2018 or any year thereafter.

3. Alieria misled the class members into entering contracts for a product that was not what it purported to be and did not comply with applicable federal or state law. Because the products Alieria sold to the class members met the definition of insurance under Kentucky law, it was required to comply with the Kentucky insurance code and it failed to do so, to the damage of the class members.

4. Each Plaintiff or class member at his or her option is entitled to rescind his or her contract with Alieria or reform his or her contract with Alieria so as to comply with applicable

insurance law, including Kentucky law and the law of the United States, which among other things, prohibits the exclusion of pre-existing conditions, prohibits waiting periods for coverage, and prohibits insurers from selectively paying claims to different insured in a different manner. Those Plaintiffs or class members who choose to rescind their contracts with Alieria are entitled to judgment in the amount of all payments made to Alieria for purchase of products sold by Trinity Healthshare, Inc. (“rescission damages”). Those Plaintiffs or class members who choose to reform their contracts with Alieria are entitled to judgment in the amount of all claims submitted to Alieria for payment by Trinity Healthshare, Inc., but not previously paid (“reformation damages”).

5. The uncontroverted declaration of Neil Luria (D.E. 64-5), the Chief Restructuring Officer of Sharity Ministries Inc. (the company formerly known as Trinity Healthshare, Inc.), is sufficient evidence of both the amount of contract payments made to Alieria for Trinity plans, and the amount of claims submitted to Alieria but unpaid for Trinity plans. Plaintiff Austin Willard made total contractual payments to Alieria and Trinity of \$16,038.75. Mr. Willard submitted total medical bills to Alieria and Trinity that have not been paid of \$16,255.24. On a classwide basis, the contract payments to Alieria and Trinity by all class members total \$2,189,003, and the medical bills submitted to Alieria and Trinity by all class members that have not been paid total \$3,112,951.

6. Mr. Willard has elected to reform his contract and therefore is entitled to receive judgment of his reformation damages, in an amount of the total medical bills submitted by him to Alieria but unpaid.

7. The class members have not yet had the opportunity to elect the measure of damages each will receive. Presumably, each will make the rational decision to elect to receive

the higher of the rescission damages or reformation damages available to him or her on an individual basis. Neil Luria has provided a Second Declaration, dated November 11, 2021, and filed in the record herein on November 12, 2021. Mr. Luria's Second Declaration provides sufficient evidence of the total amount of damages sustained by the class members, based on each class member's presumed election to take the higher amount of damages available to him or her. The aggregate amount of those damages, based on the presumed individual elections, is \$4,696,124. The Court finds that this amount represents the total damages of the class known at this time.

JUDGMENT

IT IS NOW THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

The Court grants default judgment in favor of Austin Willard, against The Alera Companies, for reformation of his contract with The Alera Companies in order to comply with applicable insurance laws, in the amount of \$16,255.54.

The Court grants default judgment in favor of the class of all persons who, while a Kentucky resident, purchased or were covered by a plan from Alera and Trinity Healthshare, Inc., that purported to be a "health care sharing ministry." The amount of the judgment is the aggregate rescission damages or reformation damages of the class, presuming each individual class member elects the higher measure of available damages, \$4,696,124, less the judgment in favor of Austin Willard, individually, for a total judgment in favor of the absent class members of \$4,679,868.46.