

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ALIERA HEALTHCARE, INC.,	§	
Defendant	§	53RD JUDICIAL DISTRICT

FIRST AMENDED PETITION SEEKING INJUNCTIVE RELIEF, CIVIL PENALTIES, TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

The State of Texas, acting by and through the Attorney General of Texas, pursuant to Tex. Ins. Code § 101.105, files this First Amended Petition Seeking Injunctive Relief, Civil Penalties, Temporary Restraining Order and Temporary Injunction against Alieria Healthcare, Inc., and in support thereof would show the Court as follows:

**I.
INTRODUCTION**

The Defendant Alieria Healthcare, Inc., is engaged in the business of insurance in this State without a license, in violation of Tex. Ins. Code § 101.101. The company claims to have revenue of over \$180 million per year, and has signed up over 17,000 Texas customers claiming to offer “great healthcare with comprehensive medical plans” at cut-rate prices. These unregulated plans come

with disclaimers stating that in reality, the customers of Alieria Healthcare have no legal basis to enforce the plans' promises, even after making all required monthly payments.

In meetings with State regulators, Alieria representatives have asserted that Alieria is exempt from state regulation because it merely administers a "health care sharing ministry." Alieria is no ministry, however; it is a multi-million dollar for-profit business that admittedly siphons off over 70% of every dollar collected from its members to "administrative costs." Texas law does offer a safe harbor for faith-based non-profit organizations that operate only to facilitate the sharing of medical expenses among participants. Alieria does not meet these requirements, and it should be enjoined from continuing to offer its unregulated insurance products to the public.

II. DISCOVERY CONTROL PLAN

1. This action is governed by Discovery Control Plan Level 2 under the Texas Rules of Civil Procedure.

III. PARTIES

2. The Attorney General brings this action pursuant to Tex. Ins. Code § 101.105, in the name of the State of Texas, in order to protect the people of this State from unauthorized insurance products that endanger the public.

3. Alieria Healthcare, Inc. is a foreign, for-profit corporation organized under the laws of Delaware doing business in Texas. Alieria's registered agent for service is CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136. Alieria's corporate address is 5901-B Peachtree Dunwoody Road, #200, Atlanta, Georgia, 30328.

4. After the State of Texas filed its Original Complaint against Alieria Healthcare, Inc. on June 13, 2019, Alieria announced that effective July 1, 2019, the name of Alieria Healthcare, Inc. would be changed to the Alieria Companies, and become a holding company for multiple wholly owned subsidiaries. This announcement was made on the website alierahealthcare.com, and in communications to sales agents. *See* Exhibit A (copy of current home page located at alierahealthcare.com). When referenced in this document, Alieria refers to Alieria Healthcare, Inc., as well as its successors, subsidiaries, agents and assigns.

IV. JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter, and venue is proper in Travis County, Texas.

6. Tex. Ins. Code § 101.105(b) provides as follows: "The commissioner [of insurance] may request that the attorney general institute a civil action in a district court in Travis County for injunctive relief to restrain a person or entity,

including an insurer, from continuing a violation or threat of violation described by Section 101.103(a). On application for injunctive relief and a finding that a person or entity, including an insurer, is violating or threatening to violate this chapter or Chapter 226, the district court shall grant the injunction relief and issue an injunction without bond.”

7. Tex. Ins. Code § 101.105(c) provides as follows: “On request by the commissioner, the attorney general shall institute and conduct a civil suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized under this subchapter.”

V.

VERIFIED ALLEGATIONS OF FACT BASED ON SWORN TESTIMONY AND COURT RECORDS

A. Alieria is founded in December 2015, with a focus on offering unregulated insurance products.

8. Alieria was formed in December 2015 by Timothy Moses, a resident of Marietta, Georgia; his wife, Shelley Steele; and their son, Chase Moses, a resident of Atlanta, Georgia. Timothy Moses was named as the executive director of Alieria, and Shelley Steele was named as the Chief Executive Officer. Chase Moses is currently named as President of Alieria, at least as of the filing of the Original Complaint in this matter.

9. Before forming Alieria, Timothy Moses served as the president and CEO of International BioChemical Industries, Inc. (IBCL). IBCL declared bankruptcy in 2004 after Timothy Moses was charged with securities fraud and perjury related to a series of false press releases issued by the company, and a deposition in which Timothy Moses gave false testimony in a civil enforcement action brought by the Securities and Exchange Commission. *See* Exhibit B (collecting documents related to *United States v. Moses*, Case No. 1:04-cr-00508-CAP-JMF, filed in the United States District Court for the Northern District of Georgia, Atlanta Division). Timothy Moses was sentenced to over 6 years in prison on these charges, and ordered to pay \$1.65 million in restitution to IBCL shareholders. *Id.* Timothy Moses was only released from supervision on these charges in April 2015, after being sentenced to (and subsequently spared from) an additional prison term for failing to provide truthful financial disclosures to his probation officer in 2012, 2013 and 2014. *Id.* The lawyer who convinced United States District Judge Charles A. Pannell, Jr. not to send Timothy Moses back to prison was G. Michael Smith of Atlanta, Georgia, who was subsequently named General Counsel for Alieria. *Id.* Timothy Moses only satisfied the criminal restitution judgment against him a few months ago, in April 2019. *Id.*

10. Most states will not license a company to sell insurance if it is closely held by a person who has been convicted of any felony, especially a crime

involving financial fraud or dishonesty. In light of these limitations, it is not surprising that Alera has focused, since its inception, on offering purportedly unregulated, insurance-like products.

B. In 2016, Timothy Moses convinces a small Mennonite ministry in Virginia to partner with Alera, but after Moses is caught writing checks to himself from non-profit funds, Alera creates its own ministry.

11. In October 2016, Timothy Moses met with Tyler Hochstetler, the director of Anabaptist Healthshare, a non-profit corporation based in Virginia, that operated a health care sharing ministry limited to members of the Gospel Light Mennonite Church of the Anabaptist faith. At the time of this meeting, the concept of a “health care sharing ministry” in which church members would help each other pay medical bills was not new. Ministries such as Anabaptist, however, were only recently coming to the attention of the general public because under a relatively obscure provision of the Affordable Care Act (ACA), members of a recognized health care sharing ministry were exempted from the individual mandate. As required by the ACA, Anabaptist had requested and been granted certification as a health care sharing ministry by the United States Department of Health and Human Services. *See* Exhibit C at p. 43-46 (testimony of Tyler Hochstetler, given at an evidentiary hearing on Anabaptist’s motion for preliminary injunction, held in Civil Action File No. 2018CV308981, *Alera*

Healthcare, Inc. v. Anabaptist Healthshare and Unity Healthshare LLC, pending in the Superior Court of Fulton County, Georgia).

12. On October 27, 2016, the day that Tyler Hochstetler and his father, Eldon Hochstetler, sat down with Timothy Moses at a Holiday Inn Express in Ruckersburg, Virginia, Anabaptist Healthshare had approximately 800 members with assets of about \$48,000, and was run mostly out of Tyler Hochstetler's home office. Exhibit C. at pp. 94-97 (testimony of Tyler Hochstetler).

