

EXHIBIT A

Michael Mona vs. CV Sciences, Inc.

A-21-843767-C

COMPLAINT

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CASE NO: A-21-843767-C
Department 4

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10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 MICHAEL J. MONA, JR., an individual,

13 Plaintiff,

Case No.:
Dept. No.:

14 vs.

COMPLAINT

JURY TRIAL DEMANDED

16 CV SCIENCES, INC., a Delaware Corporation;
17 DOES I through X, inclusive; and ROE
18 CORPORATIONS I through X, inclusive,

ARBITRATION EXEMPTION
CLAIMED: (1) ACTION FOR
DECLARATORY RELIEF; AND (2)
ACTION FOR EXTRAORDINARY
RELIEF

19 Defendants.

21 **COMPLAINT**

22 Plaintiff Michael J. Mona, Jr. (hereinafter "Mona") by and through his attorneys of record,
23 the law firm of Hayes Wakayama, alleges and complains as follows:

24 **PARTIES**

25 1. Plaintiff Michael J. Mona, Jr. ("Mona") is an individual who, at all times herein, is
26 a resident of Clark County Nevada.
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1 position its sister division (CorpFin) insisted for more than six months was correct under applicable
2 accounting guidelines.

3 20. Two different divisions within the SEC were taking competing and inconsistent
4 positions as to CVSI's public reporting of the PhytoSphere acquisition.

5 **THE COMPLAINT AND SETTLEMENT**

6 21. In June of 2017, the SEC filed a complaint against CVSI and Mona regarding the
7 public reporting of the finances surrounding the Phytosphere acquisition.

8 22. As part of its complaint, the SEC alleged that Anton and its accountants ignored
9 numerous indications of fraudulent financial reporting by its audit clients and facilitated the fraud.

10 23. Anton partners settled the SEC charges for their roles in the audits and interim
11 reviews and agreed to pay penalties and be suspended from appearing and practicing before the
12 SEC as an accountant, which included not participating in the financial reporting or audits of public
13 companies.

14 24. Given the inconsistent positions taken by the SEC's CorpFin and Enforcement,
15 CVSI and Mona were well primed to prevail in their defense of the SEC's lawsuit.

16 25. Despite the high probability of prevailing against the SEC, CVSI's then Chief
17 Financial Officer (CFO), Joseph Dowling ("Dowling") implored Mona to settle with the SEC so
18 as to not prolong the matter and potentially restrict the Company's up-listing from an Over-the
19 Counter ("OTC") stock to become a NASDAQ-traded security.

20 26. Dowling had specifically asked Mona to "take a bullet" for the Company and enter
21 into an agreement with the SEC whereby Mona and the Company both paid a fine, and Mona
22 agreed to a five-year ban from being the officer and director of a publicly-traded company.

23 27. Having complete trust in Dowling, Mona agreed to settle with the SEC and step
24 down as President and CEO.

25 28. On May 31, 2018, CVSI and Mona entered into a binding settlement agreement
26 with the SEC to resolve the lawsuit fully and finally.

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1 THE EMPLOYMENT AGREEMENT

2 29. As a result of the SEC settlement, Mona entered into an employment agreement
3 with CVSI dated June 8, 2018 (the "Employment Agreement").

4 30. Pursuant to the Employment Agreement, CVSI agreed to pay Mona an annual base
5 salary and other benefits starting January 1, 2018 and continuing on until June 5, 2021.

6 31. CVSI further agreed to issue Mona 2,950,000 stock-settled Restricted Stock Units
7 (the "RSUs") that would vest and become freely tradeable as follows: (i) one-third on the one-year
8 anniversary of the Employment Agreement; and (ii) the remaining two-thirds in equal monthly
9 increments over the remaining 24 months.

10 32. Pursuant to Section 2.1, CVSI was required to withhold from any amounts payable
11 to Mona all applicable taxes as follows:

12 33. The Company shall withhold from any payroll or other amounts payable to
13 Employee [Mona] pursuant to this Agreement all federal, state, city or other taxes and
14 contributions as are required pursuant to any law or governmental regulation or ruling now
15 applicable or that may be enacted and become applicable in the future.

16 34. CVSI was thus required to withhold all applicable taxes related to the RSUs prior
17 to issuing the shares to Mona.

18 35. Pursuant to Section 11, CVSI and Mona agreed that the terms contained in the
19 Employment Agreement are "final, complete and [an] exclusive statement and expression of the
20 agreement between the Company and Employee with respect the subject matter hereof and thereof,
21 and cannot be varied, contradicted, or supplemented by evidence of any prior or contemporaneous
22 oral or written agreements."

