BOYAMIAN LAW, INC.
Michael H. Boyamian (SBN 256107)
Armand R. Kizirian (SBN 293992)
550 North Brand Boulevard, Suite 1500
Glendale, California 91203-1922
Telephone: 818.547.5300
Facsimile: 818.547.5678
E-mail(s): michael@boyamianlaw.com,
armand@boyamianlaw.com

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
11/06/2024 at 11:37:34 AM
By: Damaree Franklin,
Deputy Clerk

Attorneys for Plaintiff KIMBERLY CORDERO, an Individual,
On Behalf of Herself, Other Aggrieved Employees,
and the General Public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

KIMBERLY CORDERO, an individual, on behalf of herself, all other aggrieved employees, and the general public,

Plaintiff,

vs.

HUMANA INC., a Delaware corporation; HUMANA AT HOME, INC., a Delaware corporation; HUMANA AT HOME1, INC., a Florida corporation; HUMANA MARKETPOINT, INC, a Kentucky Corporation.; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 24CV098568

COMPLAINT FOR:

1. **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE 2698, ET. SEQ**

Plaintiff KIMBERLY CORDERO, an individual, hereby files this Complaint ("Complaint") against Defendant HUMANA INC., a Delaware corporation; HUMANA AT HOME, INC., a Delaware corporation; HUMANA AT HOME1, INC. a Florida corporation; HUMANA MARKETPOINT, INC, a Kentucky corporation; and DOES 1 through 50, inclusive, (hereinafter collectively "Humana" or "Defendants"). Plaintiff, in her representative capacity, is informed and believes and on the basis of that information and belief alleges as follows:

INTRODUCTION

1. This lawsuit challenges Defendants' employment practices with respect to their employees in the State of California, who are paid on a salary basis plus commission (hereinafter "Aggrieved Employees" or "Marketing Sales Agents") from August 26, 2023 and continuing through the present ("Relevant Time Period").

2. During the Relevant Time Period, Defendants' policy and practices (official and unofficial) led to the systematic underpayment of all wages, including overtime pay, and failed to provide legally compliant rest breaks to Plaintiff and the Aggrieved Employees. In particular, and during the Relevant Time Period, Defendants compensated Plaintiff and Aggrieved Employees with straight time for all hours worked, even for work in excess of eight hours per day and/or forty hours per work week, and failed to pay them overtime wages accordingly, and further failed to pay Plaintiff and Aggrieved Employees for all straight time hours they worked. Throughout the Relevant Time Period, Defendants misclassified Marketing Sales Agents as exempt from overtime, failed to pay for all hours worked, including minimum wages and overtime wages, failed to provide separate rest period compensation, and for related derivative claims of inaccurate wage statements and waiting time penalties.

3. At all times relevant hereto, and with certain defined exceptions, Defendants' compensation scheme did not fully compensate Plaintiff with overtime compensation for all overtime hours worked.

4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to provide Plaintiff with paid rest periods and rest period compensation in violation of Labor Code sections 226.7 and 516 and IWC Wage Order No. 4, section 12.

5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants' knowingly and intentionally utilized a timekeeping system, which failed to compensate Plaintiff for all hours worked.

6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants knowingly and intentionally provided Plaintiff with wage statements that, among others, do not show all wages earned, all hours worked, or all applicable rates.

7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to pay Plaintiff all wages due and owing upon termination of employment including, but not limited to, payment of wages for missed rest periods compensation.

8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to provide Plaintiff with a safe and healthy work environment in violation of Labor Code sections 6400-6403.

9. In this case, Plaintiff seeks civil penalties established by Labor Code section 2699, the Private Attorneys General Act ("PAGA"), against Defendants for their unlawful employment practices.

PARTIES

Plaintiff Kimberly Cordero

10. Plaintiff Kimberly Cordero is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Plaintiff commenced her employment with Defendants in or around February 2022.

11. Plaintiff commenced her employment with Humana from approximately February 2022 through November 2023. During her tenure at Humana, Plaintiff fulfilled the role of a "Marketing Sales Agent" within the Sales Department. Plaintiff was generally engaged in selling insurance during the time between mid-October and early December per Medicare guidelines for Annual Enrollment Period (AEP). Following this period, she performed maintenance activities on policies Aggrieved Employees sold, responding to customer inquiries about policy terms and features, and general branding/marketing related activities for Humana. Having embraced the role of Marketing Sales Agent, Plaintiff diligently discharged her responsibilities during her tenure. Throughout her tenure with Humana, Plaintiff was misclassified as exempt employment, earning a $52,000 base salary plus commissions.

