

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BETTY MORRIS and DONALD REED,
on behalf of themselves, and on behalf of
all others similarly situated,

Plaintiffs,

v.

Case No.: 8:20-cv-00105-SDM-CPT

US FOODS, INC.,

Defendant.

FIRST AMENDED CLASS ACTION COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), Named Plaintiffs, Betty Morris and Donald Reed (hereinafter, referred to as the “Plaintiffs”), file this First Amended Class Action Complaint as a matter of right alleging US Foods, 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.

BRIEF OVERVIEW

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 Defendant money by pushing terminated employees away from electing COBRA.¹

2. Put another way, instead of utilizing the DOL Model Notice and sending a single

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.

COBRA notice “written in a manner calculated to be understood by the average plan participant” containing all information required by law, to save money Defendant instead opted to break the information into multiple documents, mailed separately under different cover, containing bits and pieces of information on COBRA, both of which are still missing critical information.

3. In fact, the DOL Model Notice was designed to avoid precisely the issues caused by Defendant confusing and piecemeal COBRA rights notification process.

4. The deficient COBRA notices at issue in this lawsuit both confused and misled Plaintiffs. They also caused Plaintiffs economic injuries in the form of lost health insurance and unpaid medical bills, as well as informational injuries.

5. Defendant, the admitted plan sponsor and plan administrator of the US Foods Health & Welfare 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 health coverage upon the occurrence of a “qualifying event” as defined by the statute.

6. 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.

7. For example, Defendant’s “COBRA Enrollment Notice,” sent to Plaintiffs and attached as Exhibit “B,” violates Section 2590.606–4(b)(4)(viii). This mandates that a COBRA notice must include an “explanation of the maximum period for which continuation coverage will be available” and an “explanation of the continuation coverage termination date.” Defendant violated the regulation by failing to include in the notice the specific date coverage will end for Plaintiffs and the putative class members.

8. Additionally, it violates 29 C.F.R. § 2590.606-4(b)(4)(v) because Exhibit “B” itself never actually explains how to enroll in COBRA, nor does it bother including a physical election form (both of which the model Department of Labor form includes). 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.

9. It also violates 29 C.F.R. § 2590.606-4(b)(4)(i) by failing to identify the name of the plan, US Foods Health & Welfare Benefit Plan. Furthermore, Exhibit “B” violates 29 C.F.R. § 2590.606-4(b)(4)(vi) because it fails to provide all required explanatory information.

10. 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.”

11. To compound the confusion, Defendant sent Plaintiffs a second letter, attached as Exhibit “C,” containing information on COBRA in a document labeled “Important Information About Your COBRA Continuation Coverage.” The two documents were mailed under separate cover, only further adding to the confusion. And, while Exhibit “C” contains some of the information missing from Exhibit “B,” it does not contain all of it.

12. As a result of receiving the COBRA enrollment notice, and the subsequent letter attached as Exhibit “C,” Plaintiffs failed to understand the notice and, thus, Plaintiffs could not make an informed decision about their health insurance and lost health coverage.

13. Plaintiffs suffered multiple economic injuries giving rise to Article III standing. Plaintiffs lost their health insurance coverage due to Defendant deficient COBRA forms. In

addition to a paycheck, health 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. Additionally, Plaintiffs were forced to forego necessary medical care because they lost their health insurance benefits.

14. By not providing Plaintiffs with a COBRA election notice containing all information required by 29 C.F.R. § 2590.606-4(b)(4) and 29 U.S.C. § 1166(a), Defendant caused Plaintiffs the type of quintessential informational injury the Supreme Court has long held provides Article III standing.

15. 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 Plaintiffs and the class members they seek to represent by failing to provide all information in its notice required by COBRA.

16. As a result of these violations, which threaten Class Members' ability to maintain their health coverage, Plaintiffs seek 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. Plaintiffs are former employees of Defendant. Both were covered under

Defendant's Health Plan, making both participants/beneficiaries under the Plan.

20. Both Plaintiffs experienced a qualifying event within the meaning of 29 U.S.C. § 1163(2), rendering them qualified beneficiaries of the Plan pursuant to 29 U.S.C. § 1167(3).

21. Defendant is an Illinois corporation but is registered to do business in the state of Florida. Defendant employed more than 20 employees who were members of the Plan in each year from 2012 to 2018.

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 required to be delivered to covered employees but to qualifying beneficiaries, as well.

27. 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).

28. To facilitate compliance with 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. (See 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.”

29. 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). Such is the case here. Defendant failed to 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, as set forth below.

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

30. Defendant partially adhered to the Model Notice provided by the Secretary of Labor, but only to the extent that served Defendant’s best interests by discouraging individuals from electing coverage, as critical parts are omitted or altered in violation of 29 C.F.R. § 2590.606-4. Among other things:

- a. **Defendant's COBRA forms violate 29 C.F.R. § 2590.606–4(b)(4)(viii) because they fail to include the required explanation of a specific continuation coverage termination date;**
- b. **Defendant's COBRA forms violate 29 C.F.R. § 2590.606–4(b)(4)(vi) because they fail to include basic information, like the name of the plan under which continuation coverage is available;**
- b. **Defendant's COBRA forms violate 29 C.F.R. § 2590.606–4(b)(4)(v) because they fail to adequately explain the procedures for electing coverage, nor do they bother including a physical election form (both of which the model Department of Labor form includes);**
- c. **Defendant's COBRA forms violate 29 C.F.R. § 2590.606-4(b)(4)(vi) because they fail to provide all required explanatory information; and, finally,**
- d. **Defendant's COBRA forms violate 29 C.F.R. § 2590.606-4(b)(4) because Defendant failed to provide a notice written in a manner calculated to be understood by the average plan participant.**

31. Defendant's COBRA notice confused Plaintiffs and resulted in their inability to make an informed decision as to electing COBRA continuation coverage. In fact, Plaintiffs did not understand the notice and, further, Plaintiffs were unable to elect COBRA because of Defendant's confusing and incomplete COBRA notice.