13. At the meeting, Timothy Moses shared a proposal with the Hochstetlers to expand access to health care sharing ministry plans, with fees paid to Alera for marketing and selling these plans. Exhibit C at pp. 50-52 (testimony of Tyler Hochstetler). The result of that meeting was a Memorandum of Understanding, signed on October 31, 2016, between Alera and Anabaptist Healthshare, providing that Alera would market certain health care sharing ministry (HCSM) plans in exchange for a per member per month fee, and that additional per member per month fees would be paid personally to Tyler Hochstetler and his father. The October 2016 MOU, along with a subsequent Amended Memorandum of Understanding (AMOU), signed November 10, 2016, also contemplated the forming of an Anabaptist subsidiary, to be known as Unity Healthshare.

14. Alieria was successful in signing up thousands of members using the Unity HCSM, but in 2018, the deal unraveled after Hochstetler found out that Timothy Moses had used his signature authority on Unity accounts to “take whatever he wanted” from Unity as payment to Alieria. Exhibit. C at pp. 79-86 (Hochstetler testimony). In addition to paying Alieria, Timothy Moses wrote approximately \$150,000 worth of checks to himself from Unity funds without board approval. *Id.* In an affidavit filed later in a Georgia state court, Moses explained that he did in fact receive this money, which he believed was justified because “[p]rior to being issued these checks, I talked with Tyler [Hochstetler] about the fact that I do not receive a salary from Alieria or Unity and that I perform substantial work on behalf of furthering the relationship between Alieria and Unity. Tyler did not object to me receiving income from Unity, which totaled approximately \$150,000 over approximately 4-5 months.” Exhibit D (affidavit of Timothy Moses). On advice of counsel, Timothy Moses did return the money. *Id.*

15. As it became clear to the Hochstetlers and the Moseses over the summer of 2018 that their relationship would not be able to continue, Alieria caused a new corporation to be created, known as Trinity Healthshare. The Chief Executive Officer of this new entity was a former Alieria employee with ties to the Moses family. Exhibit E at pp. 274-276; 299-303 (testimony of Chase Moses). Like Unity, Alieria entered into a contract with Trinity. This contract allowed

Aliera to use Trinity’s non-profit status to sell health care plans purporting to be sharing ministry plans, but Aliera would keep complete control of the money and the administration of the plans.

16. The dissolution of the Aliera/Unity relationship is currently the subject of a state court lawsuit in Georgia, in which multiple Aliera executives have provided sworn testimony to the effect that all of the alleged ministry members were, in reality, customers of Aliera. *See, e.g.*, Exhibit F (December 23, 2018 Affidavit of Chase Moses at ¶ 16, 18, 20, 23); Exhibit G (Affidavit of G. Michael Smith at ¶ 7); Exhibit H (Affidavit of Shelley Steele, ¶ 14). Chase Moses, testifying in the Georgia state suit in January 2019, testified that Aliera was not merely an administrator of Unity ministry products, but instead that the Unity ministry was essentially a “vendor” for Aliera. *See* Exhibit E at pp. 305-306 (testimony of Chase Moses); Exhibit F (December 23, 2018 Affidavit of Chase Moses at ¶ 16, 18, 20, 23).

C. Aliera Healthcare’s advertisements and offerings in Texas raise concerns at TDI, and Aliera executives meet with TDI staff in February 2019.

17. In correspondence dated February 19, 2019, a staff attorney with the Texas Department of Insurance wrote to Reba Leonard, then the chief compliance officer for Aliera, questioning whether Aliera’s operations complied with Texas

insurance laws. TDI requested a meeting with Alera to discuss its business operations.

18. At the time this correspondence was sent, the website located at alierahealthcare.com contained multiple advertisements for obvious insurance products. The website stated that Alera offered various low-cost healthcare options for both individuals and families. For a monthly membership fee, the plans offered access to health care providers through office visits, urgent care and telemedicine. A brochure, in substantially the same form attached as Exhibit I, was accessible through the website, and set out plan comparison charts describing what services were offered, and at what percentage or amount these services would be covered. A copy of the website downloaded on or about June 13, 2019, is attached as Exhibit J, and this content appears to be substantially similar to the way that the website appeared in February 2019.

19. Following this inquiry, Alera executives agreed to a meeting at TDI's offices in Austin, which was held on February 25, 2019. Reba Leonard, Dwight Francis, Alera's legal counsel, and Danny Saenz, a consultant, attended on behalf of Alera. Various TDI staff attended the meeting, including Jamie Walker, Deputy Commissioner for Financial Regulation. The Alera team came with a slide presentation that they provided in hard copy to TDI. A copy of that slide presentation is attached as Exhibit K.

20. As noted in the slide presentation, Alera claimed to TDI that it offered a sharing ministry plan through Trinity Healthshare, and also other offerings that were separate from the sharing ministry. With respect to the sharing ministry plans, Alera claimed that it was acting merely as an agent for Trinity in marketing and administering these plans. At that meeting, Alera did not provide TDI with any of the affidavits or testimony that Shelley Steele, Michael Smith and Chase Moses had personally offered on behalf of Alera in state court in Georgia, stating that Alera was the architect of the ministry plans and owned all of the customers. TDI later obtained copies of testimony and documents filed in the Georgia litigation.

21. With respect to those products offered by Alera that were admittedly outside the sharing ministry, TDI staff had questions regarding how these offerings would qualify as anything but insurance. The Alera executives had no substantive response to this issue, other than to note that they believed that many sharing ministry plans offered similar “add-ons”.

22. The meeting closed with TDI staff requesting additional information regarding Alera’s relationship with Trinity Healthshare, as well as any other contracts with telemedicine or prescription benefit providers. Over the next few months, Alera did provide additional information to TDI, culminating in a May 1,

2019 meeting at TDI's offices, at which Alieria delivered a binder compiling the bulk of documents that Alieria had previously provided.