Defendant Humana, Inc.

12. Plaintiff is informed and believes and based thereon alleges that Defendant Humana, Inc. is a Delaware Corporation.

////

Defendant Humana at Home, Inc.

13. Plaintiff is informed and believes and based thereon alleges that Defendant Humana at Home, Inc. is a Delaware Corporation.

Defendant Humana at Home1, Inc.

14. Plaintiff is informed and believes and based thereon alleges that Defendant Humana Marketpoint, Inc. is a Florida Corporation.

Defendant Humana Marketpoint, Inc.

15. Plaintiff is informed and believes and based thereon alleges that Defendant Humana Marketpoint, Inc. is a Kentucky Corporation.

Does 1 through 50

16. DOES 1 through 50 inclusive are now and/or at all times mentioned in this Complaint were, licensed to do business and/or actually doing business in the State of California. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 50, inclusive and for that reason, DOES 1 through 50 are sued under such fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 50 are believed to be business entities who were also co-employers of the Plaintiff and the other aggrieved employees.

All Defendants

17. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within the course and scope of said employment and/or agency; furthermore, that each and every Defendant herein, while acting as a high corporate officer, director and/or managing agent, principal and/or employer, expressly directed, consented to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the matters referred to herein.

////

18. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

19. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership, and common enterprise, and were acting within the course and scope of, and in pursuit of said joint venture, partnership, and common enterprise and, as such were co-employers of the Plaintiff and the other aggrieved employees.

20. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

21. Plaintiff is further informed and believes, and based upon such information and belief, alleges that there exists, and all times relevant herein there existed, a unity of interest and ownership between and among Defendants, and each of them, such that any individuality and separateness between and among such Defendants has ceased, and that each is the alter ego of the other, and vice versa. Plaintiff is further informed and believes, and based upon such information and belief, alleges that Defendants, and each of them, are wholly owned subsidiaries, affiliates, operating divisions, operating units, holding companies or otherwise integrated enterprises

22. Plaintiff is further informed and believes, and based upon such information and belief, alleges that the operations of Defendants, and each of them, and all of their affiliates are integrally related, from human resources policies, resources and management, to the overall "Humana" business enterprises. Defendants, and each of them, and their subsidiaries and affiliates substantially made the final decision regarding matters related to Plaintiff, exercising control to a degree that exceeds the control normally exercised by a parent corporation, and further that Defendants, and each of them, have common control of work relations, common management and a

clear interrelation of operations. Finally, Defendants, and each of them, operate and maintain their affiliates and subsidiaries operating under the Humana name and utilizing the Humana logo nationwide. Adherence to the fiction of the separate existence of Defendants, and each of them, would permit an abuse of trust and/or corporate privilege and would sanction a fraud and promote injustice in that Plaintiff is informed and believes, and based upon such information and belief, allege that Defendants, and each of them, were, and all at times relevant are, inadequately capitalized and incapable of responding in damages to Plaintiff.

JURISDICTION AND VENUE

23. This Court has jurisdiction over all causes of action herein pursuant to the California Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code § 17203. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because Defendants operate in this County, injuries that are the subject of this lawsuit arose in this county, and Defendants have not otherwise designated a location for a California office.

FACTUAL ALLEGATIONS

24. Plaintiff is a former Marketing Sales Agent of Defendants. She was classified as a salaried, exempt employee earning a $52,000 base salary plus commissions. Plaintiff was hired on February 7, 2022 and was terminated from her position in or around November 20, 2023. On the sales side, Humana has in place a dedicated team of Marketing Sales Agents who work remotely, from their homes or away from a Humana office, calling prospective customers and offering them a wide variety of insurance options. Marketing Sales Agents are generally engaged to sell insurance during the time period between mid-October and early December per Medicare guidelines for Annual Enrollment Period (AEP). Sales activity for non-AEP months is minimal as the remaining months in the calendar year are used to perform maintenance activities on policies Aggrieved Employees sold, responding to customer inquiries about policy terms and features, and general branding/marketing related activities for Humana. In addition, Marketing Sales Agents are also subject to rigid control over all aspects of their work. Aggrieved Employees, including Plaintiff, have in place a set schedule for work, beginning at 10:00 a.m. and ending at 6:30 p.m. Marketing Sales Agents are required to manually clock in to work, are required to take two 15-minute rest

