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June 9, 2025

VIA ONLINE FILING

Labor & Workforce Development Agency
Website: <https://dir.govfa.net/418>

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

CVS Pharmacy, Inc.
Attn: CEO and/or President
One CVS Drive
Woonsocket, RI 02895

Re: Christopher Dubin v. CVS Pharmacy, Inc.

**NOTICE PURSUANT TO LABOR CODE SECTION 2699.3, *et seq.*; VIOLATIONS OF
LABOR CODE SECTIONS 221, 223, 224, 2802, 2804 BY CVS PHARMACY, INC.**

To: California Labor and Workforce Development Agency; CVS Pharmacy, Inc.

From: Christopher Dubin, on behalf of all aggrieved employees as defined below

This letter is intended to comply with the requirements of California Labor Code Private Attorneys General Act of 2004 (PAGA), California Labor Code section 2698, *et seq.*, including section 2699.3 with respect to notice of violations of the Labor Code and Wage Order by CVS Pharmacy, Inc. (“Respondent”). Unless the Labor & Workforce Development Agency proceeds against the Respondent, Christopher Dubin (“Claimant”), intends to file against Respondent a PAGA cause of action on his behalf and on behalf all other “aggrieved employees” that seeks civil penalties, costs, and attorney fees under PAGA.

Please note that this firm represents the interests of Claimant and:

all other current and former California employees of Respondent with a Tobacco/Nicotine and/or Working Sp/PartChg deduction from his or her wages as a result of his or her participation in Respondent’s medical benefits plan(s) within the relevant time period. (“aggrieved employees”),

June 9, 2025

Christopher Dubin – PAGA

Page 2

Claimant performed work for Respondent as a California employee during the relevant time period. Claimant alleges that Respondent violated Labor Code §§221, 223, 224, 2802, 2804, in addition to claims under the Business and Professions Code §17200, *et seq.*

Claimant alleges Respondent subjected him and the aggrieved employees to unlawful costs associated with Respondent's employee health insurance plan that denies benefits under the employee benefit plan at the legally mandated charge resulting in violations for, among other things, violations of the California Insurance Code, California Labor Code, and California Unfair Competition Law, and the Employee Retirement Income Security Act.

Respondent subjected Claimant and the aggrieved employees to a tobacco/nicotine surcharge in order to access and obtain the benefits under the health insurance plan(s) offered by Respondent. The tobacco/nicotine surcharge is listed as "Tobacco/Nicotine" under the Post Tax Deductions portion of the aggrieved employees' wage statements. Additionally, Respondent subjected Claimant and the aggrieved employees to a working spousal surcharge in order to access and obtain the benefits under the health insurance plan(s) offered by Respondent. The working spousal surcharge is listed as "WorkingSp/PartChg" under the Post Tax Deductions portion of the aggrieved employees' wage statements. Claimant alleges Respondent's policy and practice subjecting him and the aggrieved employees to a "Tobacco/Nicotine" and/or "WorkingSp/PartChg" surcharge is in violation of Labor Code §§221, 223, 224, as unpermitted, unlawful withholding of wages.

Claimant further alleges that Respondent failed to indemnify him and the aggrieved employees for costs incurred in direct consequence of the discharge of their duties to Respondent. Respondent required Claimant and the aggrieved employees to bear the expenses and/or costs associated with Respondent's provided health insurance plan for its employees through Respondent's assessment of a "Tobacco/Nicotine" and/or "WorkingSp/PartChg" surcharge to Claimant and the aggrieved employees, without reimbursement or expenses. Respondent has wrongfully withheld indemnification for the expenses incurred by Claimant and the aggrieved employees, in violation of Labor Code §§2802, 2804.

Please advise if the LWDA has any objection to our client amending the Complaint (attached hereto as **Exhibit A**) to file a PAGA cause of action to seek any and all appropriate civil penalties for these underlying factual allegations and Labor Code violations, pursuant to Labor Code §2699, *et seq.*

Very truly yours,

THE MYERS LAW GROUP, A.P.C.



Andriana N. Bravo, Esq.

Attorneys for Christopher Dubin and the aggrieved employees

Enclosure

Exhibit A

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Attorneys for Plaintiff Christopher Dubin,
and all others similarly situated.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHRISTOPHER DUBIN, on behalf of
himself and all others similarly situated

PLAINTIFF,

v.

