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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 BRANDY ELLOIE, individually, and on behalf
11 of all others similarly situated,

12 Plaintiff,

13 vs.
14

15 HEALTHMARKETS, INC., a Delaware
corporation; HEALTHMARKETS INSURANCE
16 AGENCY, INC. a Delaware corporation;
17 INSPHERE INSURANCE SOLUTIONS, INC., a
Delaware corporation; and DOES 1 through 10,
18 inclusive,

19 Defendants
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FILED
Superior Court of California
County of Los Angeles

07/22/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Navarro Deputy

Case No.: 21STCV09822

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

1. Civil Penalties Under PAGA [Cal.Lab.
Code §2699, et seq.].

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1 Plaintiff Brandy Elloie (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Healthmarkets, Inc., Healthmarkets
6 Insurance Agency, Inc., Insphere Insurance Solutions, Inc. and Does 1 through 10 (collectively
7 referred to as “Defendants”) for California Labor Code violations and unfair business practices
8 stemming from Defendants’ failure to pay minimum wages, failure to pay overtime wages,
9 failure to provide meal periods, failure to authorize and permit rest periods, failure to maintain
10 accurate records of hours worked and meal periods, failure to timely pay all wages to terminated
11 employees, failure to indemnify necessary business expenses, and failure to furnish accurate
12 wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
21 other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action on behalf of herself and on behalf of others for PAGA penalties
23 only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or
25 were harmed by Defendant’s illegal practices are “Aggrieved Employees.”

26 4. Plaintiff brings this action against Defendants seeking only to recover penalties for
27 herself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the
28 State of California. Plaintiff does not seek to recover anything other than penalties as permitted

1 by California Labor Code Section 2699 at this time. To the extent that statutory violations are
2 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
3 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
4 declaratory relief, and injunctive relief for herself and all aggrieved employees as permitted by
5 the PAGA.

6 5. Defendants own/owned and operate/operated an industry, business, and
7 establishment within the State of California, including Los Angeles County. As such, and based
8 upon all the facts and circumstances incident to Defendants' business in California, Defendants
9 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
10 Commission ("IWC"), and the California Business & Professions Code.

11 6. Despite these requirements, throughout the statutory period Defendants
12 maintained a systematic, company-wide policy and practice of:

- 13 (a) Failing to pay employees for all hours worked, including all minimum
14 wages, and overtime wages in compliance with the California Labor Code
15 and IWC Wage Orders;
- 16 (b) Failing to provide employees with timely and duty-free meal periods in
17 compliance with the California Labor Code and IWC Wage Orders, failing
18 to maintain accurate records of all meal periods taken or missed, and
19 failing to pay an additional hour's pay for each workday a meal period
20 violation occurred;
- 21 (c) Failing to authorize and permit employees to take timely and duty-free rest
22 periods in compliance with the California Labor Code and IWC Wage
23 Orders, and failing to pay an additional hour's pay for each workday a rest
24 period violation occurred;
- 25 (d) Failing to indemnify employees for necessary business expenses incurred;
- 26 (e) Willfully failing to pay employees all minimum wages, overtime wages,
27 meal period premium wages, and rest period premium wages due within
28

the time period specified by California law when employment terminates;
and

(f) Failing to maintain accurate records of the hours that employees worked.

(g) Failing to provide employees with accurate, itemized wage statements
containing all the information required by the California Labor Code and
IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and
constructive notice of the improprieties alleged herein and intentionally refused to rectify their
unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the
unlawful conduct, policies, practices, acts and omissions as described in each and all of the
foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further,
Defendants are responsible for each of the unlawful acts or omissions complained of herein under
the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff Brandy Elloie is a California resident that worked for Defendants in the
County of Los Angeles, State of California, as a insurance agent from approximately December
2015 to March 2020.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new
plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
American Savings and Loan Association (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief
alleges, that Defendants Healthmarkets, Inc., Healthmarkets Insurance Agency, Inc., Insphere
Insurance Solutions, Inc. are:

(a) Delaware corporations with a principal place of business in Los Angeles,

California.