breaks, clock out for a supposed meal break, and a "wellness" thirty-minute break once a week. They were also required to meet sales goals and quota. For inbound calls, Marketing Sales Agents were required to meet 150-200 sales a week and for outbound calls, 78 sales a week.

25. Plaintiff generally worked five days a week and for purposes of the Relevant Time Period for the PAGA penalties she seeks on behalf of herself and other aggrieved Marketing Sales Agents.

Defendant's Failure to Pay Overtime Compensation

26. During the AEP, Humana compensates Marketing Sales Agent with overtime payment for all hours worked. However, in the non-AEP months, the Company has a policy, practice, or procedure of not paying for daily overtime when Marketing Sales Agents, including Plaintiff, routinely work in excess of 8.0 hours of work. Instead, Defendants require Aggrieved Employees to complete a "Long Call Form" which would serve as some form of credit for the following scheduled day of work. Specifically, if Plaintiff worked 9 hours during a non-AEP shift, that extra hour of overtime would mean that the following day, her work schedule would commence at 11:00 a.m. instead of 10:00 a.m. while she would be compensated as if she started work at 10:00 a.m. In other words, instead of paying daily overtime, Defendants pay Plaintiff and the other Aggrieved Employees their regular rate of pay in a different shift when time beyond 8 hours in a day is incurred, a clear violation of California law.

27. Plaintiff seeks to recover civil penalties pursuant to the unpaid compensation for all hours worked as defined by the Labor Code and the applicable Industrial Welfare Commission wage order as to the time during which an employee is subject to the control of an employer, and includes all the time the employee is engaged, suffered or permitted to work, whether or not required to do so, or as otherwise set forth in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, (2018) 4 Cal.5th 903. *See also Morillion v. Royal Packing Co.* (2000) 22 Cal-4th 575; *Troester v. Starbucks Corp.* (2018) 421 P.3d 1114 (California Supreme Court decision affirming that relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off-the-clock without compensation.) In California, the employer is required to keep records of all hours worked. Labor Code § 1174(d). California law also requires that all hours worked over 8 in a day or 40 in a

week or worked on the 7th consecutive day of a work week be paid 1.5 times an employee's regular rate of pay. *See, e.g.*, Lab. Code §§ 510, 1194; Cal. Code Regs., tit. 8, § 11090, *et seq*. In addition, hours worked over 12 in a day or hours over 8 worked on the 7th consecutive day in a week are paid at 2 times an employee's regular rate of pay.

28. Labor Code Section 1194 provides that an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

29. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states: "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

30. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

31. Plaintiff and other Aggrieved Employees were entitled to overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein. However, Defendant paid Aggrieved Employees, including Plaintiff, a straight hourly rate for all hours worked. Defendants do not and did not pay Aggrieved Employees, including Plaintiff, one and one-half (1-1/2) times their regular rate of pay for any overtime hours worked over eight hours per day and/or forty hours per week. Instead, Defendants paid Aggrieved

Employees, including Plaintiff, a regular, hourly rate for all hours worked with no payment of overtime wages.

32. Plaintiff was classified as non-exempt by Defendants and was therefore entitled to payment for all hours worked, including overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein.

33. As a matter of policy and/or practice, Plaintiff and other Aggrieved Employees were also frequently required to perform work during meal and rest breaks.

34. As a matter of policy and/or practice Defendants utilized a timekeeping system, which failed to compensate Plaintiff and other Aggrieved Employees for all hours worked, whether by rounding, time-shaving, or otherwise.

35. Throughout the Relevant Time Period, Defendants did not maintain adequate records of all wages earned, hours worked, and meal and rest breaks taken.

36. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff and other Aggrieved Employees and thus failed to pay overtime wages for the actual amount of overtime hours worked.

Defendants' Failure to Provide Rest Breaks

37. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number 4, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved of all duty.

38. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order, number 4, section 12, required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period is not provided.

39. Plaintiff is informed and believes and based thereon alleges that Defendants failed to effectively communicate California rest period requirements to their Aggrieved Employees, including Plaintiff. Plaintiff is further informed and believes and based thereon alleges that throughout the Relevant Time Period, Defendants failed to schedule rest periods.

40. Plaintiff is further informed and believes and based thereon alleges that Defendants rarely, if ever, issue any compensation to Marketing Sales Agents for missed, late or shortened meal

and/or rest breaks.

41. In conjunction with Marketing Sales Agents' core duties to sell insurance products and services to Humana's customers and prospective customers, Aggrieved Employees' compensation package included commission-based payments based upon the sales they make on behalf of Humana. Labor Code § 200(a) defines wages as: "all amounts of labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." Notably, the Labor Code's definition of wages includes commissions, as set forth in Labor Code § 200(a).

42. Plaintiff and other Aggrieved Employees were paid based on commission pay plans that are the functional equivalent of the commission pay plan that was found to be unlawful in *Vaquero v. Stoneledge Furniture LLC* ("*Stoneledge*"), 9 Cal. App. 5th 98 (2017). In *Stoneledge*, sales associates who worked for Ashley Furniture stores were paid on a commission pay plan, which guaranteed a minimum hourly rate as an advance against commissions earned in later pay periods. The *Stoneledge* court held the commission pay plan was unlawful because it failed to separately compensate sales associates for rest periods in weeks where the employee was paid on a commission basis. In essence, the reasoning of the *Stoneledge* court was a natural extension of its prior holding in *Bluford v. Safeway, Inc.*, 216 Cal. App. 4th 864, 872 (2013), which held that "under the rule of *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323 rest periods must be separately compensated in a piece-rate system." *See also Stoneledge*, 9 Cal. App. 5th at 110 ("We agree with Bluford that Wage Order No. 4 requires employers to separately compensate employees for rest periods if an employer's compensation plan does not already include a minimum hourly wage for such time.").

43. In *Ferra*, the Court held that employers are required to pay meal and rest break violation premiums at the same "regular rate of pay" they use for paying overtime -to wit, they must include in the pay rate calculation all wages and other nondiscretionary earnings (such as shift differentials, piece-rate and incentive compensation, and nondiscretionary bonuses). *Id.* at * 11. The High Court also confirmed that its decision applies retroactively to meal and rest break violation premium payments previously made or owed. *Id.* at *12. Throughout the Relevant Time Period,

Plaintiff and the other aggrieved employees were routinely denied the rest breaks they were entitled to under California law.

44. Specifically, throughout the Relevant Time Period, Defendants regularly:

a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and the other aggrieved employees were relieved of all duty for each four (4) hours of work;

b. Failed to compensate Plaintiff and the other aggrieved employees for break time when breaks were taken; and

c. Failed to pay Plaintiff and the other aggrieved employees one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not permitted.

Defendants' Failure to Pay All Wages Upon Termination

45. At all times relevant hereto, Labor Code § 201 required an employer that discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Labor Code Sections 202 requires an employer to pay an employee who quits any compensation due and owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

46. Defendants willfully and knowingly failed to pay Aggrieved Employees, upon termination of employment, all accrued compensation including payment of minimum wage compensation, missed rest periods compensation and for time spent performing work off the clock at Defendants' direction.

Defendants' Failure to Provide Accurate, Itemized Wage Statements

47. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number 4, section 7 required employers to maintain adequate employment records and provide employees with accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly rates worked during each pay period, the corresponding number of hours worked at each hourly rate, and rest breaks taken.

////

48. Wage statements provided to Plaintiff and the other aggrieved employees by Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of the Labor Code section 226, and IWC Wage Order number 4, section 7.

49. Moreover, Defendants did not maintain adequate records of all wages earned, hours worked and breaks taken.

Exhaustion of Administrative Remedies

50. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated April 5, 2024, Plaintiff, on behalf of herself and the other Aggrieved Employees, gave written notice by electronic mail and certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Attached as **Exhibit "1"** is a true and correct copy of the referenced letter.

51. More than sixty-five (65) calendar days have passed since Plaintiff provided the LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified from the LWDA that it does intend to investigate the violations of the California Labor Code alleged herein.