32. Defendant's attempt to cure the above deficiencies with a separate COBRA notice, attached as Exhibit "C," only adds to the confusion. As a result, Plaintiffs could not make an informed decision about their health insurance and lost health coverage.

Facts Specific to Named Plaintiff Donald Reed

33. Plaintiff, Donald Reed was employed by Defendant for approximately seven (7) years during which time he obtained medical insurance for himself through Defendant's group health plan.

34. In May 2017, Plaintiff went out on medical leave.

35. In or around November 2017, Plaintiff Reed's employment was terminated. Mr.

Reed was not terminated for “gross misconduct” and was therefore eligible for continuation coverage.

36. Plaintiff Reed’s termination was a qualifying event (termination of employment), which triggered Defendant’s COBRA obligations.

37. Following this qualifying event, Defendant caused its COBRA Administrator, Alight Solutions, to mail him the deficient COBRA enrollment notice attached hereto as Exhibit “B.” Also, Defendant caused Alight to mail Plaintiff its “Important Information About Your COBRA Continuation Coverage”, containing some – but not all – of the information missing from its COBRA enrollment notice.

38. The deficient COBRA notice that Plaintiff Reed received was violative of COBRA’s mandates for the reasons set forth herein and left him without health insurance options after he experienced of a qualified event.

39. Plaintiff Reed suffered a tangible injury in the form of lost health insurance coverage because of Defendant’s deficient COBRA notice.

40. Plaintiff Reed suffered a tangible injury in the form of lost prescription benefits because of Defendant’s deficient COBRA notice. Specifically, Plaintiff Reed was unable to obtain prescription medications necessary for the treatment of his underlying health conditions.

41. Plaintiff Reed suffered a tangible injury in the form of lost medical treatment. Specifically, Plaintiff was unable to obtain medical care for his underlying health conditions.

42. Plaintiff Reed also suffered a tangible injury because of Defendant’s deficient COBRA notice in that he lost control over his own medical treatment, including the ability to continue treating with his prior health care providers and the ability to select his future health care providers. Ultimately, the only healthcare options available to Plaintiff Reed were “free” clinics.

43. Plaintiff Reed also suffered injury in the form of stress and anxiety created by the loss of his health insurance coverage because of Defendant's deficient COBRA notice.

44. Finally, Plaintiff Donald Reed suffered an informational injury as a result of Defendant's deficient COBRA notice because he was never provided all information to which he was entitled by 29 C.F.R. § 2590.606-4(b).

45. No administrative remedies exist as a prerequisite to Plaintiff Donald Reed's claims on behalf of the Putative Class as he is not making a claim for benefits or payment for benefits. Nor does he challenge the termination of his health benefits after he experienced a qualifying event. Rather, Plaintiff Donald Reed is simply challenging the legal sufficiency of Defendant's post-employment COBRA notices. As such, any efforts related to exhausting under such non-existent remedies are/were futile.

Facts Specific to Named Plaintiff Betty Morris

46. Plaintiff Morris worked for Defendant for approximately forty-two (42) years, and, during that time, was also a participant in Defendant's health plan.

47. On or around June 4, 2017, Plaintiff Morris's employment was terminated. Ms. Morris was not terminated for "gross misconduct" and was therefore eligible for continuation coverage.

48. Plaintiff Morris's termination was a qualifying event (termination of employment), which triggered Defendant's COBRA obligations.

49. Following this qualifying event, Defendant caused its COBRA Administrator, Alight Solutions, to mail Plaintiff the deficient COBRA enrollment notice attached hereto as Exhibit "B." Also, Defendant caused Alight to mail Plaintiff Morris the attached "Important Information About Your COBRA Continuation Coverage", containing some – but not all – of the information missing from its COBRA enrollment notice.

50. The deficient COBRA notice that Plaintiff Morris received was violative of COBRA's mandates for the reasons set forth herein.

51. Plaintiff Morris suffered a tangible injury in the form of loss of insurance coverage for her and her daughter due to Defendant's deficient COBRA election notice.

52. Plaintiff Morris suffered a tangible injury in the form of lost medical treatment. Specifically, Plaintiff Morris did not seek medical treatment because she did not have insurance coverage due to Defendant's deficient COBRA election notice.

53. Finally, Plaintiff Morris suffered an informational injury as a result of Defendant's COBRA notice because she was never provided all information to which she was entitled by 29 C.F.R. § 2590.606-4(b).

54. No administrative remedies exist as a prerequisite to Plaintiff Morris's claims on behalf of the Putative Class as she is not making a claim for benefits or payment for benefits. Nor does she challenge the termination of her health benefits after she experienced a qualifying event. Rather, Plaintiff Morris she is challenging the legal sufficiency of Defendant's post-employment COBRA notices. As such, any efforts related to exhausting under such non-existent remedies are/were futile.

Violation of 29 C.F.R. § 2590.606-4(b)(4)(viii) – Failure to provide an explanation of the continuation coverage termination date

55. The governing regulation clearly requires Defendant to provide a COBRA election notice that discloses "an explanation of the maximum period for which continuation coverage will be available under the plan" in addition to "an explanation of the continuation coverage termination date." 29 C.F.R. § 2590.606-4(b)(4)(viii).

56. This information not only informs Plaintiffs of the length of their coverage, if elected, but also the specific date on which such coverage will terminate which is crucial to

deciding whether to elect coverage.

57. Continuation coverage is not designed to be permanent and electing it assumes that at some point in the future Plaintiff will enroll in a new plan or go uninsured. Election notices must be sufficient to permit the discharged employee to make an informed decision whether to elect coverage.

58. Plaintiffs could not truly make an informed decision regarding continuation coverage without knowing the specific date coverage will end and they were left uninsured.

59. COBRA requires specific information be disclosed specifically to avoid type of confusion surrounding a matter as important as electing health insurance.

60. Furthermore, a fiduciary breaches its duties by materially misleading plan participants, regardless of whether the fiduciary's statements or omissions were made negligently or intentionally. Without the required disclosures, Defendant's notice does not permit Plaintiffs to make an informed decision and is therefore deficient.

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

61. Defendant's COBRA forms violate 29 C.F.R. § 2590.606-4(b)(4)(i) because they fail to identify the name of the plan under which continuation coverage is available, namely the "US Foods Health & Welfare Benefit Plan."