CVS PHARMACY, INC., a Rhode Island
Corporation; and DOES 1 through 100,
inclusive

DEFENDANTS.

Case No.: **25STCV16422**

CLASS ACTION COMPLAINT

- 1. Unlawful Deduction of Wages;**
- 2. Failure to Indemnify Necessary Expenditures**
- 3. Violations of Employee Retirement Income Security Act;**
- 4. Unfair Competition**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

This is an action brought by Plaintiff CHRISTOPHER DUBIN (“Plaintiff”), on his behalf and all others similarly situated, against CVS PHARMACY, INC., a Rhode Island Corporation, and other as of yet unnamed DOE Defendants 1-100 (hereinafter collectively “Defendants”) alleging claims benefits under the employee benefit plan, including but not limited to unlawful costs associated with the employee health insurance plan in violation of California Labor Code, Unfair Competition Law, the California Insurance Code, and the Employee Retirement Income Security Act (“ERISA”). Plaintiff seeks damages, attorneys’ fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges as follows:

II. GENERAL ALLEGATIONS

1. This class action arises from unlawful costs associated with Defendants’ employee health insurance plan that deny benefits under the employee benefit plan at the legally mandated charge resulting in violations for, among other things, Defendants’ violation of the California Insurance Code, California Labor Code, and California Unfair Competition Law, and the Employee Retirement Income Security Act (“ERISA”).

2. Plaintiff seeks, among other things, all money, wages, interest, and cost of suit, including attorney’s fees.

3. Plaintiff seeks to represent the following Class:

All current and former California employees of Defendants with a Tobacco/Nicotine and/or Working Sp/PartChg deduction from his or her wages as a result of his or her participation in Defendants’ medical benefits plan(s) at any time from six years prior to the filing of this action through the date of class certification. (The “Class”).

4. This Court is the proper court, and this action is properly filed in Los Angeles County and in this judicial district because Defendants do business in Los Angeles County, out of Los Angeles, California, and because Defendants’ obligations and liabilities arise therein.

5. Plaintiff is a current hourly non-exempt employee for Defendants in the state of California and a resident of California.

6. Plaintiff is informed and believes, and thereon alleges that Defendant CVS PHARMACY, INC., is a Rhode Island Corporation.

1 7. The true names and capacities, whether individual, corporate, associate, or
2 otherwise, of DOES 1 through 100 are unknown to Plaintiff, who therefore sues the DOE
3 Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names and
4 capacities when they have been ascertained.

5 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
6 and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each
7 acting as agents and/or employees, and/or under the direction and control of each of the other
8 Defendants, and that said acts and failures to act were within the course and scope of said agency,
9 employment and/or direction and control. Plaintiff is informed and believes, and thereon alleges,
10 that at all times material hereto Defendants were and are the agents of each other.

11 9. Plaintiff is informed and believes, and thereon alleges, that Defendants DOES 1
12 through 100 are the partners, owners, shareholders, managers, joint employers, or alter egos of
13 Defendants, and were acting on behalf of Defendants in the payment of wages to Plaintiff and the
14 Class.

15 10. As alleged herein Plaintiff is employed by Defendants, and Plaintiff performed
16 work for Defendants in Los Angeles County in the state of California.

17 **III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

18 11. Plaintiff and the Class worked as employees in the state of California for
19 Defendants whose primary business is the operation of a healthcare company.

20 12. Throughout the period of six (6) years prior to the filing of this action through the
21 date of class certification (“Class Period”), Plaintiff and all Class members were and are employees
22 of Defendants in the state of California.

23 13. Defendants denied Plaintiff and the Class benefits under their health insurance
24 plans at the legally mandated charge that resulted in unlawful deduction of wages or monies paid
25 to Plaintiff and the Class. Plaintiff and the Class overpaid for benefits under the employee benefit
26 plan.

27 14. Throughout the Class Period, Defendants knowingly and willfully engaged and
28 continue to engage in an unlawful scheme to deny benefits under their employee benefit plan at

1 the legally compliant rate.

2 15. Plaintiff is a member of and seeks to be the representative for the Class of similarly
3 situated employees who all have been exposed to and have suffered Defendants' unlawful practices
4 as alleged herein.

5 16. During the Class Period, Plaintiff and the Class were eligible to enroll in a health
6 insurance plan(s) offered to employees of Defendants.