23. The contract between Alieria and Trinity is included in the binder, and it is crystal clear about who is in charge of these alleged ministry plans. In the opening "whereas" clauses, the contract explicitly states that "Trinity has no members in its HCSM, and the Parties intend that the members who enroll in the Plans become 'customers' of Alieria, and that Alieria maintain ownership of the 'Membership Roster,' which shall include the name, contact information, social security number, type of Plan and agent information (if applicable), among other necessary information, for each member who enrolls in the Plans." *See Exhibit L at p. 1 (copy of Alieria/Trinity Agreement).*

24. The Alieria/Trinity contract further provides that Alieria will "develop, market and sell the HCSM plans," and that "Alieria will be responsible for plan design (defining the schedule of medical services eligible for sharing), and pricing of the Plans." *Ex. L at p. 2.* Alieria will also "enroll new members in the Plans," and "Alieria is authorized to accept any enrollment from members in the Plans in its sole discretion." *Id.* Pursuant to the agreement, "Trinity acknowledges and agrees that because Alieria is the sole party developing and marketing the Plans (including the HCSM component) and making the sole effort to develop members, Alieria has exclusive ownership rights to the Membership Roster, and Trinity is not authorized

to contact any members or use any information contained in the Membership Roster for any purpose without the prior written consent of Alieria.” *Id.*

25. With respect to finances, the agreement provides that “[a]ll member share contributions (the monthly share amount that each member contributes for each of the Plans and Member Enrollment Fees will be first paid directly to a banking account in the name of Alieria.” Ex. L at p. 5. Alieria will then “transfer the funds attributable to the HCSM portion of the Plans into a banking account in the name of Trinity, which funds will be the net amount after any payments due from Trinity . . . have been distributed by Alieria.” *Id.* Transfer to a Trinity bank account means little, however, given that the agreement also provides that “[p]ursuant to resolutions of the board of directors of Trinity, Alieria is an authorized signatory, and is authorized to make payments from each and all banking accounts opened in Trinity’s name in connection with this Agreement.” *Id.* Alieria is also “authorized to make, or cause to be made, deposits into, and payments from, such Trinity banking account, in accordance with the Revenue and Expense Structure.” *Id.*

26. Several of Alieria’s contracts with third-party providers were also included in the binder. These contracts are clearly “capitated”, meaning that Alieria has agreed to pay a set price for a certain number of individual visits or individual members. A capitated contract is a classic example of an agreement routinely

entered into by HMOs or other insurers to mitigate the risk these companies assume from their members by agreeing in advance to a set, discounted rate with providers.

27. Within days of the May 1, 2019, meeting, the Department instituted cease and desist proceedings against Alera and Trinity Healthshare, Timothy Moses, Shelley Steele and Chase Moses. *See* Exhibit M (copy of Notice of Hearing, issued May 7, 2019). The notice also named Anabaptist Healthshare and Unity Healthshare, although the Department later nonsuited Anabaptist and Unity when it became apparent that Anabaptist and Unity no longer intended to work with Alera.

D. Alera and Trinity convince ALJ O'Malley and Judge Gamble of this Court that a continuance of the hearing was warranted.

28. The Notice of Hearing for the cease and desist proceedings was originally set for May 28, 2019, but attorneys for Alera and Trinity filed multiple pretrial motions, and convinced Administrative Law Judge Michael O'Malley that they needed a continuance. The Department attempted to force ALJ O'Malley to hold the cease and desist hearing within the 30-day window provided by Tex. Ins. Code § 101.152, but Alera and Trinity were able to stop the hearing by filing a lawsuit and seeking emergency relief. These suits were filed in Travis County District Court, styled *Alera Healthcare, Inc. v. Sullivan, et al.*, Cause No. D-1-

GN-19-003088 and *Trinity Healthshare v. Sullivan, et al.*, Cause No. D-1-GN-19-003073.

29. Judge Maya Guerra Gamble presided over the hearing on Alieria and Trinity's motions for temporary restraining order. At that hearing, held on June 5, 2019, the arguments focused not on the merits of the cease and desist proceeding, but on the issue of whether ALJ O'Malley had properly granted a continuance of the original hearing date, based on his concerns about preserving the due process rights of the parties. After the hearing, Judge Gamble ruled from the bench that she would grant the temporary restraining order, and prevent the cease and desist hearing from going forward as scheduled on the following day, June 6, 2019. Specifically, her ruling found that "there is evidence that harm is imminent to Plaintiffs and if the Court does not issue the temporary restraining order, Plaintiffs will be irreparably injured because they will be deprived of [their] rights to the due process of law, including their right to fair notice of the claims asserted against them and the opportunity to present a defense on the merits of those claims." *See* Exhibit N (copy of Order Granting Temporary Restraining Order).

30. Following this ruling, the Department nonsuited its cease and desist proceeding. This lawsuit was filed the same day.

VI.
ALLEGATIONS OF LAW AND VERIFIED FACTS
REGARDING THE BUSINESS OF INSURANCE IN TEXAS

A. The business of insurance is defined broadly under Texas law, and the core feature of insurance is sharing risk in exchange for payment.

31. Chapter 101 of the Texas Insurance Code protects Texas residents from the unauthorized practice of insurance. Tex. Ins. Code § 101.102 prohibits any person, including an insurer, from “directly or indirectly doing an act that constitutes the business of insurance under this chapter, except as authorized by statute.”

32. Conduct that constitutes the business of insurance is described in Tex. Ins. Code §101.051(b), and includes “making or proposing to make, as an insurer, an insurance contract,” “taking or receiving an insurance application,” “receiving or collecting any consideration for insurance,” “issuing or delivering an insurance contract to a resident of this state,” “contracting to provide in this state indemnification or expense reimbursement for a medical expense by direct payment, reimbursement or otherwise to a person domiciled in this state” through any funding mechanism, “doing any kind of insurance business specifically recognized as constituting insurance business within the meaning of statutes relating to insurance,” and “doing or proposing to do any insurance business that is

in substance equivalent to conduct described by [this statute] in a manner designed to evade statutes relating to insurance.”

33. At its core, insurance is “an undertaking by one party to protect the other party from loss arising from named risks, for consideration and upon terms and under the conditions recited.” *Nat'l Auto Serv. Corp. v. State*, 55 S.W.2d 209, 210–11 (Tex. Civ. App.—Austin 1932 writ dismiss'd) quoting 12 Couch's Cyc. of Insurance Law, vol. 1, p. 2. The buyer of an insurance policy pays present consideration to protect against future risk. *Employers Reinsurance Corp. v. Threlkeld & Co. Ins. Agency*, 152 S.W.3d 595, 597 (Tex. App.—Tyler 2003 pet. denied).

34. An essential element of insurance is the spreading or pooling of risk. *Employers Reinsurance Corp.*, 152 S.W.3d at 598. In determining whether an arrangement is insurance, courts examine its purpose, effect, contents, and import, and not necessarily the terminology used, including declarations to the contrary. *Nat'l Auto*, 55 S.W.2d at 210-211. Merely stating that a particular business is “not insurance” will not suffice to take that business out of the realm of insurance regulation.

B. Alieria’s Member Guide, and the contracts it signs with providers demonstrate that Alieria is collecting money in exchange for assuming risk.

35. Alieria’s 2019 Member Guide is clear that Alieria is taking money from its members in exchange for assuming the risk of its members healthcare costs. Part I of the Guide is titled “How to Use Your Membership,” and it lists the following services that are provided to members: telemedicine, preventative care, labs and diagnostics, urgent care, primary care, specialty care, hospitalization, and PPO network. Part II of the Member Guide is entitled “How Your Healthcare Cost-Sharing Ministry (HCSM) Works” and describes how payment for the services described in Part I will be made. Part III is entitled “Your Summary of Cost-Sharing” and describes categories of “Eligible Medical Expenses,” followed by “Limits of Sharing,” “Cost-Sharing for Pre-Existing Conditions,” lists of “Medical Expenses Not Generally Shared by HCSM,” and provisions regarding pre-authorization of certain medical expenses, titled “Pre-Authorization Required.” See Exhibit O (copy of 2019 Member Guide).

i. The Member Guide makes clear that Alieria is collecting monthly payments in exchange for assuming risk.