62. Defendant's Notice, Exhibit "B," fails to comply with this straightforward requirement. This information is also missing from Exhibit "C."

***Violation of 29 C.F.R. 29 C.F.R. § 2590.606-4(b)(4)(v)
Failure to Adequately Explain How to Enroll in COBRA***

63. The governing statute clearly requires that "[t]he notice ... shall be written in a manner calculated to be understood by the average plan participant and shall contain the following information:...(v) [a]n 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.” 29 C.F.R. § 2590.606-4(b)(4)(v).

64. Defendant’s COBRA Enrollment Notice (Exhibit “B”) fails to adequately explain the procedures for electing coverage. Defendant’s “Important Information About Your COBRA Continuation Coverage Rights (Exhibit “C”) doesn’t either. By failing to including explain the procedures for electing coverage, Defendant interfered with Plaintiffs’ ability to elect COBRA continuation coverage. And, by failing to adequately explain the procedures for electing coverage, Defendant prevented Plaintiffs from understanding their rights under COBRA and how to make an informed decision about continuation coverage.

65. Instead, Defendant’s COBRA enrollment notice merely directs plan participants to a general phone number, and website, rather than explaining how to actually enroll in COBRA. To further compound the confusion, the Defendant COBRA Enrollment Notice contains no instructions on how to actually enroll if one calls the phone number, or visits the website. The telephone number provided by Defendant in its COBRA Enrollment Notice is a “catch-all” number individuals can call with questions about anything benefit-related, including retirement funds, etc., as is the website.

66. This “catch-all” number is actually a phone number to a third-party administrator, Alight Solutions (an entity never identified in the COBRA notice), as is on the website.

67. A “catch-all” number provided by Defendant and then routed to a third-party call center designed to answer anything HR-related simply cannot meet the strict informational statutory requirements of 29 C.F.R. § 2590.606-4(b)(4)(v) required of all COBRA notices as to enrollment. The same is true as to the generic website link provided. Merely directing individuals to a website link and assuming he/she will be able to figure out how to enroll in COBRA once the website is visited simply is very different than actually explaining how to

enroll in COBRA.

68. Unlike the Defendant COBRA notice, the Model DOL notice provides a near fool-proof way to elect COBRA coverage by providing a physical election form to mail in, the date it is due, the name and address to where election forms should be sent, spaces for the names, social security numbers, and type of coverage elected by each plan participant or beneficiary. (Exhibit “A,” p. 7).

69. Defendant COBRA Enrollment Notice simply does not contain “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” as required by 29 C.F.R. § 2590.606-4(b)(4)(v).

70. Merely telling Plaintiffs and the putative class members to call a generic 1-800 number, or visit a catch-all website, operated by a third-party and hope they are able to figure out how to enroll after they call is not what is legally required in a COBRA notice. Instead, the notice itself must contain information on how to enroll. Defendant’s notice simply does not.

Violation of 29 C.F.R. § 2590.606-4(b)(4)(vi) – Failure to Include Explanatory Information

71. Exhibit “B” violates 29 C.F.R. § 2590.606-4(b)(4)(vi) because it fails to provide all required explanatory information.

72. For example, there is simply 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.

Violation of 29 C.F.R. § 2590.606-4(b)(4) – Failure to Provide COBRA Notice Written in a Manner Calculated “To Be Understood By the Average Plan Participant”

73. By failing to adequately explain the procedures for electing coverage, as required

by 29 C.F.R. § 2590.606-4(b)(4)(v), coupled with the complete omission the required explanation of the continuation coverage termination date, and failure to include all required explanatory information, or even the name of the Plan itself, Defendant cumulatively violated 29 C.F.R. § 2590.606- 4(b)(4).

74. This particular section mandates that employers, like Defendant, must provide a notice of continuation coverage written in a manner calculated “to be understood by the average plan participant.”

75. Without the aforementioned critical pieces of, Defendant’s COBRA notice cannot be said to be written in a manner calculated “to be understood by the average plan participant.” Thus, Defendant violated 29 C.F.R. § 2590.606-4(b)(4)(v).

CLASS ACTION ALLEGATIONS

76. Plaintiffs bring this action as a class action pursuant to 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, in the form attached as Exhibit “B,” during the applicable statute of limitations period as a result of a qualifying event, as determined by Defendant’s records, and did not elect continuation coverage.

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

78. 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 were typical of the COBRA notices that other Class Members received and suffered from the same deficiencies.

79. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class

members, they have no interests antagonistic to the class, and has retained counsel experienced in complex class action litigation.

80. 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.

81. 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.

82. Plaintiffs intend to send notice to all Class Members to the extent required the Federal Rules of Civil Procedure. The names and addresses of the Class Members are available from Defendant's records, as well as from Defendant's third-party administrator, Alight

Solutions.

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

83. Plaintiff reincorporates by reference paragraphs 1-16 and 23-82.

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

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

86. 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.

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

88. 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 above.

89. These violations were material and willful.

90. 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, Plaintiffs, individually and on behalf of the Class, pray for relief as follows:

- a. Designating Plaintiffs’ counsel as counsel for the Class;
- b. Issuing proper notice to the Class at Defendant’s expense;

- c. 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;
- d. 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;
- e. 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;
- f. Awarding attorneys' fees, costs and expenses to Plaintiffs' counsel as provided by 29 U.S.C. § 1132(g)(1) and other applicable law; and
- g. Granting such other and further relief, in law or equity, as this Court deems appropriate.

Dated this 2nd day of April, 2020.

/s/ Marc R. Edelman

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been provided via electronic transmission and/or via U.S. Mail on this 2nd day of April, 2020, to the following:

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/s/ Marc R. Edelman
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EXHIBIT “A”

Model COBRA Continuation Coverage Election Notice
(For use by single-employer group health plans)

IMPORTANT INFORMATION: COBRA Continuation Coverage and other Health Coverage Alternatives

[Enter date of notice]

Dear: [Identify the qualified beneficiary(ies), by name or status]

This notice has important information about your right to continue your health care coverage in the [enter name of group health plan] (the Plan), as well as other health coverage options that may be available to you, including coverage through the Health Insurance Marketplace at www.HealthCare.gov or call 1-800-318-2596. You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage. Please read the information in this notice very carefully before you make your decision. If you choose to elect COBRA continuation coverage, you should use the election form provided later in this notice.

