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5  
6 **UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

7  
8 CORAL RECHNER, individually and  
on behalf of all other similarly situated,

Case No.: \_\_\_\_\_

9 Plaintiff,

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

10 CALIFORNIA VEGETABLE SPECIALTIES,  
11 INC.,

12 Defendant,  
\_\_\_\_\_ /

13 **CLASS ACTION COMPLAINT**

14  
15 1. Plaintiff Coral Rechner (“Plaintiff”) files this Class Action Complaint  
16 alleging California Vegetable Specialties, Inc. (“California Vegetable Specialties” or  
17 “Defendant”) violated the Employee Retirement Income Security Act of 1974 (“ERISA”),  
18 as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”),  
19 by failing to provide Plaintiff with a timely COBRA notice that complies with the law.

20 2. In America, medical problems contribute to 66.5% of all  
21 bankruptcies.<sup>1</sup> Access to health coverage does not just impact Americans’ health, it also

22  
23 <sup>1</sup> “Medical Bankruptcy: Still Common Despite the Affordable Care Act.” David U.  
24 Himmelstein, Robert M. Lawless, Deborah Thorne, Pamela Foohey, and Steffie  
Woolhandler. *American Journal of Public Health*, March 1, 2019 (online Feb. 6, 2019).

1 has a serious financial impact on their lives. As a result, COBRA was enacted to ensure  
2 that individuals who were receiving health insurance from their employers, and  
3 subsequently leave the company, have the opportunity to elect COBRA continuation  
4 coverage for themselves and their family members to avoid a gap in coverage.

5 3. Yet, some employers, who find COBRA coverage to be inherently  
6 expensive,<sup>2</sup> fail to provide former employees with access to timely statutorily required  
7 information to make an informed decision about obtaining COBRA coverage. As a result,  
8 these individuals lose access to health coverage for themselves, and their dependent family  
9 members, and suffer grave medical and financial complications.

10 4. Here, Defendant's failure to provide a timely COBRA notice caused  
11 Plaintiff economic injuries in the form of lost health insurance and created economic  
12 barriers to Plaintiff's ability to access medical care. Additionally, the failure to provide a  
13 timely COBRA notice caused Plaintiff to avoid doctor visits, for fear of the costs associated  
14 with having to pay for medical needs out-of-pocket.

15 5. California Vegetable Specialties, the plan sponsor and plan administrator of  
16 the California Vegetable Specialties' group health benefit plan (the "Plan"), has repeatedly  
17 violated ERISA by failing to provide participants and beneficiaries in the Plan with adequate  
18 notice, as prescribed by COBRA, of their right to continue their health coverage upon the

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19  
20 <sup>2</sup> According to one Congressional research service study, "...[The] average claim costs for  
21 COBRA beneficiaries exceeded the average claim for an active employee by 53%. The  
22 average annual health insurance cost per active employee was \$7,190, and the COBRA  
23 cost was \$10,988.14. The Spencer & Associates analysts contend that this indicates that the  
24 COBRA population is sicker than active-covered employees and that the 2% administrative  
fee allowed in the law is insufficient to offset the difference in actual claims costs." *Health  
Insurance Continuation Coverage Under COBRA*, Congressional Research Service, Janet  
Kinzer, July 11, 2013.

1 occurrence of a “qualifying event” as defined by the statute within forty-four (44) days. 29  
2 C.F.R. § 2590.606-4(b)(2).

3 6. Simply put, Defendant’s failure to provide a timely COBRA notice violates  
4 the law. Defendant failed to provide a timely COBRA notification to allow Plaintiff an  
5 opportunity to make an informed decision within the statutory time-period about Plaintiff’s  
6 healthcare options for her and her family.

7 7. As a result of this violation, which threatens Class Members’ ability to  
8 maintain their health coverage, Plaintiff seeks statutory penalties, injunctive relief,  
9 attorneys’ fees, costs and expenses, and other appropriate relief as set forth herein and  
10 provided by law.

11 **JURISDICTION AND VENUE**

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

14 9. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2) and  
15 ERISA § 502(e)(2), because the events giving rise to these claims arose in this district.

16 **PARTIES**

17 10. Plaintiff is a natural person residing in San Joaquin County, California.

18 11. Plaintiff is a former employee of Defendant and received health coverage  
19 from Defendant. Plaintiff was thus a participant/beneficiary in the Plan before Plaintiff’s  
20 termination on November 22, 2019, which constituted a qualifying event within the  
21 meaning of 29 U.S.C. § 1163(2), rendering Plaintiff a qualified beneficiary of the Plan  
22 pursuant to 29 U.S.C. § 1167(3). Importantly, Plaintiff was not terminated for gross  
23 misconduct.

24 12. Defendant is a California corporation with a principal office in Solano  
County, California.



