UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

JAMIE BRYANT, individually and on behalf of all others similarly situated,

Plaintiff,

v. **CASE No.: 16-24818**

WAL-MART STORES, INC.,

Defendant.
_____/

FIRST AMEND CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the Putative Class set forth below, pursuant to Fed.R.Civ.P. 15(a)(1)(B), files this First Amended Complaint against Class Action Complaint Against Defendant.

1. Plaintiff, Jamie Bryant, lost her job at Wal-Mart on April 8, 2016. She is the single mother of two children, ages 10 and six. As a result of losing her job at Wal-Mart, for a period of time she and her young children lost health insurance coverage.

2. Plaintiff now sues Defendant, Wal-Mart Stores, Inc., on behalf of herself and similarly situated present and former employees, for violating the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), alleging that Defendant failed to provide required notices of their right to continued health care coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"). The deficient notice at issue caused her, and her young sons, to lose health coverage.

3. Defendant, the plan sponsor of the Health Plan ("Plan"), has repeatedly violated

ERISA by failing to provide participants and beneficiaries in the Plan with adequate notice, as prescribed by COBRA, of their right to continue their health coverage upon the occurrence of a "qualifying event" as defined by the statute. As a result of these violations, which threaten Class Members' ability to maintain their health coverage, Plaintiff seeks statutory penalties, injunctive relief, attorneys' fees, costs and expenses, and other appropriate relief as set forth herein and provided by law.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 1132(e) and (f), and also pursuant to 28 U.S.C. §§ 1331 and 1355.

5. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2) because the statutory violations at issue took place in this District, and Defendant has business operations in this District.

PARTIES

6. Plaintiff is a Florida resident and former employee of Defendant who was a covered employee and participant in the Plan the day before the termination of her employment on April 8, 2016, which was a qualifying event within the meaning of 29 U.S.C. § 1163(2), rendering her a qualified beneficiary of the Plan pursuant to 29 U.S.C. § 1167(3).

7. Defendant is a foreign corporation with its headquarters in Arkansas, and employed more than 20 employees who were members of the Plan in each year from 2011 to 2016.

8. Defendant is the Plan sponsor within the meaning of 29 U.S.C. §1002(16)(B), and the administrator of the Plan within the meaning of 29 U.S.C. § 1002(16)(A). The Plan provides medical benefits to employees and their beneficiaries, and is an employee welfare

benefit plan within the meaning of 29 U.S.C. § 1002(1) and a group health plan within the meaning of 29 U.S.C. § 1167(1).

FACTUAL ALLEGATIONS

COBRA Notice Requirements

9. The COBRA amendments to ERISA include certain provisions relating to continuation of health coverage upon termination of employment or another "qualifying event" as defined by the statute.

10. Among other things, COBRA requires the plan sponsor of each group health plan normally employing more than 20 employees on a typical business day during the preceding year to provide "each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event … to elect, within the election period, continuation coverage under the plan." 29 U.S.C. § 1161.

11. COBRA further requires the administrator of such a group health plan to provide notice to any qualified beneficiary of their continuation of coverage rights under COBRA upon the occurrence of a qualifying event. 29 U.S.C. § 1166(a)(4). This notice must be "[i]n accordance with the regulations prescribed by the Secretary" of Labor. 29 U.S.C. § 1166(a).

12. The relevant regulations prescribed by the Secretary of Labor concerning notice of continuation of coverage rights are set forth in 29 C.F.R. § 2590.606-4 and the Appendix thereto.

13. Section 2590.606-4(b)(1), states:

> Except as provided in paragraph (b)(2) or (3) of this section, upon receipt of a notice of qualifying event …, the administrator shall furnish to each

qualified beneficiary, not later than 14 days after receipt of the notice of qualifying event, a notice meeting the requirements of paragraph (b)(4) of this section.