7 17. During the Class Period, Defendants subjected Plaintiff and the Class members to
8 a tobacco/nicotine surcharge in order to access and obtain the benefits under the health insurance
9 plan(s) offered by Defendants. The tobacco/nicotine surcharge is listed as "Tobacco/Nicotine"
10 under the Post Tax Deductions portion of Plaintiff and the Class members' wage statements.

11 18. During the Class Period, Defendants subjected Plaintiff and the Class members to
12 a working spousal surcharge in order to access and obtain the benefits under the health insurance
13 plan(s) offered by Defendants. The working spousal surcharge is listed as "WorkingSp/PartChg"
14 under the Post Tax Deductions portion of Plaintiff and the Class members' wage statements.

15 19. Defendants' policy and practice of issuing surcharges to Plaintiff and the Class in
16 order to access the benefits under the health insurance plan(s) violates California Insurance Code.

17 20. California Insurance Code §10965.9 mandates that a health insurer may use only
18 the following characteristics of an individual, and any dependent thereof, for purposes of
19 establishing the rate of the individual health benefit plan covering the individual and the eligible
20 dependent thereof, along with the health benefit plan selected by the individual: (1) age, (2)
21 geographic region, and (3) whether the plan covers an individual or family, as described in the
22 PPACA.

23 21. California Insurance Code §10965.9(b) expressly provides that the rate for a health
24 benefit plan subject to this section shall not vary by any factor not described in Section 10965.9.

25 22. California Insurance Code §10965(b) defines "Dependent" to include "spouse".

26 23. During the Class Period, Defendants' policy and practice subjecting Plaintiff and
27 the Class to a "Tobacco/Nicotine" and/or "WorkingSp/PartChg" surcharge is in violation of the
28 Labor Code because the same is an unpermitted, unlawful withholding of wages.

1 24. During the Class Period, Defendants required Plaintiff and the Class members to
2 bear the expenses and/or costs associated with Defendants' provided health insurance plan for its
3 employees through Defendants' assessment of a "Tobacco/Nicotine" and/or
4 "WorkingSp/PartChg" surcharge to Plaintiff and the Class, without reimbursement or expenses.

5 25. The underpayment of wages, Labor Code violations and Wage Order violations
6 upon Plaintiff and the Class are a consequence of Defendants' unlawful policies and practices
7 which were centrally devised, implemented, communicated, and applied to Plaintiff and the Class.

8 26. Because of Defendants' unlawful conduct, Plaintiff and the Class have been and
9 continue to be systematically deprived of their entitlement to benefits of the Labor Code, Business
10 and Professions Code, California Insurance Code, and Employee Retirement Income Security Act,
11 to the detriment of Plaintiff, the Class, and the public at large.

12 **CLASS DEFINITION AND CLASS ALLEGATIONS**

13 27. Plaintiff brings this action on his own behalf and on behalf of all others similarly
14 situated, pursuant to California Code of Civil Procedure §382, and as a member of the Class
15 defined as follows:

16 All current and former California employees of Defendants with a
17 Tobacco/Nicotine and/or Working Sp/PartChg deduction from his or her wages as
18 a result of his or her participation in Defendants' medical benefits plan(s) at any
time from six (6) years prior to the filing of this action through the date of class
certification. (The "Class").

19 **Sub-Class 1**

20 All current and former California employees of Defendants with a
21 Tobacco/Nicotine deduction from his or her wages as a result of his or her
22 participation in Defendants' medical benefits plan(s) at any time from six (6) years
prior to the filing of this action through the date of class certification.
("Tobacco/Nicotine Charge" Sub-Class).

23 **Sub-Class 2**

24 All current and former California employees of Defendants with a Working
25 Sp/PartChg deduction from his or her wages as a result of his or her participation
26 in Defendants' medical benefits plan(s) at any time from four (4) years prior to the
filing of this action through the date of class certification. ("Spouse" Sub-Class).

27 28. Plaintiff reserves the right to amend or otherwise alter the class definition presented
28 to the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in response to

1 facts learned through discovery, legal arguments advanced by Defendants or otherwise.

2 29. Further, this action is brought for the benefit of the public, who are entitled to
3 restitution of those funds improperly withheld by Defendants.