23 36. Section 11 further provided that any modification of the Employment Agreement
24 must be in writing signed by an authorized officer of CVSI and Mona. There was never a
25 modification to the Company's obligation to withhold all federal or state taxes in relation to the
26 vesting of the RSUs.

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1 **THE ISSUANCE OF THE RSUs**

2 37. In the fall of 2018, Dowling approached Mona and asked him to make another
3 personal sacrifice for the Company.

4 38. This time, Dowling informed Mona that NASDAQ was requiring him to
5 completely step away from CVSI as a final condition for the up-listing to go forward.

6 39. Acting in what he believed to be in the best interests of CVSI, Mona agreed to retire
7 from the Company on January 22, 2019.

8 40. At the time of Mona’s retirement, CVSI’s stock price was \$4.66 per share.

9 **The Settlement Agreement**

10 41. Shortly before the need to report financial results for the first quarter of 2019, CVSI
11 realized that it had not properly planned for the immediate vesting of Mona’s stock options and
12 RSUs due to CVSI terminating his Employment Agreement for “good reason.”

13 42. Once again, Dowling approached Mona and asked him to make yet another
14 personal sacrifice and forego the immediate vesting of certain stock options that were tied to the
15 development of its proprietary drug product CVSI-007, a treatment for addiction to smokeless
16 tobacco (hereinafter referred to as the “Milestone Options”).

17 43. After extensive deliberation, Mona agreed to forego the immediate vesting of the
18 Milestone Options valued, at the time, around \$40 million.

19 44. To memorialize Mona agreeing to forego the immediate vesting of the Milestone
20 Options, CVSI and Mona entered into a Confidential Settlement Agreement and Release of Claims
21 dated March 31, 2019 (the “Settlement Agreement”).

22 45. Pursuant to the Settlement Agreement, CVSI and Mona agreed to a broad release
23 of any and all claims based upon or arising out of Mona’s resignation from the Company on
24 January 22, 2019.

25 46. CVSI and Mona, however, did not agree to release “any claim that may arise after
26 the Effective Date of this [Settlement] Agreement other than claims that have been or could have
27 been brought in connection with the Dispute or related to the Engagement, known or unknown[.]”
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1 47. The Settlement Agreement did not delay the immediate vesting of the RSUs
2 previously awarded to Mona under the Employment Agreement, in fact it expressly recognized
3 the immediate vesting of the RSUs in section 2(a), thereof.

4 **CVSI's Poor Performance and Plummeting Stock Price**

5 48. After Mona's departure from CVSI, the value of the Company started to plummet.

6 49. After a small bump at the end of March 2019, where the stock price increased to a
7 high of \$5.93 per share, the steep downward descent began with prices dropping to \$4.00 per share
8 by July 26, 2019.

9 50. Two months later, the stock price had dropped below \$2.00 per share on September
10 27, 2019.

11 51. By December 6, 2019, CVSI's stock price had dropped to \$0.86 per share.

12 52. After a brief minor resurgence in January 2020 to just above \$1.00 per share,
13 CVSI's stock has only peaked above \$1.00 per share a single time since.

14 53. Over the past six months (starting in April 2021 and continuing through October
15 2021), CVSI's stock price has fluctuated between a high of \$0.40 per share and a low of \$0.22
16 per share.

17 54. As of November 5, 2021, CVSI's stock price closed at \$0.20 per share.

18 **Settlement of the RSUs**

19 55. On or about June 8, 2018, CVSI issued the 2,950,000 in RSUs to Mona.

20 56. On August 29, 2019, CVSI issued the stock certificates pursuant to the RSUs to
21 Mona for the entire 2,950,000 shares.

22 57. Given that Mona was the co-founder of CVSI and a former officer and employee
23 of the Company, Mona was required to refrain from selling any of his shares for a period of six
24 months because he was considered an insider and based on the number of his outstanding shares.
25 After the six-month waiting period, the Drip Rule placed further time restrictions as to when Mona
26 could sell his shares.

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1 58. Wilson-Davis & Co., Inc. (“Wilson Davis”) serves as the brokerage firm and
2 clearinghouse that acts as the trade-facilitator between CVSI and its stockholders, including any
3 transactions concerning the settlement of the RSUs.

4 59. Starting in April 2020, Mona began to liquidate his RSU shares while CVSI’s share
5 price fluctuated around \$0.50 to \$0.54.

6 60. Over the course of the next year through May 25, 2021, Mona sold all of the RSU
7 shares with an average stock sales price of \$0.503337 per share.

8 61. In total, the net amount Mona received through his sale of the RSU shares was
9 approximately \$1,484,845.71 (before commissions and fees).