36. In Part I, the Member Guide describes the “Telemedicine” program, and the first bolded heading under this description is “Offerings of the Telemedicine Program.” In several bullet points, the Member Guide describes the offering as follows:

“At home, at work, or while traveling in the US, speak to a telemedicine doctor from *anywhere, anytime, on the go.*”

“Save time and money by avoiding expensive emergency room visits, waiting for an appointment, or driving to a local facility.”

“Telemedicine consultations are *free for you and your dependents on your Plan.*” Ex. O (emphasis added).

37. In Part I, under “Preventative Care,” the Member Guide states that “Members have *no out-of-pocket expenses* for preventative services, which include, but are not limited to, routine in-network checkups, pap smears, flu shots and more.” Ex. O (emphasis added).

38. In Part I, under “Urgent Care,” the Member Guide states: “Alieracare Bronze, Silver, and Gold plans have *unlimited Urgent Care visits,*” and “X-rays are included, and subject to \$25 per read fee at Urgent Care.” Ex. O (emphasis added).

39. In Part I, under “Primary Care,” the Member Guide states: “Alieracare Bronze, Silver, and Gold plans have *unlimited Primary Care visits.*” Ex. O (emphasis added).

40. In Part I, under “Hospitalization,” the Member Guide states:

1. Members are required to pre-authorize all hospitalization services and visits unless it is an obvious medical emergency. Please see pre-authorization section for instructions.

2. The member will be responsible for first reaching their MSRA before any cost-sharing will be available. Once the MSRA has been reached in full, the sharing will then be reimbursed *directly back to the providers and hospital facilities.*

3. Several plans allow for *fixed cost-sharing* in the emergency room. Please see Appendix for your exact plan details.

Ex. O (emphasis added).

41. In Part I, under “PPO Network,” the Member Guide states: “With a growing nationwide PPO network of more than 1,000,000 healthcare professionals and more than 6,000 facilities, Multiplan PHCS network offers Plan Members a range of quality choices to help them stay healthy.” Ex. O.

42. Part II of the Member Guide begins by describing Trinity HealthShare as a “clearing house that administers voluntary sharing of healthcare needs for qualifying members,” and attempts to disclaim that anything in the Member Guide “create[s] a legally enforceable right on the part of any contributor.” Ex. O. These statements simply ignore the entire import of the Member Guide, which describes what services are available with which plans, and are followed by other statements describing the member’s obligation of “financial participation,” and what actions Alieria may take in the event that “a member’s eligible bills exceed the available shares to meet those needs.” Ex. O.

43. With respect to “financial participation,” the Member Guide states that contributions should be received “by the 1st or 15th of each month depending on the member’s effective date,” and that if the contribution “is not received within 5 days of the due date, an administrative fee may be assessed.” Ex. O. “If the monthly contribution is not received by the end of the month, a membership will become inactive as of the last day of the month in which a monthly contribution was received,” and “[n]eeds occurring after a member’s inactive date . . . are not eligible for sharing.” Ex. O.

44. Part II of the Member Guide also contains provisions that address what actions Alera may take if the “suggested share amounts” collected from its members do not meet the “eligible needs submitted for sharing.” Ex. O. One possibility is that Alera may institute a “pro-rata sharing of eligible needs . . . whereby the members share a percentage of eligible medical bills within that month and hold back the balance of those needs to be shared the following month.” Ex. O. In the event that the “suggested share amount is not adequate to meet the eligible needs submitted for sharing over a 60-day period, then the suggested share amount may be increased in sufficient proportion to satisfy the eligible needs,” an action which “may be undertaken temporarily or on an ongoing basis.” Ex. O.

45. At the end of Part II, in a section titled “Contributors’ Instructions and Conditions,” the Guide states: “By submitting monthly contributions, the

contributors instruct Trinity HealthShare to share clearing house funds in accordance with the membership instructions.” Ex. O.

46. Part III of the Member Guide, “Your Summary of Cost-Sharing,” begins with a list of “eligible medical expenses.” This list contains 41 numbered paragraphs, with statements such as:

34. Sleep Disorders. Overnight Sleep Testing Limit: All components of a polysomnogram must be completed in one session. A second overnight test will not be eligible for sharing under any circumstance. Overnight sleep testing must be medically necessary and will require pre-authorization. **Allowed charges will not exceed the Usual, Customary, and Reasonable charges for the area.**

...

36. Specialty Care. For most everyday medical conditions, your PCP is your one-stop medical shop. However, there are cases when it’s time to see a specialist who’s had additional education and been board certified for that specialty. **For situations like these, the AlierCare Bronze, Silver, and Gold plans provides specialty care offerings at the cost of just a consult fee.** A member will need to receive a PCP referral to see a specialist for treatment or consultation outside of their scope of knowledge.

...

38. Surgical Offerings. Non-life-threatening surgical offering are not available for the first 60 days of membership. **Please verify eligibility by calling Member Services before receiving any surgical services.**

Ex. O (emphasis added).

47. Following these three sections, the Member Guide contains five appendices. Appendixes A, B and C provide “Plan Details” for the “Bronze”

“Silver” and “Gold” plans, respectively. Ex. O. Each of these appendices contain a chart that appears virtually indistinguishable from any plan comparison chart that any consumer would get from a licensed insurance company. Ex. O. The charts list percentages of what will be covered, such as Wellness & Preventative Care: 100%; Primary Care: \$50 Consult Fee; and Specialty Care: \$125 Consult Fee. Ex. O.

48. Appendix D is titled “Terms, Conditions and Special Considerations,” and lists eighteen separate items, followed by five numbered “Disclaimers.” Ex. O. Most of the initial items address Alieria’s telemedicine service. Ex. O. The second item on the disclaimer list, at page 43 of the Member Guide, states: “Alieria and Trinity programs are NOT insurance. Alieria Healthcare, Inc./Trinity HealthShare does not guarantee the quality of services or products offered by individual providers. Members may change providers upon 30 days’ notice if not satisfied with the medical services provided.” Number 5 on the disclaimer list states: “This membership is issued **in consideration of the Member’s application and the Member’s payment of a monthly fee as provided under these Plans.** Omissions and missatements, or incorrect, incomplete, fraudulent, or intentional misrepresentation **to the assumed risk in your application** may void your membership, and services may be denied.” Ex. O (emphasis added).

49. Appendix E is titled “Legal Notices” and over 7 pages, it lists 22 separate state notices in alphabetical order. The disclaimer required by Texas law is listed on page 50 of the Member Guide, and states as follows:

Notice: This health care sharing ministry facilitates the sharing of medical expenses and is not an insurance company, and neither its guidelines nor its plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant will be compelled by law to contribute toward your medical bills. As such, participation in the ministry or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payment for medical expenses or whether this ministry continues to operate, you are always personally responsible for the payment of your own medical bills. Complaints concerning this health care sharing ministry may be reported to the office of the Texas attorney general.