4 30. This action has been brought and may be properly maintained as a class action
5 pursuant to the provisions of the Code of Civil Procedure §382 and other applicable law.

6 31. **Numerosity:** Members of the Class are so numerous that their individual joinder is
7 impracticable. It is possible to ascertain the number of former and current employees who are
8 members of the proposed class, but they are so numerous that joinder is impracticable. The
9 proposed Class includes future employees (persons who are hired by defendant within the class
10 period, but who are not now class members as current or former employees) whose joinder is
11 currently impossible. The precise number of Class members and their addresses can be determined
12 by Defendants' business records and will become known to Plaintiff through discovery. Class
13 members may be notified of the pendency of this action by mail, e-mail, the internet, or published
14 and posted notice.

15 32. **Typicality:** Plaintiff's claims are typical of the claims of members of the proposed
16 classes. Defendants employed Plaintiff during the statutory period, and Plaintiff has been subjected
17 to Defendants' unlawful employment practices, as alleged in this Complaint.

18 33. **Adequacy of Class Representative:** Plaintiff will fairly and adequately protect the
19 interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and
20 Plaintiff has retained competent and experienced counsel. The interests of Class members will be
21 fairly and adequately protected by Plaintiff and his counsel.

22 34. **Common Questions of Law and Fact:** Common questions of law and fact exist
23 as to all Class members and predominate over any questions affecting solely individual members
24 of the proposed Class:

- 25 a. Whether Defendants unlawfully withheld wages from Plaintiff and the Class
26 members in violation of Labor Code §§ 221, 223, 224;
- 27 b. Whether Plaintiff and the Class were denied access to employee health benefits
28 under Defendants' health insurance benefit plan(s) absent an unlawful surcharge

- 1 labeled “Tobacco/Nicotine” and/or “WorkingSp/PartChg” every pay period;
- 2 c. Whether Defendants engaged in a pattern or practice of failing to indemnify
- 3 Plaintiff and the Class for necessary expenditures and losses incurred from
- 4 Defendants’ assessment of a “Tobacco/Nicotine” and/or Working Sp/PartChg
- 5 surcharge to Plaintiff and the Class, in violation of the applicable Labor Code
- 6 provisions including §§ 2802, 2804;
- 7 d. Whether Defendants’ assessment of a Tobacco/Nicotine” and/or
- 8 “WorkingSp/PartChg” employee health benefit surcharge violate California
- 9 Insurance Code §§ 10965.9 and 10965;
- 10 e. Whether Defendants’ assessment of “Tobacco/Nicotine” charge discriminates
- 11 against Plaintiff and the members of the Class based on a “health status-related
- 12 factor;
- 13 f. Whether Defendants’ assessment of “Tobacco/Nicotine” charge is in violation of
- 14 29 U.S.C. § 1182(b)(1);
- 15 g. Whether Defendants’ have a wellness program in place that satisfies the
- 16 requirements of 29 C.F.R. § 2590.702(f);
- 17 h. Whether Defendants improperly retained, appropriated or deprived Plaintiff and
- 18 members of the proposed Plaintiff class of the use of monies or sums to which they
- 19 were legally entitled;
- 20 i. Whether Defendants engaged in unlawful, unfair, and/or fraudulent business
- 21 practices;
- 22 j. Whether Defendants, and each of them, was/were participants in the alleged
- 23 unlawful conduct;
- 24 k. Whether Defendants engaged in unfair practice and violated California Business
- 25 and Professions Code §17200 *et seq.*; and
- 26 l. The nature and extent of class-wide injury and measure of damages for the injury.

27 35. **Superiority and Substantial Benefit:** A class action is the superior method for the

28 fair and efficient adjudication of this controversy. Defendants implemented illegal schemes that

1 are generally applicable to the members of the proposed plaintiff class and sub-classes. Damages
2 suffered by each Class member may be relatively small given the burden and expense of individual
3 prosecution of the complex and expensive litigation necessitated by Defendants' conduct. Further,
4 it would be virtually impossible for the Class members to redress the wrongs done to them on an
5 individual basis. Even if Class members could afford such individual litigation, the court system
6 could not. By contrast, the class action device presents far fewer management difficulties, and
7 provides the benefits of a single adjudication, economies of scale, and comprehensive supervision
8 by a single court.