1 be included in a COBRA letter as set forth in 29 C.F.R. § 2590.606-4<sup>3</sup>:

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

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

6 (ii) Identification of the qualifying event;

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

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

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

19 (vi) An explanation of the consequences of failing to elect  
20 or waiving continuation coverage, including an explanation  
that a qualified beneficiary's decision whether to elect

21 <sup>3</sup> In fact, the Department of Labor provides a Model COBRA form on its website. All  
22 California Vegetable Specialties had to do was complete the model form, which makes it  
23 easy on employers, and send it to Plaintiff timely so Plaintiff could make an informed  
decision about coverage. Instead, California Vegetable Specialties failed to provide any  
information to Plaintiff, and Plaintiff lost coverage.

1 continuation coverage will affect the future rights of  
2 qualified beneficiaries to portability of group health  
3 coverage, guaranteed access to individual health coverage,  
4 and special enrollment under part 7 of title I of the Act, with  
5 a reference to where a qualified beneficiary may obtain  
6 additional information about such rights; and a description  
7 of the plan's procedures for revoking a waiver of the right to  
8 continuation coverage before the date by which the election  
9 must be made;

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

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

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

17 (x) In the case of a notice that offers continuation coverage  
18 with a maximum duration of less than 36 months, a  
19 description of the plan's requirements regarding the  
20 responsibility of qualified beneficiaries to provide notice of  
21 a second qualifying event and notice of a disability  
22 determination under the SSA, along with a description of the  
23 plan's procedures for providing such notices, including the  
24 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;

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

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

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

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

12 20. To facilitate compliance with these notice obligations, the United States  
13 Department of Labor (“DOL”) issued a Model COBRA Continuation Coverage Election  
14 Notice (“Model Notice”), which is included in the Appendix to 29 C.F.R. § 2590.606-4.  
15 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 21. In the event that a plan administrator declines to use the Model Notice and  
17 fails to meet the notice requirements of 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4, the  
18 administrator is subject to statutory penalties of up to \$110 per participant or beneficiary  
19 per day from the date of such failure. 29 U.S.C. § 1132(c)(1). In addition, the Court may  
20 order such other relief as it deems proper, including but not limited to injunctive relief  
21 pursuant to 29 U.S.C. § 1132(a)(3) and payment of attorneys’ fees and expenses pursuant  
22 to 29 U.S.C. § 1132(g)(1). Such is the case here. Defendant failed to timely use the Model  
Notice and failed to meet the notice requirements of 29 U.S.C. § 1166 and 29 C.F.R. §  
2590.606-4.

23 *Plaintiff’s Experience*

1           22. Plaintiff is a former employee of Defendant and received health coverage  
2 from Defendant. Plaintiff was thus a participant/beneficiary in the Plan before Plaintiff's  
3 termination on November 22, 2019, which constituted a qualifying event within the  
4 meaning of 29 U.S.C. § 1163(2), rendering Plaintiff a qualified beneficiary of the Plan  
pursuant to 29 U.S.C. § 1167(3).

5           23. Importantly, Plaintiff was not terminated for gross misconduct.

6           24. Defendant failed to send Plaintiff a timely COBRA notice within forty-  
four (44) days of the qualifying event.

7           25. As a result, Plaintiff lost health insurance coverage.

8           26. While uninsured, Plaintiff intentionally stayed away from the doctor  
9 fearing any type of doctor visit would result in crippling debt.

10                   ***Plaintiff's First Concrete Injury: Informational Injury***

11           27. Defendant's failure to send a timely COBRA notice caused Plaintiff an  
12 informational injury when Defendant failed to provide Plaintiff with information to which  
13 Plaintiff was entitled to by statute, namely a COBRA election notice containing all  
14 information required by 29 C.F.R. § 2590.606-4(b)(4) and 29 U.S.C. § 1166(a) within the  
15 statutory time frame. Through ERISA and then COBRA, Congress created a right—the  
16 right to timely receive the required COBRA election notice—and an injury—not receiving  
a timely and proper election notice with information required by 29 C.F.R. § 2590.606-  
4(b)(4) and 29 U.S.C. § 1166(a). Defendant injured Plaintiff and members of the putative  
class by failing to provide the required information timely.

17                   ***Plaintiff's Second Concrete Injury: Loss of Insurance Coverage***

18           28. Besides the informational injury suffered, Plaintiff also suffered a tangible  
19 injury in the form of economic loss, specifically the loss of insurance coverage and creating  
20 economic barriers to Plaintiff's ability to access medical care, due to Defendant's untimely  
21 COBRA election notice. Besides a paycheck, insurance is one of the most valuable things  
employees get in exchange for working for an employer like Defendant. Insurance  
coverage has a monetary value, the loss of which is a tangible economic injury.

22           29. Defendant cannot cure its failure to send a timely COBRA notice with a  
23 late notice. Pursuant to 29 C.F.R. § 2590.606-4(b)(2), Plaintiff, as a participant in the Plan,  
24 was entitled to notice of Plaintiff's right to elect COBRA coverage within forty-four (44)



1 days of Plaintiff's qualifying event. Here, Defendant failed to provide a timely notice.