(b) Business entities conducting business in numerous counties throughout the State of California, including in Los Angeles County; and

(c) The former employers of Plaintiff, and the current and/or former employers of the Aggrieved Employees. Defendants suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

12. Plaintiff does not currently know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of California.

14. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other Aggrieved Employees, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have

known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

15. Plaintiff Brandy Elloie is a California resident who worked for Defendants in the County of Los Angeles, State of California, as a insurance agent. During the statutory period, Defendants misclassified Plaintiff as an independent contractor, when in-fact Plaintiff should have been classified as an employee.

16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours worked (including minimum wages and overtime wages), failed to provide Plaintiff with uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

17. Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages.

18. Throughout the statutory period, Defendants misclassified Plaintiff and the Aggrieved Employees as independent contractors, despite the fact that Defendants were considered "captive agents" in that they were unable to work as agents for any other company, other than for Defendants.

19. Throughout the statutory period, Defendants have wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants also did not adequately inform Plaintiff and the

1 Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or,
2 for shifts greater than 10 hours, by the end of the tenth hour of work. Accordingly, Defendants'
3 policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in
4 compliance with California law.

5 20. Throughout the statutory period, Defendants have wrongfully failed to authorize
6 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
7 Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work
8 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
9 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
10 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
11 for rest periods that were not authorized or permitted. Defendants also did not adequately inform
12 Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants
13 did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
14 the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the
15 timing of rest periods. Defendants also did not have adequate policies or practices to verify
16 whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further,
17 Defendants did not maintain accurate records of employee work periods, and therefore
18 Defendants cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods
19 during the middle of each work period. Accordingly, Defendants' policy and practice was to not
20 authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance
21 with California law.

22 21. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
23 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
24 Defendants without reimbursement. For example, Plaintiff and the Aggrieved Employees were
25 required to pay use their own personal cellular telephones for purposes of work, without
26 reimbursement. Defendants also failed to reimburse Plaintiff and the Aggrieved Employees for
27 automobile expenses such as mileage and gas, and failed to reimburse costs such as meals paid
28 for clients.

1 22. Throughout the statutory period, Defendants willfully failed and refused to timely
2 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for
3 all minimum wages, overtime wages, meal period premium wages, and rest period premium
4 wages. Further, Defendants did not pay Plaintiff and the Aggrieved Employees their final
5 paychecks immediately upon termination.

6 23. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
7 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
8 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
9 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
10 provided in accordance with California law, correct wages for rest periods that were not
11 authorized and permitted to take in accordance with California law, and Defendant's address).
12 Further, the wage statements do not show Defendant's address as required by California law. As
13 a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved
14 Employees suffered injury because, among other things:

- 15 (a) the violations led them to believe that they were not entitled to be paid
16 minimum wages, overtime wages, meal period premium wages, and rest
17 period premium wages to which they were entitled, even though they were
18 entitled;
- 19 (b) the violations led them to believe that they had been paid the minimum,
20 overtime, meal period premium, and rest period premium wages, even
21 though they had not been;
- 22 (c) the violations led them to believe they were not entitled to be paid
23 minimum, overtime, meal period premium, and rest period premium wages
24 at the correct California rate even though they were;
- 25 (d) the violations led them to believe they had been paid minimum, overtime,
26 meal period premium, and rest period premium wages at the correct
27 California rate even though they had not been;
- 28

- 1 (e) the violations hindered them from determining the amounts of minimum,
2 overtime, meal period premium, and rest period premium owed to them;
3 (f) in connection with their employment before and during this action, and in
4 connection with prosecuting this action, the violations caused them to have
5 to perform mathematical computations to determine the amounts of wages
6 owed to them, computations they would not have to make if the wage
7 statements contained the required accurate information;
8 (g) by understating the wages truly due them, the violations caused them to
9 lose entitlement and/or accrual of the full amount of Social Security,
10 disability, unemployment, and other governmental benefits;
11 (h) the wage statements inaccurately understated the wages, hours, and wages
12 rates to which Plaintiff and the Aggrieved Employees were entitled, and
13 Plaintiff and the Aggrieved Employees were paid less than the wages and
14 wage rates to which they were entitled.

15 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California
16 Labor Code § 226(e), including actual damages.

17 **FIRST CAUSE OF ACTION**

18 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
19 **2004, Cal. Lab. Code § 2698 et seq.)**

20 24. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
21 though fully set forth herein.