14. Section 2590.606-4(b)(4), in turn, provides as follows:

(4) The notice required by this paragraph (b) shall be written in a manner calculated to be understood by the average plan participant and shall contain the following information:

(i) The name of the plan under which continuation coverage is available; and the name, address and telephone number of the party responsible under the plan for the administration of continuation coverage benefits;

(ii) Identification of the qualifying event;

(iii) Identification, by status or name, of the qualified beneficiaries who are recognized by the plan as being entitled to elect continuation coverage with respect to the qualifying event, and the date on which coverage under the plan will terminate (or has terminated) unless continuation coverage is elected;

(iv) A statement that each individual who is a qualified beneficiary with respect to the qualifying event has an independent right to elect continuation coverage, that a covered employee or a qualified beneficiary who is the spouse of the covered employee (or was the spouse of the covered employee on the day before the qualifying event occurred) may elect continuation coverage on behalf of all other qualified beneficiaries with respect to the qualifying event, and that a parent or legal guardian may elect continuation coverage on behalf of a minor child;

(v) An explanation of the plan's procedures for electing continuation coverage, including an explanation of the time period during which the election must be made, and the date by which the election must be made;

(vi) An explanation of the consequences of failing to elect or waiving continuation coverage, including an explanation that a qualified beneficiary's decision whether to elect continuation coverage will affect the future rights of qualified beneficiaries to portability of group health coverage, guaranteed access to individual health coverage, and special enrollment under part 7 of title I of the Act, with a reference to where a qualified beneficiary may obtain additional information about such rights; and a description of the plan's procedures for revoking a waiver of the

right to continuation coverage before the date by which the election must be made;

(vii) A description of the continuation coverage that will be made available under the plan, if elected, including the date on which such coverage will commence, either by providing a description of the coverage or by reference to the plan's summary plan description;

(viii) An explanation of the maximum period for which continuation coverage will be available under the plan, if elected; an explanation of the continuation coverage termination date; and an explanation of any events that might cause continuation coverage to be terminated earlier than the end of the maximum period;

(ix) A description of the circumstances (if any) under which the maximum period of continuation coverage may be extended due either to the occurrence of a second qualifying event or a determination by the Social Security Administration, under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq. or 1381 et seq.) (SSA), that the qualified beneficiary is disabled, and the length of any such extension;

(x) In the case of a notice that offers continuation coverage with a maximum duration of less than 36 months, a description of the plan's requirements regarding the responsibility of qualified beneficiaries to provide notice of a second qualifying event and notice of a disability determination under the SSA, along with a description of the plan's procedures for providing such notices, including the times within which such notices must be provided and the consequences of failing to provide such notices. The notice shall also explain the responsibility of qualified beneficiaries to provide notice that a disabled qualified beneficiary has subsequently been determined to no longer be disabled;

(xi) A description of the amount, if any, that each qualified beneficiary will be required to pay for continuation coverage;

(xii) A description of the due dates for payments, the qualified beneficiaries' right to pay on a monthly basis, the grace periods for payment, the address to which payments should be sent, and the consequences of delayed payment and non-payment;

(xiii) An explanation of the importance of keeping the administrator informed of the current addresses of all participants or beneficiaries under the plan who are or may become qualified beneficiaries; and

> (xiv) A statement that the notice does not fully describe continuation coverage or other rights under the plan, and that more complete information regarding such rights is available in the plan's summary plan description or from the plan administrator.

15. To facilitate compliance with these notice obligations, the United States Department of Labor ("DOL") has issued a Model COBRA Continuation Coverage Election Notice ("Model Notice"), which is included in the Appendix to 29 C.F.R. § 2590.606-4. A copy of this Model Notice is attached hereto as Exhibit A. The DOL website states that the DOL "will consider use of the model election notice, appropriately completed, good faith compliance with the election notice content requirements of COBRA."

16. In the event that a plan administrator declines to use the Model Notice and fails to meet the notice requirements of 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4, the administrator is subject to statutory penalties of up to $110 per participant or beneficiary per day from the date of such failure. 29 U.S.C. § 1132(c)(1). In addition, the Court may order such other relief as it deems proper, including but not limited to injunctive relief pursuant to 29 U.S.C. § 1132(a)(3) and payment of attorneys' fees and expenses pursuant to 29 U.S.C. § 1132(g)(1).

