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1 NATALIA FOLEY, SBN 295923 (UAN 1194930)  
2 NATALIA FOLEY BEVERLY HILLS  
3 Law Offices of Natalia Foley  
4 8306 Wilshire Blvd Ste 115  
5 Beverly Hills CA 90211  
6 tel 310 707 8098/ fax 310 626 9632  
7 nfoleylaw@gmail.com  
8 ATTORNEY FOR APPLICANT

9 **WORKERS' COMPENSATION APPEALS BOARD**  
10 **STATE OF CALIFORNIA**

11 **DEBORAH L. CLARKE**

12 Applicant ,

13 vs.

14 **CVS CAREMARK**  
15 **CORPORATION,**

16 Defendants.

Case No.: ADJ 11264523  
ADJ 11264503

PETITION FOR DISCRIMINATION  
BENEFITS PURSUANT TO LABOR CODE  
SECTION 132(a)

17 COMES NOW Applicant and the Attorney of Record, NATALIA FOLEY  
18 BEVERLY HILLS, and claiming benefits against the employer CVS CAREMARK  
19 CORPORATION for discrimination benefits pursuant to California Labor Code Section  
20 132(a) alleges as follows:

21 **I. STATEMENT OF FACTS**

22 Between 5/5/2017 - 04/12/2018, Applicant, while employed by CVS CAREMARK  
23 CORPORATION as a cashier, and sustained cumulative injury to her lower and upper  
24 extremities, lower back, legs, neck and psychological state while in the course and scope of  
25 her employment.

26 On and before 04/04/2018, Applicant complained about not getting accommodations  
27 for her medical restrictions related to her physical disability, well known to the employer, in  
28

1 response to that she was denied working hours. Applicant then complained to HR  
2 department and she was assured that she will continue working with the company, as a  
3 matter of fact, she was scheduled for the next week, following 4/4/218.

4 On 4/5/2018 Applicant filed her applicant for workers compliant with the Board, and  
5 on the same day her employer was notified of this application via fax and by mail.

6 In retaliation for filing for workers compensation benefits, on 4/12/2018, Applicant  
7 was advised by her manager that the company no longer needs her, and that she must go  
8 home and never come back.

9 Although Applicant never received any letter of termination, she was effectively  
10 ousted from her work, was never scheduled for work again, never provided any expiations,  
11 never given any pay or temporary disability compensation for the period from 4/12/2018 to  
12 the present and thus Applicant was constructively terminated , retaliated against and denied  
13 her livelihood.

14 Applicant is therefore informed and believes, and thereon alleges, that Defendant's  
15 actions were nothing other than an attempt to discriminate and retaliate against Applicant  
16 for filing for Workers Compensation workers' compensation benefits.

17  
18 **II. APPLICANT IS ENTITLED TO MULTIPLE BENEFITS**

19  
20 Upon the Board's Finding of wrongful discrimination, Applicant is entitled to a 50%  
21 penalty assessed against benefits paid or due up to \$10,000.

22 In addition, Applicant demands back wages and other benefits. The Board may order  
23 back and front wages until reinstatement. *Barns v. WCAB* (1994) 59 CCC 156; *Eubanks v.*  
24 *WCAB* (1994) 59CCC 223; *United Airlines v. WCAB* (1998) 63 CCC 1445. This can  
25 include payment of the Employer's portion of the unemployment tax, reimbursement of  
26 group health benefits, seniority and cost of living increases, and increased retirement  
27 benefits.

28

1 If an Award of increased retirement benefits would violate ERISA provisions, the  
2 Board can order, instead, a dollar Award for the lost value of the enhanced retirement  
3 benefits. Eubanks v. WCAB, supra:

4 “The employee’s retirement account must be brought up-to-date  
5 if possible. Otherwise, she is to receive the amount of money  
6 which would have been credited for her retirement.”

7 Finally, pursuant to the Supreme Court’s decision in Currie v. WCAB (2001) 66 CCC 208,  
8 24 Cal. 4th 1109, Applicant must be awarded all pre-judgment interest on all back pay due  
9 Applicant. The Court stated that:

10 “...the Award must include all pre-Award interest on all back pay  
11 from the date it accrued pursuant to CC Section 3287(a). Interest  
12 is recoverable on each salary or pension payment from the date  
13 it fell due.

14 “CC Section 3287(a) states ‘Every person who is entitled to  
15 recover damages certain, or capable of being made certain  
16 by calculation, and the right to recover which is vested in him  
17 on a particular day, is entitled also to recover interest thereon  
18 from that day.’ “

19 The Supreme Court’s Holding in that case was:

20 “We agree that CC Section 3287(a) applies to back pay Awards  
21 made under LC Section 132a...without the pre-judgment interest,  
22 the back pay remedy may lose a significant portion of its value,  
23 and the Employee is left ‘less than fully reimbursed’ for his or  
24 her lost wages.”