<u>FIRST CAUSE OF ACTION</u>

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)

52. Plaintiff incorporates by reference the allegations set forth above.

53. As set forth above, Plaintiff have complied with the procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated April 5, 2024, Plaintiff, on behalf of herself and the other aggrieved employees, gave written notice by certified mail to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of the written notice letter is attached hereto as **<u>Exhibit "1"</u>**. More than sixty-five (65) calendar days have passed since Plaintiff provided the LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified from the LWDA that it does intend to investigate the violations

of the California Labor Code alleged herein.

54. This action arises out of the allegedly unlawful labor practices of Defendants in California. Through this private attorneys' general action, Plaintiff represents herself, and other aggrieved employees of Defendants that were in California, against whom Defendants have allegedly committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described herein, Plaintiff now seeks to recover civil penalties, attorneys' fees, and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq*.

55. Labor Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

56. Plaintiff is informed and believes that throughout the Relevant Time Period, Defendants have applied centrally devised policies and practices to Plaintiff and the other aggrieved employees with respect to wages, hours, and working conditions.

Failure to Pay Minimum Wages and Designated Rates

57. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees and the payment of a wage less than the minimum so fixed is unlawful. Additionally, Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

58. Where any statute or contract requires an employer to maintain the designated wage scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

59. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff and the other aggrieved employees to remain under Defendants' control without paying therefore, which resulted in them earning less than the legal minimum wage in the State of California for all hours worked. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff and the other aggrieved employees to remain under Defendants' control without paying therefore, which resulted in them earning less than the legal minimum wage in the State of California for all hours worked.

60. Defendants' failure to pay Plaintiff and other aggrieved employees minimum wages and designated violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant to sections 1197.1 and 2699(a), (f), and (g).

Failure to Pay Overtime Compensation

61. Labor Code Section 1194 provides that an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

62. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states: "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

63. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

64. Plaintiff and the other aggrieved employees were entitled to overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein.

65. As a matter of policy and/or practice, Plaintiff and the other aggrieved employees were frequently required to perform work before and after their scheduled shifts as well as during

rest breaks causing Plaintiff and the other aggrieved employees to not receive pay for all hours worked.

66. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff and other aggrieved employees, and thus failed to pay overtime wages for the actual amount of overtime hours worked.

Failure to Provide Rest Breaks

67. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net rest time for each four (4) hour work period, or major portion thereof, that must be in the middle of each work period insofar as is practicable.

68. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from requiring employees to work during required rest periods and require employers to pay employees an additional hour of premium wages on each workday that the employee is not provided with the required rest period.

69. At relevant times during the applicable limitations period, Defendants failed to provide Plaintiff with a net rest periods of at least ten (10) minutes for each four (4) hour work period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit Plaintiff to take all legally required rest breaks.

70. Plaintiff are informed, believes and thereon allege that, at relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing the other aggrieved employees with net rest periods of a least ten (10) minutes for each four (4) hour work period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit them to take all legally required rest breaks.

Failure to Pay Wages Upon Termination

71. Labor Code Section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

72. Labor Code Section 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours' notice before quitting are due and payable at the time of

quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours' notice before quitting are due and payable within 72 hours.

73. Labor Code Section 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code Section 201 or Section 202.

74. Plaintiff are informed and believes that Defendants' failures to timely pay Plaintiff and the aggrieved employees all of their earned and unpaid wages, including unpaid minimum wage and overtime, and unprovided rest period premium wages, have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

Failure to Provide and Maintain Compliant Wage Statements

75. Labor Code Section 1174 requires that every person employing labor in this state shall keep (1) a record showing the names and addresses of all employees employed and the ages of all minors; (2) at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments; (3) such records in accordance with rules established for this purpose by the commission, but in any case, on file for not less than three years. This statute also prevents an employer from prohibiting an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to keep the records required by Section 1174.

76. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved employees were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable hourly rates in effect during the pay period; and (d) the corresponding number of hours worked at each hourly rate by the employee.

////

77. Defendants failed to provide Plaintiff with accurate itemized statements in accordance with California Labor Code Section 226(a) by providing Plaintiff with wage statements with inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of the unlawful labor and payroll practices described herein.