10 62. The value of the RSU shares at the time of Mona’s retirement was around
11 \$13,747,000.00 (i.e., 2,950,000 RSUs at \$4.66 per share).

12 63. CVSI failed to properly withhold and account for the tax consequences related to
13 the vesting of Mona’s RSUs as required by section 2.1(a) of the Employment Agreement.

14 64. CVSI issued the RSU shares to Mona and failed to address the payroll tax
15 implications, which is confirmed by the fact that CVSI had to amend its original 941 filing to
16 correct the issues.

17 65. In accordance with Internal Revenue Code (“Code”) 3402(a), the express terms of
18 the Employment Agreement section 2(a), and standard employment customs and practices, CVSI
19 should have coordinated and secured tax withholdings in cash or in a certain number of RSU shares
20 from Mona – in conjunction with their issuance – to account for the associated tax consequences.

21 66. Prior to its issuance of the RSUs to Mona, CVSI should have withheld
22 approximately 1,128,636 of the RSU shares (representing approximately \$5,259,444.50 in taxes)
23 to cover any related tax liability and then only issue the net of approximately 1,821,363 RSU shares
24 to Mona. CVSI’s failure to do so violated both its statutory and contractual obligations related to
25 the federal and state tax obligations.

26 67. CVSI’s plummeting stock price due to poor management coupled with its failure
27 to correctly handle the issuance of the RSU shares has directly caused Mona to incur significant
28 tax related liability that should have been addressed upon settlement of the RSUs.

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1 68. CVSI is liable to the United States Treasury pursuant to tax Code and regulations
2 for failing to properly withhold and deposit the federal taxes associated with the issuance of the
3 RSU shares to Mona.

4 69. As of September 6, 2021, the IRS claims that Mona owes approximately
5 \$4,157,361.53 in relation to the RSU shares, with interest and penalties continuing to accrue at
6 around 12% annually.

7 70. In addition, the California State Franchise Board claims that Mona owes
8 approximately \$1,123,651 in taxes plus interest and penalties in relation to the RSU shares.

9 71. The growing \$5,281,012.53 in total taxes owed is the direct result of CVSI's failure
10 to properly handle the issuance of the RSU shares, specifically satisfying its statutory and
11 contractual withholding obligations.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

12 72. Mona repeats and realleges the above paragraphs as fully stated herein.

13 73. The Employment Agreement between the Parties is a valid and binding contract.

14 74. Mona fully complied with his obligations under the Employment Agreement.

15 75. Mona satisfied all conditions precedent of the Employment Agreement.

16 76. By virtue of the acts and omissions set forth above, CVSI materially breached the
17 Employment Agreement.

18 77. The Employment Agreement provides Mona the right to recover the attorney's fees
19 it incurs in any action brought to enforce its rights under the Employment Agreement.

20 78. As a direct and proximate cause of CVSI's actions, Mona has been damaged in an
21 amount in excess of \$15,000.00.

22 79. As a direct and proximate result of the aforesaid acts of CVSI, it has become
23 necessary for Mona to secure the services of an attorney, and Mona is entitled to recover attorney's
24 fees and costs incurred herein as special damages.

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SECOND CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

80. Mona repeats and realleges the above paragraphs as though fully stated herein.

81. Every contract in the State of Nevada carries an implied covenant of good faith and fair dealing.

82. CVSI had a duty to deal with Mona in good faith.

83. CVSI failed to deal with Mona in good faith as set forth herein.

84. As a direct and proximate cause of CVSI’s actions, Mona has been damaged in an amount in excess of \$15,000.00.

85. As a direct and proximate result of the aforesaid acts of CVSI, it has become necessary for Mona to secure the services of an attorney, and Mona is entitled to recover attorney's fees and costs incurred herein as special damages.

THIRD CLAIM FOR RELIEF
(Declaratory Relief)

86. Mona repeats and realleges the above paragraphs as though fully stated herein.

87. Federal law provides: “every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary.” 26 U.S.C.A. § 3402(a)(1).

88. The Employment Agreement required CVSI to withhold all federal and state taxes from Mona’s compensation, including any taxes associated with the RSUs.

89. A genuine dispute exists between the Parties regarding liability of the RSU taxes.

90. The interests of the Parties are adverse.

91. This Court should enter the following declarations:

- that the subject Employment Agreement is valid and binding;
- that CVSI had a contractual duty to withhold any and all taxes due as a result of the issuance of the RSUs;
- that CVSI had statutory duties to withhold any and all taxes due as a result of the issuance of the RSUs;

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- that CVSI is liable for the growing \$5,281,012.53 in total taxes owed to the IRS and the California State Franchise Board based upon CVSI's failure to properly handle the issuance of the RSUs in relation to tax liability; and
- that Mona must reimburse CVSI the pro-rata taxable share of the total net amount Mona received through his exercise of the RSUs (\$1,484,845.71 (before commissions and fees)) that should have been withheld by CVSI in April 18, 2019.