Why am I getting this notice?

You're getting this notice because your coverage under the Plan will end on [enter date] due to [check appropriate box]:

- | | |
|--|---|
| <input type="checkbox"/> End of employment | <input type="checkbox"/> Reduction in hours of employment |
| <input type="checkbox"/> Death of employee | <input type="checkbox"/> Divorce or legal separation |
| <input type="checkbox"/> Entitlement to Medicare | <input type="checkbox"/> Loss of dependent child status |

Federal law requires that most group health plans (including this Plan) give employees and their families the opportunity to continue their health care coverage through COBRA continuation coverage when there's a "qualifying event" that would result in a loss of coverage under an employer's plan.

What's COBRA continuation coverage?

COBRA continuation coverage is the same coverage that the Plan gives to other participants or beneficiaries who aren't getting continuation coverage. Each "qualified beneficiary" (described below) who elects COBRA continuation coverage will have the same rights under the Plan as other participants or beneficiaries covered under the Plan.

Who are the qualified beneficiaries?

Each person ("qualified beneficiary") in the category(ies) checked below can elect COBRA continuation coverage:

- ☐ Employee or former employee
- ☐ Spouse or former spouse
- ☐ Dependent child(ren) covered under the Plan on the day before the event that caused the loss of coverage
- ☐ Child who is losing coverage under the Plan because he or she is no longer a dependent under the Plan

Are there other coverage options besides COBRA Continuation Coverage?

Yes. Instead of enrolling in COBRA continuation coverage, there may be other more affordable coverage options for you and your family through the Health Insurance Marketplace, Medicaid, or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period." Some of these options may cost less than COBRA continuation coverage.

You should compare your other coverage options with COBRA continuation coverage and choose the coverage that is best for you. For example, if you move to other coverage you may pay more out of pocket than you would under COBRA because the new coverage may impose a new deductible.

When you lose job-based health coverage, it's important that you choose carefully between COBRA continuation coverage and other coverage options, because once you've made your choice, it can be difficult or impossible to switch to another coverage option.

If I elect COBRA continuation coverage, when will my coverage begin and how long will the coverage last?

If elected, COBRA continuation coverage will begin on *[enter date]* and can last until *[enter date]*.

[Add, if appropriate: You may elect any of the following options for COBRA continuation coverage: [list available coverage options].

Continuation coverage may end before the date noted above in certain circumstances, like failure to pay premiums, fraud, or the individual becomes covered under another group health plan.

Can I extend the length of COBRA continuation coverage?

If you elect continuation coverage, you may be able to extend the length of continuation coverage if a qualified beneficiary is disabled, or if a second qualifying event occurs. You must notify *[enter name of party responsible for COBRA administration]* of a disability or a second qualifying event within a certain time period to extend the period of continuation coverage. If you don't provide notice of a disability or second qualifying event within the required time period, it will affect your right to extend the period of continuation coverage.

For more information about extending the length of COBRA continuation coverage visit <http://www.dol.gov/ebsa/publications/cobraemployee.html>.

How much does COBRA continuation coverage cost?

COBRA continuation coverage will cost: *[enter amount each qualified beneficiary will be required to pay for each option per month of coverage and any other permitted coverage periods.]*

Other coverage options may cost less. If you choose to elect continuation coverage, you don't have to send any payment with the Election Form. Additional information about payment will be provided to you after the election form is received by the Plan. Important information about paying your premium can be found at the end of this notice.

You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage. You can learn more about the Marketplace below.

What is the Health Insurance Marketplace?

The Marketplace offers “one-stop shopping” to find and compare private health insurance options. In the Marketplace, you could be eligible for a new kind of tax credit that lowers your monthly premiums and cost-sharing reductions (amounts that lower your out-of-pocket costs for deductibles, coinsurance, and copayments) right away, and you can see what your premium, deductibles, and out-of-pocket costs will be before you make a decision to enroll. Through the Marketplace you'll also learn if you qualify for free or low-cost coverage from Medicaid or the Children's Health Insurance Program (CHIP). You can access the Marketplace for your state at www.HealthCare.gov.

Coverage through the Health Insurance Marketplace may cost less than COBRA continuation coverage. Being offered COBRA continuation coverage won't limit your eligibility for coverage or for a tax credit through the Marketplace.

When can I enroll in Marketplace coverage?

You always have 60 days from the time you lose your job-based coverage to enroll in the Marketplace. That is because losing your job-based health coverage is a “special enrollment” event. **After 60 days your special enrollment period will end and you may not be able to enroll, so you should take action right away.** In addition, during what is called an “open enrollment” period, anyone can enroll in Marketplace coverage.

To find out more about enrolling in the Marketplace, such as when the next open enrollment period will be and what you need to know about qualifying events and special enrollment periods, visit www.HealthCare.gov.

If I sign up for COBRA continuation coverage, can I switch to coverage in the Marketplace? What about if I choose Marketplace coverage and want to switch back to COBRA continuation coverage?

If you sign up for COBRA continuation coverage, you can switch to a Marketplace plan during a Marketplace open enrollment period. You can also end your COBRA continuation coverage early and switch to a Marketplace plan if you have another qualifying event such as marriage or birth of a child through something called a “special enrollment period.” But be careful though - if you terminate your COBRA continuation coverage early without another qualifying event, you’ll have to wait to enroll in Marketplace coverage until the next open enrollment period, and could end up without any health coverage in the interim.

Once you’ve exhausted your COBRA continuation coverage and the coverage expires, you’ll be eligible to enroll in Marketplace coverage through a special enrollment period, even if Marketplace open enrollment has ended.

If you sign up for Marketplace coverage instead of COBRA continuation coverage, you cannot switch to COBRA continuation coverage under any circumstances.

Can I enroll in another group health plan?