Defendant's Notice Is Inadequate and Fails to Comply with COBRA

17. Defendant only partially adhered to the Model Notice provided by the Secretary of Labor, but only to the extent that served Defendant's best interests, as critical parts are omitted or altered in violation of 29 C.F.R. § 2590.606-4. Defendant authored and disseminated a notice that deviated from the model form in violation of COBRA's requirements. As a result, the Notice failed to provide Plaintiff notice of all required coverage information and hindered Plaintiff's ability to obtain continuation coverage, as explained

further below. A copy of Defendant's notice is attached hereto as Exhibit B. Among other things:

a. The Notice violates 29 C.F.R. § 2590.606-4(b)(4) because Defendant has failed to provide a notice of continuation coverage written in a manner calculated to be understood by the average plan participant. The notice provided to Plaintiff is confusing, ambiguous and critical components, if included, are piecemealed throughout the notice rather than being made clear and understandable to the average plan participant.

b. The Notice violates 29 C.F.R. § 2590.606-4(b)(4)(i) because it fails to provide the name, address and telephone number of the party responsible under the plan for the administration of continuation coverage benefits. Nowhere in the notice provided to Plaintiff is any party or entity clearly and unambiguously identified as the Plan Administrator.

c. The Notice violates 29 C.F.R. § 2590.606-4(b)(4)(iv) because it fails to provide all required explanatory information; there is no explanation that a spouse of the covered employee may elect continuation coverage on behalf of all other qualified beneficiaries.

d. The Notice violates 29 C.F.R. § 2590.606-4(b)(4)(iv) because it fails to provide all required explanatory information; there is no explanation that a legal guardian may elect continuation coverage on behalf of a minor child, or a minor child who may later become a qualified beneficiary.

e. The Notice violates 29 C.F.R. § 2590.606-4(b)(4)(vi) because it fails to provide all required explanatory information. There is no "explanation that a qualified beneficiary's decision whether to elect continuation coverage will affect the future rights of qualified beneficiaries to portability of group health coverage, guaranteed access to individual health coverage, and special enrollment under part 7 of title I of the Act." Further, there is no "reference to where a qualified beneficiary may obtain additional information about such rights."

Plaintiff Jamie Bryant Experiences a Qualifying Event

18. Plaintiff was employed by Wal-Mart as a Store Manager from 2009 to 2016.

19. Plaintiff experienced a qualifying event (termination) on April 8, 2016. Importantly, for purposes of COBRA, Plaintiff was not terminated for gross misconduct.

20. Following this qualifying event, Defendant mailed Plaintiff the notice attached

hereto as Exhibit B on April 26, 2016.

21. The COBRA notice that Plaintiff received was deficient for the reasons set forth in Paragraph 17 above.

Violation of 29 C.F.R. § 2590.606-4(b)(4)(i) – Failure to Identify Plan Administrator

22. Wal-Mart was required to provide "in a manner calculated to be understood by the average plan participant ... the name, address and telephone number of the party responsible under the plan for administration of continuation coverage benefits." 29 C.F.R. § 2590.606-4(b)(4)(i). The Wal-Mart Notice fails to comply with this straightforward requirement.

23. In fact, the word "Plan Administrator" only appears in tiny, nine-point font on the very last page of the Notice and makes no reference as to whether the Plan Administrator is Wal-Mart, or not, or any other entity. It certainly does not affirmatively state, as Wal-Mart claims, that CONEXIS is the Plan Administrator. Instead, who the Plan Administrator is not identified ***at all*** in the notice.

24. In fact, the way the sentence is written near the end of the Notice, as seen below, actually indicates that the Plan Administrator is some entity other than CONEXIS:

> In order to protect your and your family's rights, you should keep CONEXIS informed of any changes in your address and the addresses of family members. You should also keep a copy, for your records, of any notices you send to the **Plan Administrator**.

(Exhibit B, p. 9). (Emphasis added).

25. Who is the Plan Administrator? If it is/was CONEXIS should not this sentence end with "You should also keep a copy, for your records, of any notices you send to the **CONEXIS**."

26. Is it Wal-Mart? If so, then shouldn't then sentence end with "You should also

keep a copy, for your records, of any notices you send to the **Wal-Mart**."