22 25. At all times herein mentioned, Defendants were subject to the Labor Code of the
23 State of California and the applicable Industrial Welfare Commission Orders.

24 26. California Labor Code § 2699(a) specifically provides for a private right of action
25 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
26 law, any provision of this code that provides for a civil penalty to be assessed and collected by
27 the Labor and Workforce Development Agency or any of its departments, divisions,
28 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,

1 be recovered through a civil action brought by an aggrieved employee on behalf of herself or
2 herself and other current or former employees pursuant to the procedures specified in Section
3 2699.3.”

4 27. Plaintiff has exhausted her administrative remedies pursuant to California Labor
5 Code § 2699.3. On September 1, 2020, she gave written notice by online filing to the Labor and
6 Workforce Development Agency and by certified mail to Defendants of the specific provisions
7 of the Labor Code that Defendants have violated against Plaintiff and current and former
8 aggrieved employees, including the facts and theories to support the violations. Plaintiff also
9 paid the filing fee shortly after March 10, 2021. Plaintiff’s PAGA case number is LWDA-CM-
10 825104-21.

11 28. The statute of limitations is tolled while a plaintiff exhausts his/her administrative
12 remedies with California’s Labor and Workforce Development Agency (LWDA) prior to suit,
13 which is required by the statute. (*See* Cal. Lab. Code § 2699.3(d).)

14 29. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and
15 Workforce Development Agency has not indicated that it intends to investigate Defendants’
16 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil
17 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
18 the Labor Code described in this Complaint. These penalties include, but are not limited to,
19 penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

20 30. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
21 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
22 employing labor who willfully fails to maintain accurate and complete records required by
23 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
24 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
25 begins and ends each work period. Meal periods, and total hours worked daily shall also be
26 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
27 keep total hours worked in the payroll period and applicable rates of pay.
28

1 31. During the time period of employment for Plaintiff and the Aggrieved Employees,
2 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
3 maintain accurate records showing meal periods, and accurate records showing when employees
4 begin and end each work period. Defendants' failure to provide and maintain records required by
5 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
6 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
7 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
8 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
9 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
10 Employees have suffered and continue to suffer, substantial losses related to the use and
11 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
12 to compel Defendants to fully perform its obligation under state law, all to their respective
13 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
14 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
15 Employees have also suffered an injury in that they were prevented from knowing,
16 understanding, and disputing the wage payments paid to them.

17 32. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
18 of civil penalties on behalf of herself, the State of California, and similarly Aggrieved Employees
19 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
20 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

21 33. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
22 pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
23 shall be entitled to an award of reasonable attorney's fees and costs."

24 **PRAYER FOR RELIEF**

25 Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment
26 against Defendants, jointly and severally, as follows:

- 27 1. That the Court declare, adjudge and decree that Defendants violated the California
28 Labor Code by failing to pay wages for all hours worked (including minimum, straight time,

1 and overtime wages), failing to provide meal periods, failing to authorize and permit rest
2 periods, failing to furnish accurate wage statements, and failing to maintain accurate records
3 of all hours worked and meal periods;

4 2. An award of civil penalties on behalf of herself and all similarly aggrieved
5 employees pursuant to PAGA;

6 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

7 4. Attorneys' fees and costs reasonably incurred;

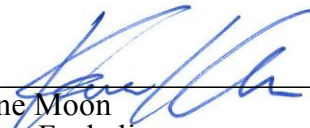
8 5. Injunctive and declaratory relief to the extent allowed by PAGA; and

9 6. Such other and further relief that the Court deems proper.
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11 Dated: July 22, 2021

Respectfully submitted,

12 MOON & YANG, APC

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14 By: 

Kane Moon

Allen Feghali

Edwin Kamarzarian

Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and
4 not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **FIRST AMENDED**
6 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by sending []
the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the
attached service list:

7 Andrew M. Paley
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12 *Attorneys for Defendants HEALTHMARKETS, INC., HEALTHMARKETS INSURANCE AGENCY, INC.*
13 *and INSPHERE INSURANCE SOLUTIONS, INC*

14 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to
15 accept electronic service, I caused the documents to be sent to the persons at the electronic
service addresses listed above via third-party cloud service CASEANYWHERE.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct. Executed this **July 22, 2021** at Los Angeles, California.

18 Ivette Hernandez
19 Type or Print Name

Signature