9 36. Plaintiff knows of no difficulty that will be encountered in the management of this
10 litigation that would preclude its maintenance as a class action. Plaintiff is informed and believes,
11 and on that basis alleges, that the amount of money due each Class member as economic damages
12 is ascertainable from Defendants' records or may readily be determined by other means.

13 37. The Classes should also be certified because:

- 14 a. The prosecution of separate actions by individual Class members would create a
15 risk of inconsistent or varying adjudications with respect to individual Class
16 members, which would establish incompatible standards of conduct for
17 Defendants;
- 18 b. The prosecution of separate actions by individual Class members creates the risk
19 of adjudication with respect to them, which would, as a practical matter, be
20 dispositive of the interests of the other Class members not parties to the
21 adjudications, or would substantially impair or impede their ability to protect their
22 interests; and
- 23 c. Defendants have acted or have refused to act on grounds generally applicable to
24 the class and/or the general public, thereby making final and injunctive relief, as
25 well as declaratory relief, with respect to the Class as a whole, appropriate.

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FIRST CAUSE OF ACTION
UNLAWFUL DEDUCTION OF WAGES
Violation of Labor Code §§ 221, 223, 224
(Against all Defendants)

38. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 37 of this Complaint.

39. Pursuant to Labor Code § 218, “[n]othing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due them under this article.”

40. Labor Code § 221 prohibits deduction from wages due or earned. *Quillian v. Lion Oil Co.* (1979) 96 Cal.App.3d 156, 160.

41. Labor Code §§ 221 and 224 make it unlawful for any employer to withhold or divert a portion of any employee’s wages when not empowered to do so by state or federal law. The one tool that is not available to the employer is an employment agreement by which the employer requires its employees to consent to unlawful deductions from their wages. *Davis v. Farmers Ins. Exchange* (2016) 245 Cal.App.4th 1302, 1332; *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1124.

42. Pursuant to Labor Code § 221, “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

43. Pursuant to Labor Code § 223, “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

44. Labor Code § 224 provides, in relevant part, “. . . Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee’s wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the

1 standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or
2 when a deduction to cover health and welfare or pension plan contributions is expressly authorized
3 by a collective bargaining or wage agreement.”

4 45. Plaintiff and the Class were denied access to employee health benefits under
5 Defendants’ health insurance benefit plan(s) based on an unlawful surcharge labeled
6 “Tobacco/Nicotine” and/or “WorkingSp/PartChg” assessed every pay period. These surcharges
7 were deducted from and/or withheld from Plaintiff and the Class members’ wages as “Post Tax
8 Deductions”.

9 46. The “Tobacco/Nicotine” and/or “WorkingSp/PartChg” employee health benefit
10 surcharge violate California Insurance Code §§ 10965.9 and 10965. Defendants are not
11 empowered to make deductions for “Tobacco/Nicotine” and/or “WorkingSp/PartChg” as a
12 condition of benefits under health benefit plans.

13 47. Plaintiff and the Class members have been harmed by Defendants’ violation of
14 Labor Code §§ 221, 223, and 224 and seek these unpaid wages pursuant to Labor Code §218,
15 attorney’s fees and costs pursuant to Labor Code § 218.5, and prejudgment interest pursuant to
16 Labor Code § 218.6.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO INDEMNIFY NECESSARY EXPENDITURES**

19 **Violation of Labor Code §§ 2802, 2804**

20 (Against all Defendants)

21 48. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
22 paragraphs 1 through 37 of this Complaint

23 49. Pursuant to Labor Code § 2802(a), “[a]n employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
26 even though unlawful, unless the employee, at the time of obeying the directions, believed them
27 to be unlawful.”

28 50. Pursuant to Labor Code § 2804, “[a]ny contract or agreement, express or implied,

1 made by any employee to waive the benefits of this article or any part thereof, is null and void,
2 and this article shall not deprive any employee or his personal representative of any right or remedy
3 to which he is entitled under the laws of this State.”

4 51. Plaintiff and the Class members have incurred necessary expenditures in direct
5 consequence of the discharge of their duties to Defendants, and/or their obedience to Defendants’
6 directions, including the reduction of their wages due to “Post Tax Deductions” assessed by
7 Defendants during each pay period to offset costs associated with Defendants’ provided health
8 insurance plan.