27. In fact, not once is a "Plan Administrator" identified by name anywhere in the Notice.

28. Immediately following this sentence the Notice informs Plaintiff and the putative class members to look to their "Associate Benefits Book" for more information of the plan. (Exhibit B, ¶ 2)("This notice does not fully describe continuation coverage or other rights under the Plan. More information about continuation coverage and your rights under the Plan is available in your Associate Benefits Book.")

29. Then, in its Motion to Dismiss Defendant claims that Plaintiff should have been able to figure out who the Plan's Administrator is/was by looking at the "Associates Benefits Book" section on ERISA, by going to the following Internet site:

> The Associate Benefits Book, which is the Plan's ERISA-required Summary Plan Description as well as part of the Plan's governing documents, itself provides seven additional pages of explanation regarding continuation coverage. *See id.* at 10; *see also* 2016 Associate Benefits Book at 107-13, *currently available at* https://us.Wal-Martone.com/en/Health/Associate-Toolkit/2016/Documents /2147511532/Associate-Benefits-Book-2016.aspx.

(Doc. 14, p. 4).

30. But the website page cited by Defendant cited does not work. There is no information available on it whatsoever. It is inoperable. (*See* Exhibit C, "the page you are looking for is out of stock.") (*last visited on January 25, 2017*). Further, a website (particularly an inoperable website) is not a substitute for a written disclosure. Thus, Wal-Mart's Notice not only fails to adequately explain the procedures for electing coverage, but also misdirects plan participants to an unhelpful website that does not readily provide the information needed to elect continuation

coverage. When contrasted with the unambiguous procedure set forth in the Model Election Notice, Wal-Mart's notice falls far short of what is required.[1]

31. Further, the return address in the upper left-hand corner on the first page of the Notice merely signifies that the Notice is being sent from CONEXIS. It does nothing to clarify whether "CONEXIS," or "Wal-Mart," or some other entity is responsible for administering continuation of coverage benefits. It certainly does not read, "CONEXIS, Plan Administrator for Wal-Mart."

32. To further compound the confusion over which entity is responsible for administering the plan, the Notice informs employees to contact ***either*** CONEXIS or the Wal-Mart Benefits Customer Service at 1-800-421-1362. (*See* Exhibit B, p. 2). This, too, is confusing. Who was Plaintiff supposed to call?

The Notice violates 29 C.F.R. § 2590.606-4(b)(4)

33. Besides failing to identify the party responsible under the plan for the administration of continuation coverage benefits, Wal-Mart's Notice violates 29 C.F.R. § 2590.606-4(b)(4) because Defendant has failed to provide a notice of continuation coverage written in a manner calculated to be understood by the average plan participant. The notice provided to Plaintiff is confusing, ambiguous and critical components, if included, are piecemealed throughout the notice rather than being made clear and understandable to the average plan participant.

34. For example, it is unclear on the face of the notice whom Plaintiff is supposed to contact with questions, Wal-Mart or CONEXIS.

[1] And while the undersigned recognizes that Defendant may have taken down this website because it was the location for the 2016 handbook, and now that this is 2017 another website exists with another address, because the site cited by Defendant in its first Motion to Dismiss is not online or accessible it cannot save Defendant from liability here.

35. Furthering the point that Defendant has failed to provide a notice of continuation coverage written in a manner calculated to be understood by the average plan participant, the notice is simply difficult to read. The notice is comprised of nine single-spaced pages filled with dense paragraphs and written in eye-straining -- nearly microscopic -- nine point font, whereas the Model Notice, by way of example, is written in at least eleven point font. Straining to read and understand the material in this notice creates an unnecessary burden to Plaintiff's understanding of the notice and cuts against Wal-Mart's argument that its Notice is similar to the Model Notice in its form and capacity to be understood. But density and formatting is not the only problem. The notice provided to Plaintiff is also confusing because it lacks the information required by 29 C.F.R. § 2590.606-4(b)(4), but then adds information neither required by 29 C.F.R. § 2590.606-4(b)(4) nor illustrated in the Model Notice. For example, the Model Notice requires language informing a qualified beneficiary of the procedure for making their first payment using the language:

> You must make your first payment for continuation coverage no later than 45 days after the date of your election (this is the date the Election Notice is postmarked). If you don't make your first payment in full no later than 45 days after the date of your election, you'll lose all continuation coverage rights under the Plan. You're responsible for making sure that the amount of your first payment is correct. You may contact [*enter appropriate contact information, e.g., the Plan Administrator or other party responsible for COBRA administration under the Plan*] to confirm the correct amount of your first payment."