2 30. Defendant has no administrative remedies Plaintiff was required to exhaust  
3 prior to bringing suit.

4 31. Additionally, because no such administrative remedies exist, any attempt  
5 to exhaust the same would have been futile.

6 **CLASS ACTION ALLEGATIONS**

7 32. Plaintiff brings this action as a class action pursuant to the Federal Rules  
8 of Civil Procedure on behalf of the following persons:

9 **All participants and beneficiaries in Defendant's Plan who were**  
10 **not sent a timely COBRA notice by Defendant during the**  
11 **applicable statute of limitations period as a result of a qualifying**  
12 **event, as determined by Defendant's records, and did not elect**  
13 **continuation coverage.**

14 33. No administrative remedies exist as a prerequisite to Plaintiff's claims on  
15 behalf of the Putative Class. As such, any efforts related to exhausting such non-existent  
16 remedies would be futile.

17 34. Numerosity: The Class is so numerous that joinder of all Class Members is  
18 impracticable. On information and belief thousands of individuals satisfy the definition of  
19 the Class.

20 35. Typicality: Plaintiff's claims are typical of the Class. Defendant uniformly  
21 failed to provide a timely COBRA notice to all Class Members. As such, Plaintiff's claim  
22 is typical of that of the other Class Members who suffered from the same deficiencies.

23 36. Adequacy: Plaintiff will fairly and adequately protect the interests of the  
24 Class members, Plaintiff has no interests antagonistic to the class, and has retained counsel  
experienced in complex class action litigation.

37. 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:

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

(ii) Whether Defendant's failure to timely send a COBRA notice violated

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

(iii) 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;

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

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

38. 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.

39. Plaintiff intends to send notice to all Class Members to the extent required under the Federal Rules of Civil Procedure. The names and addresses of the Class Members are available from Defendant's records.

### **COUNT I**

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

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

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

42. Plaintiff 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.

43. On account of such qualifying event, Defendant failed to send Plaintiff and the Class Members a timely COBRA notice.

44. Defendant's failure to send Plaintiff and other Class Members a timely COBRA notice violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-4.

1 45. These violations were material and willful.

2 46. Defendant knew that it should have sent timely notice consistent with the  
3 Secretary of Labor's Model Notice and failed to comply with 29 U.S.C. § 1166(a) and 29  
4 C.F.R. § 2590.606-4, in deliberate or reckless disregard of the rights of Plaintiff and other  
Class Members.

5 **PRAYER FOR RELIEF**

6 ***WHEREFORE***, Plaintiff, individually and on behalf of the Class, prays for relief  
7 and judgment against Defendant as follows:

- 8 a. Designating Plaintiff's counsel as counsel for the Class;
- 9 b. Issuing proper notice to the Class at Defendant's expense;
- 10 c. Declaring that Defendant's failure to send a timely COBRA notice to  
Plaintiff and other Class Members violated 29 U.S.C. § 1166(a) and 29 C.F.R. § 2590.606-  
4;
- 11 d. Awarding appropriate equitable relief pursuant to 29 U.S.C. § 1132(a)(3),  
12 including but not limited to an order enjoining Defendant from continuing to fail to send  
timely COBRA notices and requiring Defendant to send corrective notices;
- 13 e. Awarding statutory penalties to the Class pursuant to 29 U.S.C. § 1132(c)(1)  
14 and 29 C.F.R. § 2575.502c-1 in the amount of \$110 per day for each Class Member who  
15 was sent a defective or untimely COBRA notice by Defendant;
- 16 f. Awarding attorneys' fees, costs and expenses to Plaintiff's counsel as  
provided by 29 U.S.C. § 1132(g)(1) and other applicable law; and
- 17 g. Granting such other and further relief, in law or equity, as this Court deems  
18 appropriate.

19 **JURY DEMAND**

20 Plaintiff demands a trial by jury on all issues so triable.

21 Dated this 26<sup>th</sup> day of June, 2020.

22 Respectfully submitted,

1 By: /s/ Scott Edelsberg  
2 Scott Edelsberg  
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***Counsel for Plaintiff  
and the Proposed Class***

\* Applications for admission *pro hac vice* to be filed

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CORAL RECHNER, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Joaquin, California (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Scott Edelsberg, Edelsberg Law, P.A., 20900 NE 30th Ave., Suite 417 Aventura, FL 33180 (305) 975-3320

DEFENDANTS

CALIFORNIA VEGETABLE SPECIALTIES, INC.

County of Residence of First Listed Defendant Solano, California (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Employee Retirement Income Security Act of 1974 ("ERISA")

Brief description of cause: This is a putative class action pursuant to the ERISA as amended by COBRA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 06/26/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Scott Edelsberg

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Alleges California Vegetable Specialties Failed to Send Ex-Employee Timely COBRA Notice](#)

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