9 52. During the Class Period, Defendants required Plaintiff and the Class members to
10 bear the expenses and/or costs associated with Defendants’ provided health insurance plan for its
11 employees through Defendants’ assessment of a “Tobacco/Nicotine” and/or
12 “WorkingSp/PartChg” charge to Plaintiff and the Class, without reimbursement or expenses.

13 53. Defendants’ actions in requiring Plaintiff and the Class to expend money in direct
14 consequence of the discharge of their duties to Defendants, and/or their obedience to Defendants’
15 directions, but failing to fully indemnify and reimburse for those expenses, is unlawful under the
16 laws and regulations of the State of California.

17 54. Defendants have wrongfully withheld indemnification for the expenses incurred by
18 Plaintiff and the Class. In violation of California law, Defendants have systematically, knowingly,
19 and willfully refused to perform their obligations to indemnify and reimburse Plaintiff and the
20 Class.

21 55. As a direct result, Plaintiff and the Class have suffered, and continue to suffer,
22 substantial losses related to the use and enjoyment of such money, lost interest on such money,
23 and expenses and attorneys’ fees, expenses, and costs of suit.

24 56. Plaintiff and the Class are entitled to recover, and seek, an award from Defendants
25 of the full amount of the losses incurred for necessary expenditures, plus interest on all such
26 amounts, injunctive relief, declaratory judgment that any contract between Defendants and the
27 Class members that purports to waive the protections afforded under Labor Code §§2802 is null
28 and void, reasonable attorney’s fees and costs of suit, and all other appropriate remedies provided

1 by Labor Code §§2802, or any other provision of the Labor Code.

2 **THIRD CAUSE OF ACTION**

3 **VIOLATIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT**

4 **Failure to Provide a Permissible Wellness Program**

5 (Against all Defendants)

6 57. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
7 paragraphs 1 through 37 of this Complaint.

8 58. During the Class Period, Defendants subjected Plaintiff and the Class members to
9 a tobacco/nicotine surcharge in order to access and obtain the benefits under the health insurance
10 plan(s) offered by Defendants. The tobacco/nicotine surcharge is listed as “Tobacco/Nicotine”
11 under the Post Tax Deductions portion of Plaintiff and the Class members’ wage statements.

12 59. Any group health plan, and a health insurance issuer offering health insurance
13 coverage in connection with a group health plan, is prohibited from discriminating against any
14 individual in providing coverage or charging premiums based on a “health status related factor”,
15 including the use of tobacco. See 29 U.S.C. § 1182(b)(1).

16 60. As applied pursuant to 29 U.S.C. § 1182, a “health status related factor” includes
17 tobacco and/or nicotine usage.

18 61. 29 U.S.C. § 1182(b)(2)(B) provides, that a group health plan, and a health insurance
19 issuer offering group health insurance coverage, can establish premium discounts or rebates or
20 modify otherwise applicable copayments or deductibles in return for adherence to programs of
21 health promotion and disease prevention.

22 62. 29 C.F.R. § 2590.702(b)(2)(ii) provides “A group health plan or group health
23 insurance issuer may vary benefits, including cost-sharing mechanisms (such as a deductible,
24 copayment, or coinsurance), based on whether an individual has met the standards of a wellness
25 program that satisfies the requirements of paragraph (f) of this section.”

26 63. Discriminating against any individual in providing coverage or charging premiums
27 based on a “health status related factor” can be offset through an individual’s adherence to
28 programs of health promotion and disease prevention, also referred to as a wellness program, that

1 meets the requirements of 29 C.F.R. § 2590.702(f).

2 64. To broaden access to affordable health insurance coverage, the Patient Protection
3 and Affordable Care Act amended ERISA to prohibit any health insurer or medical plan from
4 discriminating against any participant in providing coverage or charging premiums based on a
5 “health status-related factor”, including the use of tobacco. Pursuant to this rule, a plan “may not
6 require any individual (as a condition of enrollment or continued enrollment under the plan) to pay
7 a premium or contribution which is greater than such premium or contribution for a similarly
8 situated individual enrolled in the plan on the basis of any health status-related factor in relation
9 to the individual or to an individual enrolled under the plan as a dependent of the individual.” 29
10 U.S.C. § 1182(b)(1); 42 U.S.C. § 300gg-4(b)(1).