36. The notice provided by the Defendant confuses this information by including additional language without context or clarification. Specifically, the notice provided by the Defendant states immediately after the above quoted text that:

> Refunds of $5.00 will be sent automatically and no action on your part is required. To receive refunds for amounts below $5.00, please contact CONEXIS. Acceptance of premium payments by CONEXIS is not an indication that coverage is in force.

(Exhibit B, p. 3).

37. This information is thrown into the notice without context, without an explanation of the "$5.00" refund, and without its presence being required or helpful to understanding any other aspect of the notice. Adding such extraneous information distorts the information provided in the notice and confuses any party seeking to gain an understanding of it.

38. Furthermore, the notice provided to Plaintiff is confusing, ambiguous and critical components, if included, are piecemealed throughout the notice rather than being made clear and understandable to the average plan participant.

39. Instead of categorizing all information relevant to a specific topic, such as payment information, in one section (as the Model Notice does) the notice provided by the Defendant scatters the information it chooses to include throughout the notice. For example, the Model Notice is organized in such a way that the notice requirements are included categorically where all information relevant to a given topic can be found in the same place. The notice provided by the Defendant shatters any chance of a comprehensive understanding with the addition of an "Important Notes" section that is over half a page long and condenses distinct pieces of information that have their own significance, require separate context and lead to unique understandings of continuation coverage.

40. The information in the "Important Notes" section may truly be of importance to the notice itself, but each item (regarding the continuation coverage generally, changes to medical plans, election rights, initial payments, due dates, and extensions of coverage) addressed in that section is discussed separately elsewhere in the notice. These "Important Notes" are thrown at the reader before any context is given and before any understanding of them can be had. Clumping disparate, albeit important, pieces of information onto the second page of a nine-page, dense and obscure document in one bulleted list, with no context or instruction as to how these pieces of

information fit together -- that at the same time -- both confuses and bombards the reader with information that is of great importance, but cannot be understood because it is not fully explained, if at all, until later in the notice.

41. Additionally, before her termination Plaintiff remembered hearing that Wal-Mart's plan permitted "domestic partners" to be covered by Wal-Mart's health insurance plan. And because she was living with a current Wal-Mart employee at the time, she attempted to and finally did contact Wal-Mart with questions about health insurance for her children, and herself, but not before she had already lost coverage. But this was no simple task. It took Plaintiff weeks of calling Wal-Mart before she was finally able to figure out how to become covered under her "significant others" Wal-Mart insurance and, during this entire period, both she and her two young children went without medical insurance. Importantly, CONEXIS had nothing to do with Plaintiff obtaining her new coverage.

42. Wal-Mart, of course, will argue that it has no liability and that CONEXIS is the Plan Administrator. But nowhere throughout the entire Notice does Wal-Mart or CONEXIS ever state, ***even one time***, that CONEXIS is the Plan Administrator.

43. What Wal-Mart has done, however, is ***admit*** that it is the "Plan Sponsor." (*See* Doc. 15, p. 4). That much is undisputed. And, according to long-standing ERISA-mandates, an admitted "plan sponsor" such as Wal-Mart here, must be considered the "administrator" in cases where the plan documents fail to designate a party as the administrator. ERISA § 3(16)(a)(ii), 29 U.S.C. § 1002(16)(a)(ii). That is precisely the situation we are dealing here. Because Wal-Mart is the plan sponsor, and because the plan documents fail to designate a party as the administrator, ERISA § 3(16)(a)(ii), 29 U.S.C. § 1002(16)(a)(ii), Wal-Mart must be considered the Plan Administrator.