78. Plaintiff is informed and believe and thereon allege that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing aggrieved employees with accurate itemized wage statements by providing them with wage statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and deductions from wages earned as a result of the unlawful labor and payroll practices described herein.

79. Plaintiff is informed and believes and thereon alleges that Defendants' failure to provide then and the aggrieved employees with accurate written wage statements is knowing and intentional.

80. Plaintiff is informed and believes and thereon alleges that Defendants had the ability to provide them and the aggrieved employees with accurate wage statements, but intentionally provided wage statements that they knew are not accurate.

81. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate information about wages and amounts deducted from wages to state and federal government agencies.

82. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

Section 558 Penalties

83. The PAGA claims are also brought against Defendants pursuant to provisions of the labor code including § 558 which permits liability of persons or employers who violate or cause to be violated Labor Code and IWC regulations. California Labor Code Section 2699.

84. The PAGA states:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees…

85. One provision of law enforceable through PAGA as to civil penalties, though not unpaid wages, is Labor Code § 558, which states the following:

> (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
> (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to any amount sufficient to recover underpaid wages.
> (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages…

Penalties Authorized by PAGA

86. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1194-1197.1, 1198, 1199, 2698, and 6400-6403 *et seq.*, during the Relevant Time Period in the following amounts:

a. For violations of California Labor Code sections 200, 201, 202, 203, 226.7, and 1198, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code Section 2699(f)(2));

b. For violations of California Labor Code Section 1194-1197.1, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars and fifty ($250.00) for each aggrieved employee per pay period for each subsequent violation regardless of whether the initial violation is intentionally committed (penalty amounts established by California Labor Code § 1197.1);

c. For violations of California Labor Code Sections 216, 221, 223 one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee for each subsequent or willful violation (penalty amounts established by California Labor Code § 225.5);

d. For violations of California Labor Code Section 1174, five hundred dollars ($500.00) for each of Defendants' violations in addition to any other penalties or fines permitted by law (penalty amounts established by California Labor Code § 1174.5);

e. For violations of California Labor Code Section 226, two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code Section 226.3);

f. For violations of California Labor Code Section 204, one hundred dollars ($100.00) per employee for initial violation and two hundred dollars ($200.00) per employee for each subsequent violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code Section 210);

g. For violations of California Labor Code section 510, 511, 512, 551, 552 and, Wage Order 4-2001 Sections 9, 11, and 12, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code Section 558).

h. For violations of California Labor Code Section 558, fifty dollars ($50.00) for initial violation, fifty dollars ($50.00) for each underpaid employee for each pay period for which the employee was underpaid; for each subsequent violation, one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code Section 558).

87. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself and the other Aggrieved Employees, are entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiff on behalf of herself and on behalf of the aggrieved employees, prays for judgment against Defendants as follows:

a. Civil penalties;

b. Other penalties and fines permitted by law;

c. Costs of suit;

d. Reasonable attorneys' fees;

e. Pre-judgment and post-judgment interest as provided by law; and

f. Such other and further relief as the Court deems just and proper.

DATED: November 6, 2024

BOYAMIAN LAW, INC.

By: ______________________________

Michael H. Boyamian
Armand R. Kizirian
Attorney for Plaintiff KIMBERLY CORDERO, Other Aggrieved Employees, and the General Public

Exhibit “1”

April 5, 2024

SUBMITTED ELECTRONICALLY VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Re: *Cordero adv. Humana Marketpoint, Inc.*
Notice of PAGA Claims Pursuant to Labor Code § 2699.3

To Whom It May Concern:

My office represents Kimberly Cordero (hereinafter "Claimant"), with respect to claims on behalf of herself and other similarly situated current and former Direct Marketing Sales Agents (collectively hereinafter referred to as "Marketing Sales Agents" or "Aggrieved Employees") of Humana Inc., Humana at Home, Inc., Humana at Home1, Inc. and Humana Marketpoint, Inc. (hereinafter collectively referred to as "Humana" or "Company") who worked in California from April 5, 2023 and continuing to the present ("Relevant Time Period"). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a). This notice is provided to enable Claimant to proceed in a court of law against Humana as authorized by California Labor Code section 2695, *et seq*.