11 65. Plaintiff is informed and believes, and thereon alleges, that Defendants do not have
12 a wellness program in place, or do not have a wellness program in place that satisfies the
13 requirements of 29 C.F.R. § 2590.702(f), such that Plaintiff and the Class are not provided an
14 opportunity to avoid and/or offset the “Tobacco/Nicotine” surcharge that is assessed every pay
15 period.

16 66. As a result of Defendants’ failure to have a satisfactory wellness program in place,
17 Defendants’ assessment of a “Tobacco/Nicotine” charge on Plaintiff and the Class for their
18 respective tobacco/nicotine usage is an unlawful discrimination based on a “health status related
19 factor”.

20 67. Defendants’ “Tobacco/Nicotine” charge has discriminated against and continues to
21 discriminate against Plaintiff and the Class members based on a health status-related factor, in
22 violation of 29 U.S.C. § 1182(b). 29 U.S.C. § 1182(b) is a provision of ERISA that Plaintiff and
23 Class members may enforce pursuant to 29 U.S.C. § 1132(a)(3).

24 68. Plaintiff and Class members have been harmed by Defendants’ violation and seek
25 restitution and reimbursement of all wages that have been unlawfully withheld, interest, attorney’s
26 fees, costs, and any other relief deemed just and proper. *See* 29 U.S.C. § 1132(g)(1).

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1 **FOURTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **Violation of Business and Professions Code §§17200, *et seq.***

4 (Against all Defendants)

5 69. Plaintiff and the class re-allege and incorporate by reference and re-allege each and
6 every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint
7 as if fully set forth herein.

8 70. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
9 least since four (4) years before the filing of this action, Defendants have engaged in a pattern and
10 practice of acts of unfair competition in violation of B&PC §17200, including the practices alleged
11 herein.

12 71. Defendants, and each of them, are “persons” as defined by Business and
13 Professions Code §17201.

14 72. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff sues
15 on his own behalf and on behalf of the current, former, and future employees of the Defendants
16 that have been denied wages, due to Defendants’ unfair business practices.

17 73. Plaintiff and the Class have suffered injuries-in-fact and have lost money as a result
18 of the Defendants’ unfair competition alleged herein.

19 74. Defendants have previously or continue to engage in unlawful, unfair, and/or
20 fraudulent business practices, as alleged in this Complaint, in violation of California’s B&PC
21 §17200 *et seq.* by:

- 22 a. Failing and refusing to pay Plaintiff and the Class members all earned wages in
23 violation of Labor Code §§221, 223, and 224;
- 24 b. Unlawfully assessing a Tobacco/Nicotine” and/or “WorkingSp/PartChg”
25 employee health benefit surcharge to Plaintiff and the Class in violation of the
26 California Insurance Code §§ 10965.9 and 10965; and
- 27 c. Failing and refusing to reimburse and indemnify Plaintiff and the Class members
28 for necessary expenditures in violation of Labor Code §§2802.

1 75. These allegations constitute unfair business practices and/or unlawful business
2 practices in violation of California B&PC §17200, *et seq.*

3 76. Defendants have denied claims benefits under the employee benefit plan, including
4 but not limited to unlawful costs associated with the employee health insurance plan in violation
5 of California Labor Code and California Insurance Code. As a result of Defendants' unfair
6 business practices, Defendants have avoided the payment of money and wages and reaped unfair
7 benefits and illegal profits at the expense of Plaintiff, the Class members, and others similarly
8 situated, and the members of the public. Defendants should be made to disgorge their ill-gotten
9 gains and to restore them to the Class, including Plaintiff.

10 77. Plaintiff and the Class members seek full restitution of said monies, as necessary
11 and according to proof, to restore any and all monies withheld and/or acquired by Defendants by
12 means of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff
13 seeks, on behalf of all current and former employees of Defendants, restitution of monies retained
14 by Defendants. Plaintiff further seeks on behalf of himself and the Class members, the appointment
15 of a receiver, as necessary, to establish the total restitutionary relief from Defendants. The
16 restitution includes all wages withheld by Defendants as a result of the unfair, unlawful, and/or
17 fraudulent business practices; including interest thereon. Absent a statutory provision specifically
18 governing the type of claim at issue, the prejudgment interest rate is 10 percent. The acts
19 complained of herein occurred, at least in part, within the last four (4) years preceding the filing
20 of the Complaint.