44. ERISA-governed plans often have two types of "administrators." *See* Corporate Counsel's Guide to ERISA § 4:6 (2014). The first type—a claims administrator—is the entity that "administers claims for employee welfare benefit plans and has authority to grant or deny claims." *Moore v. Lafayette Life Ins. Co*., 458 F.3d 416, 438 (6th Cir. 2006); *see also* Corporate Counsel's Guide to ERISA § 4:6 ("[A] claims administrator is the party responsible for claims review and approval under the given benefit plan."). The second type—a plan administrator—is usually the "employer who adopted the benefit plan in question." Corporate Counsel's Guide to ERISA § 4:6. "The phrase 'plan administrator' should not be confused with the term 'claims administrator.' . . . [T]h[e] role [of claims administrator] usually does not confer on that party the status of plan administrator." *Id*. Quite often, indeed, the claims administrator and the plan administrator are not the same. *See, e.g., Moore*, 458 F.3d at 424–25, 438 (distinguishing between the employer/plan administrator and the insurance company/claims administrator); *see also Fendler v. CNA Grp. Life Assurance Co*., 247 F. App'x 754, 755, 758–59 (6th Cir. 2007).

45. Simply put, Wal-Mart's Notice was not "written in a manner calculated to be understood by the average plan participant," as to who or which entity is the "Plan Administrator," and certainly did not allow the average plan/participant (or anyone for that matter) to distinguish between the employer/plan administrator and the insurance company/claims administrator. Rather, as required by ERISA § 3(16)(a)(ii), 29 U.S.C. § 1002(16)(a)(ii), because Wal-Mart is the plan sponsor, and because the plan documents fail to designate a party as the administrator, Wal-Mart must be considered the Plan Administrator.

Plaintiff's First Concrete Injury: Informational Injury

46. First, in accordance with the Eleventh Circuit's recent decision in *Church v. Accretive Health, Inc*., 2016 U.S. App. LEXIS 12414, *1 (11th Cir. July 6, 2016), Plaintiffs

suffered a concrete informational injury because Defendant failed to provide Plaintiff and the putative class members with information to which they were entitled to by statute, namely an ERISA-compliant COBRA notice. Through ERISA, Congress has created a new right—the right to receive the required Notice as set out in ERISA—and a new injury—not receiving a proper Notice. The Plaintiff's "inability to obtain [that] information" is therefore, standing alone, "a sufficient injury in fact to satisfy Article III." *Spokeo*, 136 S. Ct. at 1549.

47. Pursuant to ERISA, Plaintiffs were entitled to receive certain information at a specific time after a qualifying event, namely a COBRA notice that complied with ERISA's specific informational requirements for notice. By depriving Plaintiff of this information, Defendant injured Plaintiff and the putative class members she seeks to represent. *Public Citizen v. U.S. Department of Justice*, 491 U.S. 440, 449 (1989); *Federal Election Commission v. Akins*, 524 U.S. 11 (1998).

Plaintiff Second Injury: Loss of Insurance Coverage

48. Plaintiff, along with her children, also suffered a tangible injury in the form of loss of insurance coverage due to Defendant's deficient Notice. This easily gives Plaintiff Article III standing. Although the loss of insurance was only temporary, the loss of insurance to Plaintiff -- and especially to her children -- is a tangible loss of a valuable benefit, i.e., insurance coverage. Besides a paycheck, this is one of the most valuable things employees get in exchange for working for any employer, including Wal-Mart. Insurance coverage has a monetary value, the loss of which is a tangible and economic injury clearly giving rise to Article III standing.

CLASS ACTION ALLEGATIONS

49. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following persons:

All participants and beneficiaries in the Defendant's Health Plan who were sent a COBRA notice by Defendant during the applicable statute of limitations period, as a result of a qualifying event as determined by Defendant.

50. Because no administrative remedies are required, Plaintiff has sought none and seeks to move forward with the putative class action.

51. Numerosity: The Class is so numerous that joinder of all Class members is impracticable. On information and belief, hundreds or thousands of individuals satisfy the definition of the Class.

52. Typicality: Plaintiffs' claims are typical of the Class. The COBRA notice that Defendant sent to Plaintiffs was a form notice that was uniformly provided to all Class members. As such, the COBRA notice that Plaintiffs received was typical of the COBRA notices that other Class Members received, and suffered from the same deficiencies.

53. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class members, they have no interests antagonistic to the class, and have retained counsel experienced in complex class action litigation.