You may be eligible to enroll in coverage under another group health plan (like a spouse’s plan), if you request enrollment within 30 days of the loss of coverage.

If you or your dependent chooses to elect COBRA continuation coverage instead of enrolling in another group health plan for which you’re eligible, you’ll have another opportunity to enroll in the other group health plan within 30 days of losing your COBRA continuation coverage.

What factors should I consider when choosing coverage options?

When considering your options for health coverage, you may want to think about:

- Premiums: Your previous plan can charge up to 102% of total plan premiums for COBRA coverage. Other options, like coverage on a spouse’s plan or through the Marketplace, may be less expensive.
- Provider Networks: If you’re currently getting care or treatment for a condition, a change in your health coverage may affect your access to a particular health care provider. You may want to check to see if your current health care providers participate in a network as you consider options for health coverage.
- Drug Formularies: If you’re currently taking medication, a change in your health coverage may affect your costs for medication – and in some cases, your medication may not be covered by another plan. You may want to check to see if your current medications are listed in drug formularies for other health coverage.
- Severance payments: If you lost your job and got a severance package from your former employer, your former employer may have offered to pay some or all of your COBRA payments for a period of time. In this scenario, you may want to contact the Department of Labor at 1-866-444-3272 to discuss your options.
- Service Areas: Some plans limit their benefits to specific service or coverage areas – so if you move to another area of the country, you may not be able to use your benefits. You may want to see if your plan has a service or coverage area, or other similar limitations.

- Other Cost-Sharing: In addition to premiums or contributions for health coverage, you probably pay copayments, deductibles, coinsurance, or other amounts as you use your benefits. You may want to check to see what the cost-sharing requirements are for other health coverage options. For example, one option may have much lower monthly premiums, but a much higher deductible and higher copayments.

For more information

This notice doesn't 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 summary plan description or from the Plan Administrator.

If you have questions about the information in this notice, your rights to coverage, or if you want a copy of your summary plan description, contact [*enter name of party responsible for COBRA administration for the Plan, with telephone number and address*].

For more information about your rights under the Employee Retirement Income Security Act (ERISA), including COBRA, the Patient Protection and Affordable Care Act, and other laws affecting group health plans, visit the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) website at <http://www.dol.gov/ebsa> or call their toll-free number at 1-866-444-3272. For more information about health insurance options available through the Health Insurance Marketplace, and to locate an assister in your area who you can talk to about the different options, visit www.HealthCare.gov.

Keep Your Plan Informed of Address Changes

To protect your and your family's rights, keep the Plan Administrator informed of any changes in your address and the addresses of family members. You should also keep a copy of any notices you send to the Plan Administrator.

COBRA Continuation Coverage Election Form

Instructions: To elect COBRA continuation coverage, complete this Election Form and return it to us. Under federal law, you have 60 days after the date of this notice to decide whether you want to elect COBRA continuation coverage under the Plan.

Send completed Election Form to: *[Enter Name and Address]*

This Election Form must be completed and returned by mail *[or describe other means of submission and due date]*. If mailed, it must be post-marked no later than *[enter date]*.

If you don't submit a completed Election Form by the due date shown above, you'll lose your right to elect COBRA continuation coverage. If you reject COBRA continuation coverage before the due date, you may change your mind as long as you submit a completed Election Form before the due date. However, if you change your mind after first rejecting COBRA continuation coverage, your COBRA continuation coverage will begin on the date you submit the completed Election Form.

Read the important information about your rights included in the pages after the Election Form.

I (We) elect COBRA continuation coverage in the *[enter name of plan]* (the Plan) listed below:

Name	Date of Birth	Relationship to Employee	SSN (or other identifier)
------	---------------	--------------------------	---------------------------

a. _____
[Add if appropriate: Coverage option elected: _____]

b. _____
[Add if appropriate: Coverage option elected: _____]

c. _____
[Add if appropriate: Coverage option elected: _____]

 Signature

 Date

 Print Name

 Relationship to individual(s) listed above

 Print Address

 Telephone number

Important Information About Payment

First payment for continuation coverage

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.

Periodic payments for continuation coverage

After you make your first payment for continuation coverage, you'll have to make periodic payments for each coverage period that follows. The amount due for each coverage period for each qualified beneficiary is shown in this notice. The periodic payments can be made on a monthly basis. Under the Plan, each of these periodic payments for continuation coverage is due *[enter due day for each monthly payment]* for that coverage period. *[If Plan offers other payment schedules, enter with appropriate dates: You may instead make payments for continuation coverage for the following coverage periods, due on the following dates:].* If you make a periodic payment on or before the first day of the coverage period to which it applies, your coverage under the Plan will continue for that coverage period without any break. The Plan *[select one: will or will not]* send periodic notices of payments due for these coverage periods.

Grace periods for periodic payments

Although periodic payments are due on the dates shown above, you'll be given a grace period of 30 days after the first day of the coverage period *[or enter longer period permitted by Plan]* to make each periodic payment. You'll get continuation coverage for each coverage period as long as payment for that coverage period is made before the end of the grace period. *[If Plan suspends coverage during grace period for nonpayment, enter and modify as necessary: If you pay a periodic payment later than the first day of the coverage period to which it applies, but before the end of the grace period for the coverage period, your coverage will be suspended as of the first day of the coverage period and then retroactively reinstated (going back to the first day of the coverage period) when the periodic payment is received. This means that any claim you submit for benefits while your coverage is suspended may be denied and may have to be resubmitted once your coverage is reinstated.]*

If you don't make a periodic payment before the end of the grace period for that coverage period, you'll lose all rights to continuation coverage under the Plan.

Your first payment and all periodic payments for continuation coverage should be sent to:

[enter appropriate payment address]

EXHIBIT “B”



Statement Date:



Your Benefits Resources™
<http://www.usfbenefitscenter.com>

COBRA Enrollment Notice - Health and Welfare Plans

This notice contains important information about your right to continue your US Foods health coverage, as well as other health coverage alternatives that may be available to you through the Health Insurance Marketplace at www.HealthCare.gov or by calling 1-800-318-2596. You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage. Please read the information contained in this notice very carefully and keep it for your records.