Below we set forth the facts and theories which we believe support our contention that Humana has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failures by Humana to misclassify Marketing Sales Agents as exempt from overtime, failure to pay for all hours worked, including minimum wages and overtime wages, failure to provide separate rest period compensation, and for related derivative claims of inaccurate wage statements and waiting time penalties.

Facts & Theories About the Case

1. ***Relevant Factual Background***

Humana is a national insurance and healthcare company that provides, among other things, various insurance products and in-home care services. On the sales side, Humana has in place a dedicated team of Marketing Sales Agents who work remotely, from their homes or away from a Humana office, calling prospective customers and offering them a wide variety of insurance options. Kimberly Cordero is a former Marketing Sales Agent. She was a salaried, exempt employee earning a $52,000 base salary plus commissions. Ms. Cordero was hired on February 7, 2022 and was terminated from her position in or around November 20, 2023.

Our investigation has revealed that Marketing Sales Agents are generally engaged to sell insurance during the time period between mid-October and early December per Medicare guidelines for Annual Enrollment Period (AEP). Sales activity for non-AEP months is minimal as the remaining months in the calendar year are used to perform maintenance activities on policies Aggrieved Employees sold, responding to customer inquiries about policy terms and features, and general branding/marketing related activities for Humana.

In addition, Marketing Sales Agents are also subject to rigid control over all aspects of their work. Aggrieved Employees, including Ms. Cordero, have in place a set schedule for work, beginning from 10:00 a.m. and concluding to 6:30 p.m. Marketing Sales Agents are required to manually clock in to work, are required to take two 15-minute rest breaks, clock out for a supposed meal break, and a “wellness” thirty-minute break once a week. They were also required to meet sales goals and quota. For inbound calls, Marketing Sales Agents were required to meet 150-200 sales a week and for outbound calls, 78 sales a week.

2. *Failure to Pay Overtime Compensation*

Our investigation has uncovered that during the AEP, Humana compensates Marketing Sales Agent with overtime payment for all hours worked. However, in the non-AEP months, the Company has a policy, practice, or procedure of not paying for daily overtime when Marketing Sales Agents, including Ms. Cordero, routinely work in excess of 8.0 hours of work. Instead, Humana requires Aggrieved Employees to complete a “Long Call Form” which would serve as some form of credit for the following scheduled day of work. Specifically, if Ms. Cordero worked 9 hours during a non-AEP shift, that extra hour of overtime would mean that the following day, her work schedule would commence at 11:00 a.m. instead of 10:00 a.m.

Claimant seeks to recover civil penalties pursuant to the unpaid compensation for all hours worked as defined by the Labor Code and the applicable Industrial Welfare Commission wage order as to the time during which an employee is subject to the control of an employer, and includes all the time the employee is engaged, suffered or permitted to work, whether or not required to do so, or as otherwise set forth in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, (2018) 4 Cal.5th 903. *See also Morillion v. Royal Packing Co*. (2000) 22 Cal-4th 575; *Troester v. Starbucks Corp*. (2018) 421 P.3d 1114 (California Supreme Court decision affirming that relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off-the-clock without compensation.) In California, the employer is required to keep records of all hours worked. Labor Code § 1174(d). California law also requires that all hours worked over 8 in a day or 40 in a week or worked on the 7th consecutive day of a work week be paid 1.5 times an employee’s regular rate of pay. *See, e.g*., Lab. Code §§ 510, 1194; Cal. Code Regs., tit. 8, § 11090, et seq. In addition, hours worked over 12 in a day or hours over 8 worked on the 7th consecutive day in a week are paid at 2 times an employee’s regular rate of pay.

3. *Rest Period Violations Due to Humana's Commission-Based Pay Plans*

In conjunction with Marketing Sales Agents' core duties to sell insurance products and services to Humana's customers and prospective customers, Aggrieved Employees' compensation package included commission-based payments based upon the sales they make on behalf of Humana. Labor Code § 200(a) defines wages as: "all amounts of labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." Notably, the Labor Code's definition of wages includes commissions, as set forth in Labor Code § 200(a).