The ministry will assign a recommended cost sharing amount to the membership each month (“Monthly Share Amount”). **By submitting the Monthly Share Amount, you instruct the ministry to assign your contribution as prescribed by the Guidelines.** Up to 40% of your member contribution goes towards the administration of this plan. Administration costs are not all inclusive of vendor costs, which could account for up to 32% of the member monthly contribution (monthly recommended share amount). Contributions to the member “Share Box” will never be less than 28% of the member monthly recommended share amount.”

Ex. O (emphasis added).

50. The “sharing arrangement” offered by Alieria is insurance. Members each contribute present consideration to the sharing reserve to protect against future risk.

51. Alieria’s membership documents establish a defined structure for claims to be paid from the sharing reserve. The membership documents further establish a mechanism to pay claims if the sharing reserve is depleted. Statements in Alieria's membership documents to the effect that the members have no guarantee of payment appear to be disclaimers asserted in an effort to avoid state insurance regulation.

52. To be eligible for a claim payment out of the sharing reserve, a member must pay fixed monthly membership fees into the sharing reserve. Alieria's guidelines state, “This membership is issued in consideration of the Member's application and the Member's payment of a monthly fee as provided under these Plans.” If a member does not pay the monthly membership fee, the membership becomes “inactive,” and the member is no longer eligible for claim payments out of the sharing reserve. It is a *quid pro quo*. In reality, members are paying their monthly membership fees in exchange for the right to insurance coverage for medical services.

ii. Alieria’s contracts with third-party providers demonstrate that Alieria has taken on risk from its members in exchange for monthly payments.

53. At TDI’s request, Alieria has provided copies of several contracts that Alieria has currently or did have with certain third-party providers. These contracts include (1) Multi-Service Provider Agreement between CityDoc Urgent Care

Center 4, PLLC, and Alieria (then doing business as HealthPass USA), dated December 10, 2015; (2) Teladoc Services Agreement, dated June 12, 2015; and (3) Laboratory Services Agreement between Alieria and Quest Diagnostics, Inc., dated October 1, 2015. These contracts provide additional documentary evidence that Alieria has taken on risk from its members, because in these contracts, Alieria uses “per member per month” payments to limit the risk it has taken on.

54. The Urgent Care agreement contains the following provisions:

“pay to Provider a portion of the membership fee in accordance with Exhibit A for members that are assigned to Provider for delivery of medical services contained herein and as currently performed at the provider’s facility.” Contract at p. __ (copy has been provided by counsel and stamped “confidential”; copy will not be filed with this amended petition but will be provided to the Court at a hearing upon request). “As a provider in the Organizers programs, Provider agrees to . . . provide medically necessary care in a timely manner,” and agrees that it “shall perform all services currently performed by the practice to all members at no additional cost in accordance with Exhibit A schedule of services and payment parameters . . .”

55. The Urgent Care Agreement also provides: “Provider agrees to accept the Per Member Per Month (PMPM) payment rates set forth in Exhibit A as the total amount to be received by the Provider monthly for all covered services.

Organizer, its parent or affiliate shall pay only the amount due to Provider for monthly per member per month services rendered to Member, based the provisions of the applicable plan and Provider agrees to look to Organizer or its parent or affiliates only for said per member per month fee of such covered services except for any amounts required to be paid by Member pursuant to the Organizers appropriate plan.” Urgent Care Agreement at p. ___.

56 The termination of coverage provisions are similarly explicit: “2. Termination of Coverage of Members. Coverage for each Member may be terminated by Member or Organizer. When a Member whose coverage has terminated receives services from Provider, Provider agrees to bill Member directly. Organizer shall not be liable to Provider for any bills incurred by a Member whose coverage has been terminated. Provider shall verify eligibility through available electronics means or by calling the eligibility phone number provided by the organizer.”

57. With respect to the Teladoc Agreement, the terms are similarly explicit: “8. Payment Terms. Teledoc shall invoice the RESELLER a PEPM fee on the 5th day of each month for the Program services to be provided in that month. . . . The RESELLER specifically acknowledges that it is responsible for paying all applicable PEPM fees and the other fees identified herein to Teladoc regardless of whether it has collected such fees from the Clients.”

58. “9. Service Fees. Teladoc agrees to provide the services of the Program in exchange for the fees described in Attachment 2, which shall be paid by the RESELLER to Teladoc and adjusted quarterly based up the aggregate number of Covered lives in the Resellers book of business.”

59. In the Quest Diagnostics Agreement, under “Duties of Company and Compensation,” the agreement provides that “(a) Laboratory agrees to accept a per member per month fee from Company for lab services outlined in Exhibit B. With respect to such services, Laboratory agrees to accept the rates set forth in Exhibit B of this Agreement as full compensation for such services. Laboratory agrees to comply with pricing schedules for any additional service or direct cash payment from any HP USA member in accordance with Exhibit C contained herein for any HP USA member. Company will provide enrollment eligibility electronically in a mutually agreed upon format on a monthly basis.”

60. Health maintenance organizations (HMOs) operate in much the same way. Members pay a fixed premium and the HMO provides specific health care services to their members either directly or by contracting with providers. Notably, capitation agreements with providers are an important tool that HMOs use to control costs. Because HMOs spread risk and essentially function in the same way as traditional health insurers, many courts have recognized that HMOs provide insurance. *See, e.g., Corp. Health Ins., Inc. v. Texas Dep't of Ins.*, 215 F.3d 526,

538 (5th Cir. 2000) (recognizing that an HMO provides insurance); *see also Kentucky Ass'n of Health Plans, Inc. v. Nichols*, 227 F.3d 352, 364-365 (6th Cir. 2000); *Washington Physicians Serv. Ass'n v. Gregoire*, 147 F.3d 1039, 1046 (9th Cir. 1998) ("HMOs function the same way as a traditional health insurer: The policyholder pays a fee for a promise of medical services in the event that he should need them. It follows that HMOs (and HCSCs) are in the business of insurance."); *Anderson v. Humana, Inc.*, 24 F.3d 889, 892 (7th Cir. 1994) ("Because HMOs spread risk—both across patients and over time for any given person—they are insurance vehicles under Illinois law."); *Ocean State Physicians Health Plan, Inc. v. Blue Cross & Blue Shield of Rhode Island*, 883 F.2d 1101, 1107 (1st Cir. 1989).

C. Alieria does not qualify for the faith-based “safe harbor” established by Tex. Ins. Code 1681.

61. A health care sharing ministry (HCSM) is a not-for-profit health care cost-sharing arrangement among persons of similar and sincerely held beliefs. Insurance Code Chapter 1681 establishes the requirements of a HCSM. Under Section 1681.001, a “faith-based, nonprofit organization that is tax-exempt under the Internal Revenue Code of 1986 qualifies for treatment as a health care sharing ministry under this chapter if it: (1) limits its participants to individuals of a similar faith; (2) acts as a facilitator among participants [for the payment of medical bills].