As a result of your termination on _____ your current group health plan coverage ends as listed in the following table. You may choose to remain covered under your current group health plan for up to _____ months. This coverage is provided through the Consolidated Omnibus Budget Reconciliation Act and is often referred to as "COBRA" coverage.

COBRA continuation coverage will begin as listed below.

Group Health Plan	Coverage End Date	COBRA Coverage Begin Date
Medical		
Dental		
Vision		

The cost of COBRA continuation coverage depends on the coverage you select and whom you cover. Detailed cost information is provided in the Group Health Coverage section of this notice.

How Long Will Continuation Coverage Last?

Length of COBRA Coverage	Up to 18 months	Up to 29 months	Up to 36 months
Eligibility	<ul style="list-style-type: none"> ■ Employee ■ Retiree ■ Covered spouse ■ Other covered dependents 	<ul style="list-style-type: none"> ■ Employee ■ Covered spouse ■ Other covered dependents 	<ul style="list-style-type: none"> ■ Covered spouse ■ Other covered dependents
Length of COBRA Coverage	Up to 18 months	Up to 29 months	Up to 36 months
Qualifying Event(s)	Loss of coverage due to: <ul style="list-style-type: none"> ■ End of employment ■ Reduction in hours of employment 	<ul style="list-style-type: none"> ■ Individual(s) must be enrolled in COBRA and deemed disabled by the Social Security Administration prior to the initial qualifying event, or at any time during the first 60 days of COBRA continuation coverage. 	Loss of coverage due to: <ul style="list-style-type: none"> ■ Divorce or legal separation ■ The loss of a dependent child's eligibility for health care coverage under the employer's plan ■ The employee's Medicare entitlement ■ The employee's death

When the qualifying event is the end of the employment or reduction of the employee's hours of employment, and the employee became entitled to Medicare benefits less than 18 months before the qualifying event, COBRA continuation coverage for qualified beneficiaries, other than the employee, lasts until 36 months after the date of Medicare entitlement. This notice shows the maximum period of continuation coverage available to the qualified beneficiaries.

Continuation coverage will be terminated before the end of the maximum period if:

- Any required premium is not paid in full on time;
- A qualified beneficiary becomes covered, after electing continuation coverage, under another group health plan;
- A qualified beneficiary becomes entitled to Medicare benefits (under Part A, Part B, or both) after electing continuation coverage; or
- The employer ceases to provide any group health plan for its employees.

Continuation coverage may also be terminated for any reason US Foods plan would terminate coverage of a participant or beneficiary not receiving continuation coverage (such as fraud).

Events That May Change Continued Coverage

Once your COBRA coverage begins, you may be able to change your COBRA coverage elections based on Plan rules if you experience a qualified change in status. You must notify the US Foods Benefits Center by calling 1-888-316-7700 within 31 days of the qualified change in status to change your COBRA coverage. See your Summary Plan Description for detailed information on allowable changes in status. Adding family members to COBRA coverage may result in a higher premium for this additional coverage.

You may also change COBRA coverage if a child is born to the covered employee or placed for adoption with the covered employee during the 18-, 29-, or 36-month continuation period. In such case, you must notify the US Foods Benefits Center by calling 1-888-316-7700 within 31 days of the birth or placement to cover the new dependent as a qualified beneficiary under COBRA. There may be a higher premium for this additional coverage.

Convenient Payment Options

Consider having your payment automatically deducted from your checking or savings account with direct debit—it's fast and easy. Provide your account information when you enroll to authorize US Foods and your financial institution to start the direct debit payment process.

All future payments will be taken from your account on the first of the month. If the first of the month falls on a weekend or bank holiday, the payment occurs the next business day. You'll no longer receive paper bills. Your bank statement serves as your confirmation of payment. If your payment amount changes, you'll receive a notice at least 10 days before the next scheduled payment. You may stop using direct debit at any time.

To make a direct debit payment, access Your Benefits Resources™ or call the US Foods Benefits Center.

Summary of Benefits and Coverage Availability

As an employee of US Foods, the health benefits available to you represent a significant component of your compensation package. They also provide important protection for you and your family in the case of illness or injury.

Choosing a health coverage option is an important decision. To help you make an informed choice, your Plan makes available a Summary of Benefits and Coverage (SBC), which summarizes important information about any health coverage option in a standard format, to help you compare across options.

The SBC is available on the Your Benefits Resources™ website at <http://www.usfbenefitscenter.com>. During your enrollment period you can view the SBC by opening the Plan Information page, as follows:

- Log into Your Benefits Resources™ at <http://www.usfbenefitscenter.com>
- Open the Health and Insurance tab
- From the drop down menu, select Plan Information
- Then choose the Summary of Benefits and Coverage you'd like to review.

A paper copy is also available, free of charge, by calling the US Foods Benefits Center at 1-888-316-7700 (a toll-free number).

How Can You Elect COBRA Continuation Coverage?

COBRA enrollment elections must be made within **60 days** of the date that coverage is lost or within **60 days** of the statement date on the COBRA Enrollment Notice you receive, whichever is later. If you don't act within this time frame, you and your eligible dependent(s) will lose the opportunity for COBRA coverage.

To elect continuation coverage, you must call the US Foods Benefits Center at **1-888-316-7700** by the enrollment deadline provided on the COBRA Enrollment Notice.

Each qualified beneficiary has a separate right to elect continuation coverage. For example, a spouse may elect continuation coverage even if the employee does not. Continuation coverage may be elected for only one, several, or all dependent children who are qualified beneficiaries. A parent may elect to continue coverage on behalf of any dependent children. The employee or the employee's spouse can elect continuation coverage on behalf of all the qualified beneficiaries.

In considering whether to elect continuation coverage, you should take into account that you have special enrollment rights under federal law. You have the right to request special enrollment in another group health plan for which you are otherwise eligible (such as a plan sponsored by your spouse's employer) within 30 days after your group health coverage ends because of the qualifying event listed above. You will also have the same special enrollment right at the end of continuation coverage if you get continuation coverage for the maximum time available to you.