Ms. Cordero and other Aggrieved Employees were paid based on commission pay plans that are the functional equivalent of the commission pay plan that was found to be unlawful in *Vaquero v. Stoneledge Furniture LLC* ("*Stoneledge*"), 9 Cal. App. 5th 98 (2017). In *Stoneledge*, sales associates who worked for Ashley Furniture stores were paid on a commission pay plan, which guaranteed a minimum hourly rate as an advance against commissions earned in later pay periods. The *Stoneledge* court held the commission pay plan was unlawful because it failed to separately compensate sales associates for rest periods in weeks where the employee was paid on a commission basis. In essence, the reasoning of the *Stoneledge* court was a natural extension of its prior holding in *Bluford v. Safeway, Inc.*, 216 Cal. App. 4th 864, 872 (2013), which held that "under the rule of *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323 rest periods must be separately compensated in a piece-rate system." *See also Stoneledge*, 9 Cal. App. 5th at 110 ("We agree with *Bluford* that Wage Order No. 7 requires employers to separately compensate employees for rest periods if an employer's compensation plan *does not already include* a minimum hourly wage for such time.") (emphasis added).

In *Ferra*, the Court held that employers are required to pay meal and rest break violation premiums at the same "regular rate of pay" they use for paying overtime -to wit, they must include in the pay rate calculation all wages and other nondiscretionary earnings (such as shift differentials, piece-rate and incentive compensation, and nondiscretionary bonuses). *Id*. at * 11. The High Court also confirmed that its decision applies retroactively to meal and rest break violation premium payments previously made or owed. *Id*. at *12.

4. *Other Claims*

Because Claimant and other similarly situated Aggrieved Employees were not compensated for all hours worked, were deprived of overtime compensation, and were not provided with the separate rest break, Humana also failed to provide accurate wage statements in a violation of Labor Code Section 226, and failed to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 *et seq.*

<u>Scope of Anticipated Action</u>

California Labor Code Section 2699.3(a) requires an aggrieved employee to inform the Agency before filing a civil action under the Private Attorneys General Act of 2004 ("PAGA"). Based on the foregoing facts, Claimant is asserting PAGA claims on behalf of herself and on behalf of all other Marketing Sales Agents employed by Humana from April 5, 2023, to the present. Claimant seeks *civil penalties* under PAGA for the following Labor Code violations:

1. Violations of Labor Code sections 216, 1194, 225.5, 558 for failing to pay minimum and overtime wages due. Specifically, does not pay minimum and overtime wages to Claimant and other non-exempt, hourly employees for all hours worked, as required by Labor Code sections 216, 510, 511, 558, 1182.1-1182.3, 1194-1197.1 and 1198.

5. Violations of Labor Code sections 204 and 210, based on the Company's failure to pay Claimant and similarly situated non-exempt, hourly employees on the regular pay day all owed wages, and the Company's failure to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 *et seq*.

Accordingly, we believe Humana has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1194-1197.1, 1198 and 2698, *et seq*., as well as the relevant IWC orders and regulations, and that Claimant and other similarly situated current and former non-exempt, hourly employees are entitled to all damages, restitution and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further or, in the alternative, notify us that you will not pursue an investigation so that we may pursue these penalties under the Private Attorney General Act of 2004. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If the Company wishes to resolve these claims without resorting to protracted litigation, please contact the undersigned forthwith to discuss this matter further.

Thank you for your immediate attention to this matter.

Very truly yours,

Michael H. Boyamian

P 818 | 547. 5300 F 818 | 547 . 5678 550 N. BRAND BLVD. | SUITE 1500 | GLENDALE, CA 91203
WWW.BOYAMIANLAW.COM

Cc: Humana Inc. (*Sent via Certified Mail*)
Attention: 1505 Corporation (*Agent of Service of Process*)
C T Corporation
330 N. Brand Blvd.
Glendale, California 91203

Humana Marketpoint, Inc. (*Sent via Certified Mail*)
Attention: 1505 Corporation (*Agent of Service of Process*)
C T Corporation
330 N. Brand Blvd.
Glendale, California 91203

Humana at Home1, Inc. (*Sent via Certified Mail*)
Attention: 1505 Corporation (*Agent of Service of Process*)
C T Corporation
330 N. Brand Blvd.
Glendale, California 91203

Humana at Home, Inc. (*Sent via Certified Mail*)
Attention: 1505 Corporation (*Agent of Service of Process*)
C T Corporation
330 N. Brand Blvd.
Glendale, California 91203