FOURTH CLAIM FOR RELIEF
(Negligence)

92. Mona repeats and realleges the above paragraphs as though fully stated herein.

93. Under I.R.C. § 3402 (1954), a duty is imposed on all employers to withhold from the wages of their employees an amount to be determined in accordance with the IRS regulations as income taxes. *Pac. Pools Const. Co. v. McClain's Concrete, Inc.*, 101 Nev. 557, 560, 706 P.2d 849, 852 (1985).

94. The duty to withhold taxes is nondelegable. *Purcell v. United States*, 1 F.3d 932, 937 (9th Cir. 1993).

95. CVSI breached its duty to withhold Mona's taxes for the RSUs as set forth herein.

96. CVSI's failure to correctly withhold upon issuance of the RSUs has directly caused Mona to personally incur significant personal tax liability.

97. CVSI is liable to the IRS for failing to properly coordinate and deposit the withholding of federal and state taxes prior to the issuance of the RSUs to Mona.

98. As of September 6, 2021, the IRS claims that Mona owes approximately \$4,157,361.53 in relation to the RSUs, with interest and penalties continuing to accrue at around 12% annually.

99. In addition, the California State Franchise Board claims that Mona owes approximately \$1,123,651 in taxes plus interest and penalties in relation to the RSUs.

100. The growing \$5,281,012.53 in total taxes owed to the IRS and the California State Franchise Board is the direct result of CVSI's failure to properly handle the issuance of the RSUs in relation to any tax liability.

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101. As a direct and proximate cause of CVSI’s actions, Mona has been damaged in an amount in excess of \$15,000.00.

102. As a direct and proximate result of the aforesaid acts of CVSI, it has become necessary for Mona to secure the services of an attorney, and Mona is entitled to recover attorney's fees and costs incurred herein as special damages.

FIFTH CLAIM FOR RELIEF
(Temporary and Permanent Injunction)

103. Mona repeats and realleges the above paragraphs as though fully stated herein.

104. Mona is entitled to mandatory injunctive relief commanding CVSI to pay the IRS the taxes Mona owed as of the RSU issuance on April 18, 2019.

105. Mona has more than a reasonable probability of success on the merits.

106. If CVSI is permitted to move forward with its violative conduct, Mona would suffer irreparable harm.

107. CVSI should therefore be commanded to hold \$5,281,012.53 (which amount continues to accrue) in trust for the IRS and/or pay the IRS the taxes Mona owed as of the RSU issuance on April 18, 2019, until such time as this Honorable Court can make a just determination.

108. CVSI should therefore be permanently commanded to pay the IRS the taxes Mona owed as of the RSU issuance on April 18, 2019.

109. As a direct and proximate result of the aforesaid acts of CVSI, it has become necessary for Mona to secure the services of an attorney, and Mona is entitled to recover attorney's fees and costs incurred herein as special damages.

SIXTH CLAIM FOR RELIEF
(Implied and Equitable Indemnity)

110. Mona repeats and realleges the above paragraphs as though fully stated herein.

111. If damages or liability is determined arising from CVSI’s issuance of the RSUs, then such damages and/or liability is the fault of, and caused by, CVSI.

112. Mona is entitled to indemnity implied by law, by virtue of CVSI’s involvement in the issuance of the RSUs; and/or by equity and good conscience, so that if Mona owes taxes arising

1 from the RSUs, then Mona is entitled to indemnity, apportionment of liability, and contribution
2 from CVSI.

3 113. As a direct and proximate cause of CVSI's actions, Mona has been damaged in an
4 amount in excess of \$15,000.00.

5 114. As a direct and proximate result of the aforesaid acts of CVSI, it has become
6 necessary for Mona to secure the services of an attorney, and Mona is entitled to recover attorney's
7 fees and costs incurred herein as special damages.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Mona prays for the following relief against CVSI:

- 10 1. For judgment in favor of Mona and against CVSI;
- 11 2. For compensatory damages in an amount in excess of \$15,000.00;
- 12 3. For Mona's requested declarations;
- 13 4. For injunctive relief as set forth herein;
- 14 5. For an award of reasonable attorney fees and costs of suit; and
- 15 6. For any further relief as the Court deems to be just and proper.

16 DATED this 5th day of November, 2021.

17 **HAYES | WAKAYAMA**

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19
20 By /s/ Liane K. Wakayama, Esq.
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