. . .; (3) provides for the payment of medical bills of a participant through contributions from one participant to another; (4) provides amounts that participants may contribute with no assumption of risk or promise to pay by the health care sharing ministry to the participants; (5) provides a written monthly statement to all participants . . .; (6) discloses administrative fees and costs to participants; and (7) provides that any card issued to a participant for the purpose of presentation to a health care provider clearly indicates that the participant is part of a health care sharing ministry that is not engaging in the business of insurance.”

62. Alieria does not allege that it is a faith-based, nonprofit organization. It is a for-profit corporation. Alieria contends that it only contractually administers the Trinity HCSM, and previously only contractually administered Unity's HCSM. Trinity and Unity are both nonprofit organizations that are tax-exempt under the Internal Revenue Code of 1986. However, Trinity, and Unity before it, are being used by Alieria in an attempt to disguise Alieria’s profit-making venture as a HCSM and avoid insurance regulation.

63. Alieria has asserted in court documents filed in its home state of Georgia that at the time of Alieria’s agreement with Unity Healthshare, the parties understood that "all products developed by Alieria, regardless of whether such products included an HCSM component, would remain the property of Alieria, not Unity or [Anabaptist]." Alieria's First Amended Complaint, *Alieria Healthcare, Inc.*

v. Anabaptist Healthshare, et al., Civil Action File No. 2018-CV-308981 (Superior Court of Fulton County, Georgia Dec. 3, 2018).

64. In court documents, Alieria further noted that under the Unity Agreement, Eldon Hochstetler and Tyler Hochstetler, director of Anabaptist and Unity, respectively, would each individually "receive \$2.50 per enrolled member in Unity Healthshare, per month, for as long as Unity Healthshare exists, regardless of how many members enroll in Unity Healthshare." Alieria described this as a "*profit-sharing arrangement* with [Alieria]." (emphasis added). In less than two years under the Unity Agreement, Eldon Hochstetler and Tyler Hochstetler were each individually paid approximately \$700,000. Alieria's First Amended Complaint, *Alieria Healthcare, Inc. v. Anabaptist Healthshare, et al.*, Civil Action File No. 2018-CV-308981 (Superior Court of Fulton County, Georgia Dec. 3, 2018).

65. Similarly, under the Trinity Agreement, Alieria is responsible for almost all aspects of the HCSM, including "plan design (defining the schedule of medical services eligible for sharing), and plan pricing." The Trinity Agreement also entitles Alieria to a large portion of member payments. Alieria retains contributions and/or management fees range from 20 cents per membership dollar to 71 cents per membership dollar. Agent sales commissions range from 10 cents per membership dollar to 40 cents per membership dollar. Because of these and other Alieria profit

centers, member sharing reserve amounts top out at 35 cents per membership dollar, but typically are around 8 to 15 cents per membership dollar.

66. Alieria, together with Trinity, and previously with Unity, is and always has been a profit-making venture. According to an affidavit filed by Alieria's comptroller, James Butler, Alieria earned more than \$180,000,000 in revenue in 2018. Exhibit C at p. 315 (Butler testimony).

67. In the regulatory context, courts are permitted to disregard principles of corporate separateness when necessary to prevent corporations from "circumventing statutes and frustrating legislative intent by using a legislatively authorized corporate form to avoid a statute's reach and allow harms the Legislature set out to prevent." *Cadena*, 518 S.W.3d at 333. This principle is especially relevant here where Alieria's own documents demonstrate that it is using corporate fictions to control and operate a purported non-profit health sharing ministry, even stating in writing that Alieria "is authorized to make payments from each and all banking accounts opened *in Trinity's name* in connection with this Agreement." Alieria/Trinity Agreement at p. __ (emphasis added) [Exhibit J].

68. Alieria does not act as a facilitator among participants for the payment of medical bills, does not provide for the payment of medical bills by contributions from one participant to another, assumes risk and promises to pay.

69. Under Alieria's business model, members are required to pay a fixed amount to Alieria so that Alieria can pay covered claims directly to providers. Contributions are not made from one participant to another.

70. Membership contributions to the sharing reserve are not voluntary. To become and stay a member of one of Alieria's plans, a member must contribute a specified amount each month, a portion of which goes to the sharing reserve. If a member does not pay the total monthly fee within 5 days of the due date, the member is assessed a late fee. If the member does not pay the total monthly fee by the end of the month, the membership becomes inactive, and the member's covered medical expenses are not eligible for payment out of the sharing reserve. Additionally, if the sharing reserve is depleted in any given month, Alieria can initiate what is essentially an assessment of members to pay the outstanding needs.

72. Alieria's ability to assess members and raise monthly fees in response to the depletion of the sharing reserve also means that members are assuming risk. To maintain membership and health coverage, the member must pay the assessment or increased monthly fees.

D. Regulatory agencies in the state of Washington and Maryland have issued cease and desist orders to Alieria Healthcare based on these and similar allegations.

73. The State of Washington issued a cease and desist order against Alieria on May 13, 2019. In summarizing the findings of the investigation of the

Washington Insurance Commissioner, the order states that Alera “provided misleading training to prospective agents about the nature of its HCSM products . . . provided misleading advertisements to the public and prospective HCSM customers about the nature of its HCSM products, [and] held itself out as health care service contractor without being registered.” *See* Exhibit M. The Order notes “Alera’s repeated use of insurance terminology in its agent training and marketing materials,” which “has the capacity to deceive both prospective agents and prospective consumers into believing they are purchasing a non-traditional *insurance* plan.” Order at p. 3 (emphasis in original). The Order further finds that “Alera solicits and sells plans to Washington consumers that are built on an extensive network of preferred providers and include other healthcare ‘essentials’ that may mislead consumers into thinking they are purchasing healthcare insurance.” Order at p. 4.

74. Similarly, the Maryland Insurance Commissioner issued an order dated April 30, 2018, mandating that Alera cease selling its plans in Maryland and pay a civil fine of \$7,500.00. The order was based on conclusions of law that Alera was engaged in the business of insurance in Maryland, and did not qualify for the health care sharing ministry exception granted under Maryland law. Alera consented to the terms of this order.

75. Since filing its original complaint in this matter on June 13, 2019, state officials have received numerous inquiries from other regulatory agencies. Additional factual information arising out of these communications will be provided to the Court as it becomes available.

VII.
ALLEGATIONS OF IRREPARABLE HARM

76. The factual allegations set out above are incorporated as if fully repeated in support of the State's allegations of irreparable harm.

77. In addition, the State of Texas offers the following verified, sworn assertions regarding irreparable harm.

78. As described above, the defendant Alera, as well as those acting in concert or participation with it, is selling unauthorized insurance products to the people of this State, which is recognized as an inherently harmful activity by our Legislature, our courts, and our executive agencies.