21 78. Plaintiff is informed and believes and thereon alleges that at all times herein
22 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
23 prohibited by California B&PC §17200, thereby depriving their employees and the Class
24 members, the minimum standards and conditions due to them under the California labor laws and
25 California Insurance Code as specifically described herein. Plaintiff further seeks an order
26 requiring Defendants to identify by full name, telephone number, and last known address
27 employees who worked or still work for Defendants for the Class members from four (4) years
28 preceding the filing of the original Complaint through the date of class certification. Plaintiff

1 further seeks an order requiring Defendants to timely pay restitution to all current and former
2 employees, including back wages, and interest.

3 79. By and through its unfair, unlawful, and/or fraudulent business practices and acts
4 described herein, Defendants have deprived Plaintiff and all persons similarly situated of valuable
5 rights and benefits guaranteed by law, all to their detriment.

6 80. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
7 to and do seek such relief as may be necessary to restore to them the money and property which
8 Defendants have acquired, or of which Plaintiff and class members have been deprived by means
9 of the herein described unfair, unlawful, and/or fraudulent business practices.

10 81. Plaintiff, and all persons similarly situated, and all persons in interest, are further
11 entitled to and do seek a declaration that the above-described business practices are unfair,
12 unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein
13 described unfair, unlawful, and/or fraudulent business practices.

14 82. Plaintiff and the Class members request attorney's fees and costs pursuant to Code
15 of Civil Procedure §1021.5 since this action is brought to vindicate important rights of a large class
16 and the public.

17 **IV. PRAYER FOR RELIEF**

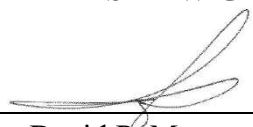
18 WHEREFORE, Plaintiff prays for judgment as follows:

- 19 1. An order that the action be certified as a class action;
- 20 2. An order that Plaintiff be appointed class representative;
- 21 3. An order that counsel for Plaintiff be appointed class counsel;
- 22 4. An order requiring Defendants to identify, by name, email address, address and
23 telephone number all current and former California employees of Defendants with a
24 Tobacco/Nicotine and/or Working Sp/PartChg deduction from his or her wages as a
25 result of his or her participation in Defendants' medical benefits plan(s) at any time
26 from six (6) years prior to the filing of this action through the date of class certification
- 27 5. For all unpaid wages due to Plaintiff and each Class member, in amounts to be proven
28 at trial;

6. For restitution of all unpaid wages due to Plaintiff and each Class member;
7. For general damages including compensatory damages according to proof;
8. For pre-judgment interest as allowed by Labor Code §§218.6 and Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
9. For all applicable interest on damages, wages, and expenses due;
10. For injunctive relief to prevent further violations of ERISA and applicable law, and the California Labor Code;
11. For declaratory relief that Defendants engaged in unfair practices;
12. For declaratory relief that Defendants violated Labor Code §§ 221, 223, 224, and 2802, California Insurance Code §§ 10965.9 and 10965, and are in violation of ERISA and applicable law;
13. For restitution of all moneys due to Plaintiffs and Class members, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;
14. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§ 218.5, 2802, Code of Civil Procedure §1021.5, *et seq.*, and all other applicable law, and;
15. For all such other and further relief that the Court may deem just and proper.

Date: June 3, 2025

THE MYERS LAW GROUP, A.P.C.

By: 

David P. Myers,
Jason Hatcher,
Andriana N. Bravo
Attorneys for Plaintiff and all others similarly
situated

SUMMONS

(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CVS PHARMACY, INC., a Rhode Island Corporation; and DOES 1 through 100, inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

CHRISTOPHER DUBIN, on behalf of himself and all others similarly situated

Electronically FILED by
Superior Court of California,
County of Los Angeles
6/06/2025 2:31 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Trinh, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): LOS ANGELES SUPERIOR COURT

312 North Spring Street, Los Angeles, CA 90012 (Spring Street Courthouse)

CASE NUMBER:
(Número del Caso):

25STCV16422

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

David P. Myers, The Myers Law Group, A.P.C., 9327 Fairway View Place, Ste. 100, Rancho Cucamonga, CA 91730; 909-919-2027

DATE: 06/06/2025

Clerk, by

S. Trinh

, Deputy

(Fecha) David W. Slayton, Executive Officer/Clerk of Court (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):