UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION

CHARLES THOMAS,
on behalf of himself, and on behalf of
all others similarly situated,

Plaintiffs,

v. Case No.:

SODEXO, INC.,

Defendant.
_____/

CLASS ACTION COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), Plaintiff, Charles Thomas (hereinafter, referred to as the "Plaintiff"), hereby files this Class Action Complaint alleging Sodexo, Inc. ("Defendant") violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), by failing to provide them with a COBRA notice that complies with the law.

1. Despite having access to the Department of Labor's Model COBRA form, a copy of which is attached as Exhibit "A," Defendant chose not to use the model form— presumably to save money by pushing terminated employees away from electing COBRA.[1]

2. Instead of utilizing the DOL Model Notice and sending a single, comprehensive COBRA notice "written in a manner calculated to be understood by the average plan participant" containing all required information, Defendant concocted its own notification dual notice

[1] In fact, according to one Congressional research service study, "…[The] average claim costs for COBRA beneficiaries exceeded the average claim for an active employee by 53%. The average annual health insurance cost per active employee was $7,190, and the COBRA cost was $10,988.14. The Spencer & Associates analysts contend that this indicates that the 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.

scheme. Specifically, Defendant sent eligible participants two written documents, mailed under separate cover. Each document contained only some of the required information, and other critical information was omitted entirely from either document. Defendant's COBRA dual-notification scheme creates confusion and challenges for recipients, the precise problems the DOL sought to avoid by publishing the Model Notice.

3. The deficient COBRA notices at issue in this lawsuit both confused and misled Plaintiff. It also caused Plaintiff economic injuries in the form of lost insurance coverage and, as well as informational injuries.

4. Defendant, the plan sponsor and plan administrator of the Sodexo Plan (the "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 insurance coverage upon the occurrence of a "qualifying event" as defined by the statute.

5. Defendant's COBRA notice and process violates the law. Rather than including all information required by law in a single notice, written in a manner calculated to be understood by the average plan participant, Defendant's COBRA notification process instead offers only part of the legally required information in haphazard and piece-meal fashion.

6. For example, Defendant's "COBRA Enrollment Notice," sent to Plaintiff and attached as Exhibit "B," violates 29 C.F.R. § 2590.606-4(b)(4)(v) because Exhibit "B" does not explain how to enroll in COBRA or include a physical election form (both of are contained in Department of Labor's model notice).

7. Instead, Exhibit "B" merely directs plan participants to a "catch-all" general H.R. phone number to enroll in COBRA, and website, operated by a third-party guised as Defendant benefits department, rather than explaining how to actually enroll in COBRA. But Exhibit "B" contains no instructions on how to actually enroll if one calls the phone number, or when one

visits the website.

8. Additionally, Exhibit "B" violates 29 C.F.R. § 2590.606-4(b)(4)(i) because it fails to identify the plan administrator. It also violates 29 C.F.R. § 2590.606-4(b)(4)(i) by failing to identify the names of the applicable plans. Furthermore, Exhibit "B" violates 29 C.F.R. § 2590.606-4(b)(4)(vi) because it fails to provide all required explanatory information.

9. Because Exhibit "B" omits the above critical pieces of information, it collectively violates 29 C.F.R. § 2590.606–4(b)(4), which requires the plan administrator of a group-health plan to provide a COBRA notice "written in a manner calculated to be understood by the average plan participant."

10. To compound the confusion, Defendant sent Plaintiff a second letter, attached as Exhibit "C," containing information on COBRA in a document labeled only "Important Information." While Exhibit "C" contains some of the information omitted from Exhibit "B," it does not contain all of it.

11. As a result of receiving the COBRA enrollment notice, and the subsequent letter attached as Exhibit "C," Plaintiff failed to understand the notice and, thus, Plaintiff could not make an informed decision about his insurance coverage and ultimately lost his insurance coverage.

12. Plaintiff suffered tangible injuries. Plaintiff lost his insurance coverage due to Defendant deficient COBRA forms. In addition to 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 and an economic injury.

13. Additionally, Plaintiff was forced to forego medical care because he lost his insurance benefits.

14. Defendant's deficient COBRA notice also caused Plaintiff an informational injury

when Defendant failed to provide them with information to which he was entitled to by statute, namely a compliant COBRA election notice containing all information required by 29 C.F.R. § 2590.606-4(b)(4) and 29 U.S.C. § 1166(a). Through ERISA and then COBRA, Congress created a right—the right to receive the required COBRA election notice—and an injury—not receiving a 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 the class members he seeks to represent by failing to provide all information in its notice required by COBRA.

15. Defendant's dual notice scheme and deficient COBRA notices created a risk of harm that others would not receive written notice in manner calculated to be understood by the average plan participant, and thus be deprived of the opportunity to make informed decisions about their insurance coverage – the very interests Congress sought to protect through ERISA and COBRA.

16. As a result of these violations, which threaten Class Members' ability to maintain their insurance 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, VENUE, AND PARTIES

17. 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.

18. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2). Additionally, ERISA § 502(e)(2) provides that venue is proper "where the plan is administered, where the breach took place, or where a defendant resides or may be found." 29 U.S.C. § 1132(e)(2). Because the breach at issue took place in this District, venue is also proper.

19. Plaintiff is a former employee of Defendant. He was covered under Defendant's Health Plan, making him a participant/beneficiary under the Plan.

20. Plaintiff experienced a qualifying event within the meaning of 29 U.S.C. § 1163(2), rendering him a qualified beneficiary of the Plan pursuant to 29 U.S.C. § 1167(3).

21. Defendant is a Maryland corporation registered to do business in the State of Tennessee. Defendant employed more than 20 employees who were members of the Plan in each relevant year.

22. 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

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

24. 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.

25. Notice is of enormous importance. The COBRA notification requirement exists because employees are not expected to know instinctively of their right to continue their healthcare coverage.

26. Moreover, existing case law makes it ostensibly clear that notice is not only

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