79. In addition, the Texas Department of Insurance has collected evidence of significant customer complaints as part of its investigation of Alera. As of May 10, 2019, the Better Business Bureau had 95 complaints on file for Alera, with about 10% of those from Texas. As of June 10, 2019, the online review platform Yelp had collected 69 one-star reviews for Alera - again, about 10% from Texas - warning people that Alera was a scam, and would not pay claims.

See Exhibit N. A recent article in the Houston Chronicle highlights one couple in Dallas who purchased an Alieria plan but had a claim for an expensive surgery denied. The article notes that “the similarities between traditional health insurance plans and the products Alieria promotes can be striking.” Exhibit O.

80. Over the last few weeks, an investigator with the Texas Department of Insurance has attempted to reach some of the individuals who filed these complaints, and succeeded in making contact with eight of them. Each of the individuals contacted indicated that they believed the product Alieria offered was insurance, and were surprised when their claims were not paid.

81. In addition, this investigator submitted an online form expressing interest in Alieria’s products, and was contacted by an insurance agent who was willing to take an application over the telephone, but would not provide written materials unless the investigator provided her credit card number for payment. Acknowledgement that the product was “not insurance” only came after the investigator specifically inquired about this issue.

82. The disclaimers provided in Alieria Healthcare’s written materials are similarly alarming. As stated in the Member Guide, the first two monthly payments of any membership are completely taken for administrative costs. In addition, the Texas disclaimer provided on page 50 of the 2019 Member Guide states that of every dollar of share contributions, Alieria can only commit that 28

cents will go toward the “sharing fund” that would be used to pay claims. While the State does not currently have detailed financial evidence to offer at this time, it is difficult to see how any business model with this ratio of payment could survive unless it is sustained by a constant influx of new members.

83. Even with state-required disclaimers, the language of the 2019 Member Guide considered as a whole, increases the chances that consumers are being misled into believing that Alieria products are insurance and that by signing up with Alieria, these consumers are entering into an enforceable agreement for Alieria to pay claims in exchange for member fees.

84. Most recently, since the original petition in this case was filed on June 13, 2019, state regulators have learned that Alieria is once again attempting to evade responsibility for its unauthorized business by changing its corporate name and possibly engaging in other restructuring activities. In order to protect the public, this Court is empowered to enjoin not only the named defendant, Alieria Healthcare, but also any individual or entity acting in active concert or participation with it.

VIII. CAUSES OF ACTION

Count I: Injunctive relief against Alieria for the unauthorized business of insurance.

85. The factual allegations set out above are incorporated as if fully repeated in support of this cause of action.

86. Alieria is directly or indirectly engaging in the business of insurance as defined in Tex. Ins. Code § 101.051.

87. Alieria has no authorization to engage in the business of insurance in Texas.

88. Alieria is violating Tex. Ins. Code § 101.102 because it is directly or indirectly doing an act or acts that constitute the business of insurance under Chapter 101 of the Texas Insurance Code without authorization.

89. Alieria is proposing to make and is making insurance contracts in Texas as an insurer. Alieria is actively promoting and selling insurance products in Texas and currently has more than 17,000 members in Texas. Alieria's membership certificates, applications, and guidelines, as provided on the website and also to customers directly, establish a contract of insurance, and Alieria is "a corporation, association, partnership, or individual engaged as a principal in the business of insurance." Tex. Ins. Code §101.002(1)(A).

90. Alieria takes and receives applications for its own insurance products and for Trinity's insurance products, including over the phone and through its agents. At least one TDI investigator has communicated with an agent attempting

to sell Alieria products and has been asked to provide credit card information in order to sign up with the plan after an application taken over the phone.

91. Alieria collects and receives consideration for its insurance products through Alieria's membership fees. Alieria's membership guide also states that it may assess its members for deficiencies in the sharing reserve.

92. Alieria issues and delivers insurance contracts to residents of Texas. More than 17,000 Texas residents have insurance contracts with Alieria. The insurance contract consists of membership certificate, application, and guidelines.

93. Alieria directly and indirectly sells insurance products to Texas residents both directly and through licensed Texas insurance agencies. Alieria offers commission of up to 40%, which is significantly higher than commission paid for the sale of authorized insurance products. Through its member guide and website, Alieria disseminates information relating to insurance coverage and rates and it receives and approves member applications. Alieria also sets the rates for the insurance products and delivers the insurance contracts. Further, Alieria adjusts claims directly and through contracted entities.

94. Alieria has capitated contracts with providers in Texas to pay the costs of its members healthcare expenses. Alieria also reimbursed providers and members in Texas directly for medical expenses under Alieria's sharing arrangement.

95. Alera has deliberately designed its corporate structure and healthcare products to avoid insurance regulation. Alera has attempted to structure its business to appear on its surface to fit within a legitimate exemption from insurance regulation. By avoiding insurance regulation up to this point, it has been able to offer healthcare plans to Texas that are significantly cheaper than plans offered by authorized insurance carriers, but without any of the statutory protections to Alera's customers.

96. On application for injunctive relief and a finding that a person or entity, including an insurer, is violating or threatening to violate Chapter 101, the district court shall grant the injunctive relief and issue an injunction without bond. *See* Tex. Ins. Code § 101.105.

Count II: Civil penalties against Alera Healthcare for the unauthorized business of insurance.

97. The allegations set out above are incorporated as if fully repeated in support of this cause of action.

98. A person or entity, including an insurer, that violates Chapter 101 is subject to a civil penalty of not more than \$10,000 for each act of violation and for each day of violation. *See* Tex. Ins. Code § 101.105.

99. The State of Texas brings suit for the recovery of civil penalties against Alera in the amount of \$10,000 for each of Alera's acts of violation and for each day of violation of Texas Insurance Code Chapter 101.

IX.
REQUEST FOR TEMPORARY RESTRAINING ORDER
AND TEMPORARY INJUNCTION

100. The State of Texas asks that this Court enter a temporary restraining order prohibiting the defendant Alera Healthcare from signing up any new Texas customers until the merits of this suit can be resolved. Further, the State asks that this Court further provide in its temporary orders that all money in the possession of Alera, from Texas customers, and any money received from Texas customers during the pendency of this case be put into an escrow account with disbursements allowed only to pay claims from Texas customers pursuant to the terms and conditions of Alera's Management and Administrative Agreement with Trinity Healthshare, Inc. or other contract governing disbursement from the Share Box Member Reserve. Further, the State asks this Court to provide in its temporary orders that Alera must maintain an accounting of disbursements from the escrow account, which will be made available to TDI, the Texas Office of the Attorney General, or the Court, for inspection and copying, upon request.

101. Temporary injunctive relief is warranted when the plaintiff has (1) asserted a cause of action against the defendant, (2) is likely to succeed on the

merits of its cause of action, and (3) will suffer probable imminent, and irreparable injury if the injunction is not granted for which there is no adequate remedy at law. *Taylor Housing Auth. v. Shorts*, 549 S.W.3d 865, 877 (Tex. App. – Austin, 2018) citing *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *Tex. Civ. Prac. & Rem. Code § 65.011*.