25  
26 **III. CONCLUSION**  
27  
28

1           WHEREFORE, Applicant respectfully requests that she be awarded the benefits  
2 provided by California Labor Code Section 132(a) including the following benefits:  
3           Increased compensation;  
4           Reinstatement;  
5           Reimbursement for lost wages and work benefits caused by said Defendant's act;  
6 such work benefits to include, but not limited to, cost-of-living increases, accrued vacation  
7 and sick leave benefits, the Employer's portion of the Unemployment tax, enhancement of  
8 retirement benefits;

9           And pre-Award interest on all back pay.  
10 Defendants to be given credit for all income earned by Applicant from the date of  
11 termination in her good-faith attempt to mitigate damages.

12  
13 Respectfully Submitted:  
14 LAW OFFICES OF NATALIA FOLEY.

15  
16 

17 BY NATALIA FOLEY, ESQ (SBN 295923)  
18 Applicant Attorney

1 NATALIA FOLEY, SBN 295923 (UAN 1194930)  
2 NATALIA FOLEY BEVERLY HILLS  
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4 8306 Wilshire Blvd Ste 115  
5 Beverly Hills CA 90211  
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11 **DEBORAH L. CLARKE**

12 Applicant ,

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14 **CVS CAREMARK**  
15 **CORPORATION,**

16 Defendants.

Case No.: ADJ 11264523  
ADJ 11264503

VERIFICATION

17 I, Natalia Foley, declare as follows:

18 I am the attorney for Application in this action I have read the enclosed 132 (A)  
19 Petition for and know its content. All facts alleged in the Petition pursuant to Labor §  
20 Code 132(A) are true of my own personal knowledge or with respect to those facts which  
21 are alleged upon information and belief. I am informed of the same and believe the same to  
22 be true.

23 I declare under penalty of perjury that the foregoing is true and correct and that this  
24 declaration was executed at Los Angeles, CA on June 06, 2018

25 Respectfully Submitted:  
26 LAW OFFICES OF NATALIA FOLEY.



27 BY NATALIA FOLEY, ESQ (SBN 295923)  
28 Applicant Attorney

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**E-Filed:** NATALIA FOLEY, ESQ  
**UAN:** NATALIA FOLEY BEVERLY HILLS  
**EAMS #:** 11964930  
**Address:** LAW OFFICES OF NATALIA FOLEY  
8306 WILSHIRE BLVD STE 115, BEVERLY HILLS CA 90211  
Tel 310 707 8098; Fax 310 626 9632; Email: nfoleylaw@gmail.com

**PROOF OF SERVICE**

**DEBORAH L. CLARKE** | WCAB#: ADJ 11264523  
VS | ADJ 11264503  
**CVS CAREMARK CORPORATION**

*State Of California*  
*County of Los Angeles*

I am employed in the county of Los Angeles, State of California.  
I am over the age of 18 years and not a party to the within action; my business address is:  
8306 WILSHIRE BLVD STE 115  
BEVERLY HILLS CA 90211

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PETITION FOR DISCRIMINATION BENEFITS PURSUANT TO LABOR CODE SECTION 132(a);  
verification

on the interested parties in this action, by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States Mail at my address stated above, addressed as follows:

CA STATE DIVISION OF  
WORKERS' COMPENSATION (LAO )  
320 W 4TH ST,  
LOS ANGELES, CA 90013

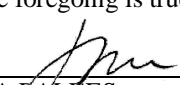
CVS PHARMACY INC  
21572 PLANO TRABUCO RD  
TRABUCO CANYON CA 92679


Ms. Rebecca Cardillo  
CVS HEALTH  
One CVS Drive  
Mail Code 2180  
Woonsocket, RI 02895

Julie Feng  
PEARLMAN, BROWN & WAX, L.L.P.  
1411 W. 190th Street, Suite 225  
Gardena, CA 90248

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: 6/6/2018 at Los Angeles, CA

By  IRINA PALEES,  
Legal Assistant to Attorney  
Natalia Foley, Esq




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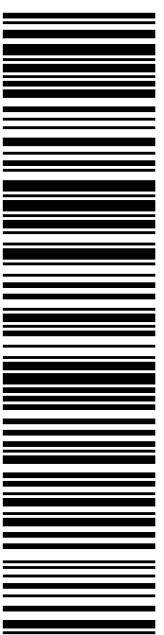
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 8306 WILSHIRE BLVD STE 115  
 BEVERLY HILLS CA 90211-2304

**To:** CVS PHARMACY INC  
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