How Much Does COBRA Continuation Coverage Cost?

Generally, each qualified beneficiary may be required to pay the entire cost of continuation coverage. The amount a qualified beneficiary may be required to pay may not exceed 102% (or, in the case of an extension of continuation coverage due to a disability, 150%) of the cost to the group health plan (including both employer and employee contributions) for coverage of a similarly situated plan participant or beneficiary who is not receiving continuation coverage. The required payment for each continuation coverage period for each option is described in the COBRA Enrollment Notice.

When and How Must Payment for COBRA Continuation Coverage Be Made?

First Payment for Continuation Coverage

If you elect continuation coverage, you do not have to send any payment at the time you enroll. However, you must make your first payment for continuation coverage not later than 45 days after the date of your election.

If you do not make your first payment for continuation coverage, in full, not later than 45 days after the date of your election, you will lose all continuation coverage rights under US Foods plan. You are responsible for making sure that the amount of your first payment is correct. You will receive a Billing Notice confirming the amount of the payment. Contact the US Foods Benefits Center at **1-888-316-7700** if you have questions about your first payment.

Payments should be sent to:

US FOODS
P.O. BOX 0619
CAROL STREAM IL 60132-0619

COBRA Enrollment Notice

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Family Information

Below is the information on file for you and your dependents. To protect your privacy, Social Security numbers aren't shown. The Qualified Beneficiary row indicates dependents who are considered qualified beneficiaries. Qualified beneficiaries have independent COBRA election rights and can elect to continue group health plan coverage for themselves if you decline coverage.

■ Person Information**Name****Birth Date****Gender****Relationship****Disabled Dependent****Qualified Beneficiary****Medicare Eligible****■ Coverage Information****Medical****Dental****Vision**

If you have an estate or trust on file, they will not appear on this page. You can view them on the Beneficiaries section of the Your Benefits Resources website.

What is the Health Insurance Marketplace?

The Marketplace offers "one-stop shopping" to find and compare private health insurance options. Through the Marketplace, you'll also learn if you qualify for free or low-cost coverage from Medicaid or the Children's Health Insurance Program (CHIP). You can access the Marketplace for your state at www.HealthCare.gov.

When can I enroll in Marketplace coverage?

You always have 60 days from the time you lose your job-based coverage to enroll in the Marketplace. That is because losing your job-based health coverage is a "special enrollment" event. **After 60 days, your special enrollment period will end and you may not be able to enroll, so you should take action right away.** In addition, during what is called an "open enrollment" period, anyone can enroll in Marketplace coverage.

To find out more about enrolling in the Marketplace, such as when the next open enrollment period will be and what you need to know about qualifying events and special enrollment periods, visit www.HealthCare.gov.

If I sign up for COBRA continuation coverage, can I switch to coverage in the Marketplace? What about if I choose Marketplace coverage and want to switch back to COBRA continuation coverage?

If you sign up for COBRA continuation coverage, you can switch to a Marketplace plan during a Marketplace open enrollment period. You can also end your COBRA continuation coverage early and switch to a Marketplace plan if you have another qualifying event, such as marriage or birth of a child through something called a "special enrollment period." But be careful - if you terminate your COBRA continuation coverage early without another qualifying event, you'll have to wait to enroll in Marketplace coverage until the next open enrollment period, and could end up without any health coverage in the interim.

Once you've exhausted your COBRA continuation coverage and the coverage expires, you'll be eligible to enroll in Marketplace coverage through a special enrollment period, even if Marketplace open enrollment has ended.

If you sign up for Marketplace coverage instead of COBRA continuation coverage, you cannot switch to COBRA continuation coverage under any circumstances.

Can I enroll in another group health plan?

You may be eligible to enroll in coverage under another group health plan (like a spouse's plan), if you request enrollment within 30 days of the loss of coverage.

If you or your dependent elect COBRA continuation coverage instead of enrolling in another group health plan for which you're eligible, you'll have another opportunity to enroll in the other group health plan within 30 days of losing your COBRA continuation coverage.

What factors should I consider when choosing coverage options?

When considering your options for health coverage, you may want to think about:

- **Premiums:** Your previous plan can charge up to 102% of total plan premiums for COBRA coverage. Other options, like coverage on a spouse's plan or through the Marketplace, may be less expensive.
 - **Provider Networks:** If you're currently getting care or treatment for a condition, a change in your health coverage may affect your access to a particular health care provider. You may want to check to see if your current health care providers participate in a network, as you consider options for health coverage.
 - **Drug Formularies:** If you're currently taking medication, a change in your health coverage may affect your costs for medication - and in some cases, your medication may not be covered by another plan. You may want to check to see if your current medications are listed in drug formularies for other health coverage.
-

- **Severance Payments:** If you lost your job and got a severance package from your former employer, your former employer may have offered to pay some or all of your COBRA payments for a period of time. In this scenario, you may want to contact the Department of Labor at 1-866-444-3272 to discuss your options.
- **Service Areas:** Some plans limit their benefits to specific service or coverage areas – so if you move to another area of the country, you may not be able to use your benefits. You may want to see if your plan has a service or coverage area, or other similar limitations.
- **Other Cost Sharing:** In addition to premiums or contributions for health coverage, you probably pay copayments, deductibles, coinsurance, or other amounts as you use your benefits. You may want to check to see what the cost-sharing requirements are for other health coverage options. For example, one option may have much lower monthly premiums, but a much higher deductible and higher copayments.

More information on health insurance options through the Marketplace can be found at www.HealthCare.gov.

Questions?

This notice does not fully describe continuation coverage or other rights under US Foods plan. More information about continuation coverage and your rights under US Foods plan is available in your Summary Plan Description or from the US Foods Benefits Center.

If you have any questions concerning the information in this notice or your rights to coverage, you should contact the US Foods Benefits Center at 1-888-316-7700. If you want a copy of your summary plan description, contact US Foods.

For more information about your rights under ERISA, including COBRA, the Patient Protection and Affordable Care Act, and other laws affecting group health plans, visit the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) website at www.dol.gov/ebsa or call their toll-free number at 1-866-444-3272. For more information about health insurance options available through the Health Insurance Marketplace, and to locate an assister in your area who you can talk to about the different options, visit www.HealthCare.gov.