102. The State of Texas is likely to succeed on the merits. This petition presents substantial evidence that Alera Healthcare is engaging in the unauthorized business of insurance in this state without a license. The bulk of these allegations come from statements made by Alera Healthcare itself, through its website, its marketing materials, its Member Guide, and its executives submitting sworn testimony in the Georgia state litigation. Two other states have already issued cease and desist orders to Alera based on these and similar allegations.

103. With respect to irreparable harm, the Texas Insurance Code is clear that “[i]t is the policy of this state to protect residents against acts by a person or insurer who is not authorized to do business in this state.” Tex. Ins. Code § 101.001. In addition, “[i]t is a state concern” that residents holding policies from unauthorized insurers “face often insurmountable obstacles in asserting legal rights under the policies in foreign forums under unfamiliar laws and rules of practice.” Tex. Ins. Code § 101.001(a). Courts in this State have often recognized the

seriousness of a charge of unauthorized insurance. See, e.g., *Strayhorn*; *Mid-American Indem. Ins. Co. v. King*, 22 S.W.3d 321, 326-327 (Tex. 1995) (“Both this Court and the United States Supreme Court have consistently recognized the right of the states to regulate the insurance industry in its operations affecting the public welfare.”) (internal quotation marks omitted); *Southwest Professional Indem. Corp. v. Texas Dept. of Ins.*, 914 S.W.2d 256, 263 (Tex. App. – Austin 1996) (“The government . . . has a great interest in protecting citizens from the unauthorized practice of insurance.”).

In *Republic Western Ins. v. State of Texas*, 985 S.W.2d 698, 706 (Tex. App. - Austin 1999), a temporary restraining order was upheld without specific findings on irreparable harm and no adequate remedy at law because the language of the statute was mandatory, providing that “an injunction shall issue if the court determines that a violation of that article has occurred.” This specific provision has been repealed, but Tex. Ins. Code § 101.105 contains similar mandatory language. Tex. Ins. Code § 101.105 (“On application for injunctive relief and a finding that the person or entity . . . is violating or threatening to violate this chapter . . . the district court shall grant the injunctive relief and issue an injunction without bond.”).

Even if findings as to irreparable harm are necessary, the allegations stated above demonstrate that Alieria Healthcare has failed to resolve numerous, serious

complaints regarding communications with customers and payment of claims.

Also, this Court is entitled to take judicial notice that Alieria continued to employ Timothy Moses well after he admitted to taking non-profit funds without authorization.

104. Because the State has shown a likelihood of success on the merits, and multiple avenues for irreparable harm, Alieria Healthcare should be enjoined immediately from continuing to sell its health care products in Texas during the pendency of this case. Provisions in the Order should also be made for the treatment of funds collected from the over 17,000 members of Alieria Healthcare living in Texas. Alieria currently claims that it is entitled to retain over 70% of these funds for “administrative costs.” During the pendency of this case, however, funds collected from Texas members should be segregated and placed in escrow with this Court, to be disbursed only with a proper accounting, reviewable upon request by TDI, the Office of the Attorney General or this Court.

106. Accordingly, the State of Texas brings suit for a temporary restraining order and temporary injunction against Alieria Healthcare, Inc. to remain in effect during the pendency of this case to be made into a permanent injunction to prevent Alieria Healthcare from engaging in the business of insurance in violation of Texas law after final trial.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

DARREN L. McCARTY
Deputy Attorney General for Civil Litigation

JOSHUA R. GODBEY
Division Chief
Financial Litigation and Charitable Trusts Division

/s/ H. Melissa Mather

H. Melissa Mather
Assistant Attorney General
State Bar No. 24010216
Email: melissa.mather@oag.texas.gov

Christina Cella
Assistant Attorney General
State Bar No. 24106199
Email: christina.cella@oag.texas.gov
Financial Litigation and Charitable Trusts Division
P.O. Box 12548
Austin, Texas 78711-2548
Telephone: (512) 475-2952
Telecopier: (512) 477-2348

Counsel for the State of Texas

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was sent to counsel of record electronically via eFileTexas.gov on July 11, 2019, as indicated below:

Alexander J. Gonzales, P.C.
Corey M. Weideman
DUANE MORRIS LLP
Las Cimas IV, Suite 300
900 S. Capitol of Texas Hwy.
Austin, TX 78746
(512) 277-2251
(512) 277-2301 Fax
ajgonzales@duanemorris.com
cmweideman@duanemorris.com
Counsel for Alieria Healthcare, Inc.

Dwight M. Francis
Aimee C. Oleson
SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP
2200 Ross Ave., 24th Floor
Dallas, TX 75201
(469) 391-7400
(469) 391-7401 Fax
dfrancis@sheppardmullin.com
aolson@sheppardmullin.com
Counsel for Alieria Healthcare, Inc.

Kamal Ghali
Chad K. Lennon
BONDURANT MIXSON & ELMORE LLP
1201 West Peachtree Street NW, Suite
3900
Atlanta, GA 30309
(404) 881-4100
(404) 881-4111 Fax
ghali@bmelaw.com
lennon@bmelaw.com
Of Counsel for Alieria Healthcare, Inc.

/s/ H. Melissa Mather
H. Melissa Mather

VERIFICATION

STATE OF TEXAS

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§
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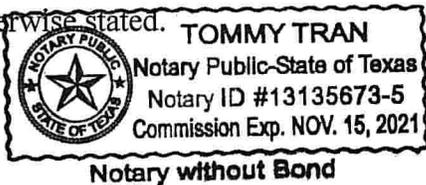
TRAVIS COUNTY

My name is Jamie Walker. I am Deputy Commissioner for Financial Regulation for the Texas Department of Insurance and I am legally competent to make this affidavit. The factual allegations in the first amended petition, paragraphs 8-29, 35-60, 62-78, and 82-84 are either within my personal knowledge or reported to me, from personal knowledge, by other TDI employees, or based on a review of available information existing and available at the time of the filing of this first amended petition.



Jamie Walker
Deputy Commissioner for Financial Regulation

This verification was acknowledged and executed before me, the undersigned authority, on July 11, 2019, by Jamie Walker, a person known to me, and she swore or affirmed that the facts stated above are true and correct and within her personal knowledge except where otherwise stated.



Notary Public in the State of Texas

VERIFICATION

STATE OF TEXAS

§

TRAVIS COUNTY

§

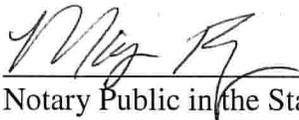
§

My name is Andy Buhl. I am an Investigator for the Texas Department of Insurance and I am legally competent to make this affidavit. The factual allegations in the first amended petition describing consumer complaints are within my personal knowledge or based on a review of available information available at the time of the filing of this first amended petition.



Andy Buhl
Investigator

This verification was acknowledged and executed before me, the undersigned authority, on July 11th, 2019, by Andy Buhl, a person known to me, and she swore or affirmed that the facts stated above are true and correct and within her personal knowledge except where otherwise stated.



Notary Public in the State of Texas