54. Commonality: Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class, including but not limited to:

a. Whether the Plan is a group health plan within the meaning of 29 U.S.C. § 1167(1);

b. Whether Defendant's COBRA notice complied with the requirements of 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4;

c. Whether statutory penalties should be imposed against Defendant under 29

U.S.C. § 1132(c)(1) for failing to comply with COBRA notice requirements, and if so, in what amount;

d. The appropriateness and proper form of any injunctive relief or other equitable relief pursuant to 29 U.S.C. § 1132(a)(3); and

e. Whether (and the extent to which) other relief should be granted based on Defendant's failure to comply with COBRA notice requirements.

55. Class Members do not have an interest in pursuing separate individual actions against Defendant, as the amount of each Class Member's individual claims is relatively small compared to the expense and burden of individual prosecution. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendant's practices and the adequacy of its COBRA notice. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Class Members' claims in a single action.

56. Plaintiff intends to send notice to all Class Members to the extent required by Rule 23(c)(2) of the Federal Rules of Civil Procedure.

57. The names and addresses of the Class Members are available from Defendant's records.

CLASS CLAIM I FOR RELIEF

Violation of 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4

58. Plaintiff repeats and incorporates the allegations contained in the foregoing paragraphs as if fully set forth herein.

59. The Plan is a group health plan within the meaning of 29 U.S.C. § 1167(1).

60. Defendant is the sponsor and administrator of the Plan, and was subject to the continuation of coverage and notice requirements of COBRA.

61. Plaintiffs and the other members of the Class experienced a "qualifying event" as defined by 29 U.S.C. § 1163, and Defendant was aware that they had experienced such a qualifying event.

62. On account of such qualifying event, Defendant sent Plaintiffs and the Class Members a COBRA notice in the form attached hereto as Exhibit B.

63. The COBRA notice that Defendant sent to Plaintiffs and other Class Members violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4 for the reasons set forth in Paragraph 16 above (among other reasons).

64. These violations were material and willful.

65. Defendant knew that its notice was inconsistent with the Secretary of Labor's Model Notice and failed to comply with 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4, but chose to use a non-compliant notice in deliberate or reckless disregard of the rights of Plaintiffs and other Class Members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, pray for relief as follows: Designating Plaintiff's counsel as counsel for the Class;

a. Issuing proper notice to the Class at Defendant's expense;

b. Declaring that the COBRA notice sent by Defendant to Plaintiffs and other Class Members violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4;

c. Awarding appropriate equitable relief pursuant to 29 U.S.C. § 1132(a)(3), including but not limited to an order enjoining Defendant from continuing to use its defective COBRA notice and requiring Defendant to send corrective notices;

d. Awarding statutory penalties to the Class pursuant to 29 U.S.C. § 1132(c)(1) and 29 C.F.R. § 2575.502c-1 in the amount of $110 per day for each Class Member who was sent a defective COBRA notice by Defendant;

e. Awarding attorneys' fees, costs and expenses to Plaintiffs' counsel as provided by 29 U.S.C. § 1132(g)(1) and other applicable law;

f. Granting such other and further relief, in law or equity, as this Court deems appropriate;

g. Designating Plaintiffs' counsel as counsel for the Class;

h. Issuing proper notice to the Class at Defendant's expense;

i. Declaring that the COBRA notice sent by Defendant to Plaintiffs and other Class Members violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4;

j. Awarding appropriate equitable relief pursuant to 29 U.S.C. § 1132(a)(3), including but not limited to an order enjoining Defendant from continuing to use its defective COBRA notice and requiring Defendant to send corrective notices;

k. Awarding statutory penalties to the Class pursuant to 29 U.S.C. § 1132(c)(1) and 29 C.F.R. § 2575.502c-1 in the amount of $110 per day for each Class Member who was sent a defective COBRA notice by Defendant;

l. Awarding attorneys' fees, costs and expenses to Plaintiffs' counsel as provided by 29 U.S.C. § 1132(g)(1) and other applicable law; and

m. Granting such other and further relief, in law or equity, as this Court deems appropriate.

JURY TRIAL

66. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff and the Class demand a trial by jury.

Dated this 26th day of January, 2017.

Respectfully submitted,

/s/Brandon J. Hill

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to:

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