Keep Your Plan Informed of Address Changes

In order to protect your and your family's rights, you should keep the US Foods Benefits Center 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 or receive from the US Foods Benefits Center.

For More Information



Online
Your Benefits Resources™
at <http://www.usfbenefitscenter.com>



Phone
Monday - Friday, 10:00 a.m. - 6:00 p.m., Eastern Time.
toll-free at 1-888-316-7700
Generally, you'll have a shorter wait time if you call after Tuesday

Your Benefits Resources™ is a trademark of Alight Solutions LLC.

EXHIBIT “C”



Statement Date:



Your Benefits Resources™
<http://www.usfbenefitscenter.com>

Important Information About Your COBRA Continuation Coverage Rights

The information in this notice will help you understand and use your benefits under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). **This notice has important information about your right to continue your health care coverage in US Foods plan, as well as other health coverage options that may be available to you, including coverage through the Health Insurance Marketplace at www.HealthCare.gov or by calling 1-800-318-2596. You may be able to get coverage through the Health Insurance Marketplace that costs less than COBRA continuation coverage. Please read the information in this notice very carefully before you make your decision.**

What Is COBRA Continuation Coverage?

Federal law requires that most group health plans (including US Foods plan) give employees and their families the opportunity to continue their health care coverage when there is a "qualifying event" that would result in a loss of coverage under US Foods plan.

Depending on the type of qualifying event, "qualified beneficiaries" can include employees, retirees, their spouses, and their dependent children covered by US Foods plan.

COBRA continuation coverage is the same coverage that US Foods plan gives to other plan participants who are not receiving continuation coverage. Each qualified beneficiary who elects continuation coverage will have the same rights under US Foods plan as other plan participants, including open enrollment and special enrollment rights.

COBRA Enrollment Notice

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Enrollment

To enroll in COBRA coverage, access Your Benefits Resources™ website at <http://www.usfbenefitscenter.com> or call the US Foods Benefits Center at 1-888-316-7700 no later than . You can enroll yourself and your covered family members. If you don't enroll within that time frame, you forfeit your rights to COBRA coverage.

Each qualified beneficiary has a separate right to elect COBRA continuation coverage. The Family Information page lists each of your covered family members and indicates which individuals are qualified beneficiaries.

Group Health Coverage

Below are the coverage options available to you and the monthly cost of each option for the remainder of the current Plan year. The Family Information section of this notice lists your dependents currently on file. Only those dependents who were covered prior to the qualifying event may continue coverage under a particular group health plan.

■ **Medical**

Coverage Category

Option

■ **Dental**

Coverage Category

Option

■ **Vision**

Coverage Category

Option

How Can You Extend the Length of COBRA Continuation Coverage?

If you elect continuation coverage, an extension of the maximum period of coverage may be available if a qualified beneficiary is disabled or a second qualifying event occurs. You must notify the US Foods Benefits Center of a disability or a second qualifying event in order to extend the period of continuation coverage. Failure to provide notice of a disability or second qualifying event may affect the right to extend the period of continuation coverage.

Disability

COBRA coverage may be available for your family for up to 29 months at a higher premium if all these events occur:

- You, your covered spouse, or your covered dependents (including newborn and newly adopted children) are determined to be disabled, as defined by the Social Security Act, prior to the qualifying event or during the first 60 days of COBRA coverage.
- The Social Security Administration's (SSA) disability determination is received within the disabled individual's 18 months of COBRA coverage.
- The disability lasts at least until the end of the 18-month period of continuation coverage and the US Foods Benefits Center is notified of the SSA's disability determination within 60 days of the disabled qualified beneficiary's Social Security Disability award being received. If the disability determination occurred before COBRA coverage started, you're required to notify the US Foods Benefits Center within the first 60 days of COBRA coverage.

Each covered family member who has elected continuation coverage will be entitled to the 11-month disability extension if one covered family member qualifies. To receive the coverage extension, you, your covered spouse, or your covered dependents must notify the US Foods Benefits Center at 1-888-316-7700.

If the disabled individual is determined by the SSA to no longer be disabled, you, your covered spouse, or your covered dependents must notify the US Foods Benefits Center within 30 days after SSA's determination by calling 1-888-316-7700.

Second Qualifying Event

An 18-month extension of coverage will be available to spouses and dependent children who elect continuation coverage if a second qualifying event occurs during their first 18 months of COBRA continuation coverage. The maximum amount of continuation coverage available when a second qualifying event occurs is 36 months. These second qualifying events include:

- The employee's death;
- The employee's entitlement to Medicare (under part A, Part B or both);
- The employee's divorce or legal separation; and
- A dependent's loss of coverage under US Foods-provided health plan.

These events can be a second qualifying event only if they would have caused the qualified beneficiary to lose coverage under US Foods plan if the first qualifying event had not occurred. You must notify the Plan within 60 days after a second qualifying event occurs if you want to extend your continuation coverage.

Military Leave

If your qualifying event was active military leave, you may be eligible for a total of 24 months of COBRA coverage. Please contact the US Foods Benefits Center for additional information.

COBRA Enrollment Notice

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Other Coverage Options

There may be other coverage, more affordable coverage options for you and your family through the Health Insurance Marketplace, Medicaid, or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period", even if the Plan generally does not accept late enrollees. In the Marketplace, you could be eligible for a new kind of tax credit that lowers your monthly premiums right away, and you can see what your premium, deductibles, and out-of-pocket costs will be before you make a decision to enroll. Being eligible for COBRA does not limit your eligibility for coverage for a tax credit through the Marketplace.

You should compare your other coverage options with COBRA continuation coverage and choose the coverage that is best for you. For example, if you move to other coverage, you may pay more out of pocket than you would under COBRA, because the new coverage may impose a new deductible.

When you lose job-based health coverage, it's important that you choose carefully between COBRA continuation coverage and other coverage options, because once you've made your choice, it can be difficult or impossible to switch to another coverage option.

More information on health insurance options through the Marketplace can be found at www.HealthCare.gov.