

OCT 22 2007

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6 Attorneys for Representative Plaintiff
and the Plaintiff Class

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

11 BENJAMIN BLAKEMAN,
12 individually, and on behalf of all others
similarly situated,

13 Plaintiffs,

14 vs.

15 GUARDIAN LIFE INSURANCE CO.,
16 INC., THE GUARDIAN INSURANCE
& ANNUITY CO., INC., PARK
17 AVENUE SECURITIES, LLC, and
DOES 1 through 100, inclusive,

18 Defendants.

Case No.:

B C 379584

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND
RESTITUTION**

DEMAND FOR JURY TRIAL

20 Representative Plaintiff alleges as follows:

22 PRELIMINARY STATEMENT

23 1. This is a class action, brought on behalf of Benjamin Blakeman (the
24 "Representative Plaintiff") and all other persons similarly situated (hereinafter referred to as the
25 "Class Members," or the "Plaintiff Class") who are or who have been employed as a Financial
26 Representative (including, but not necessarily limited to, persons holding the position of "Field
27 Representative," "Registered Representative," "Financial Advisor," and/or "Account Manager")
28 by the defendant Guardian Life Insurance Co., Inc. (and/or by any of its affiliates and/or

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1 subsidiaries, including but not limited to The Guardian Insurance & Annuity Co., Inc. and Park
2 Avenue Securities, LLC), and Does 1 through 100, inclusive (collectively referred to as
3 “Guardian Life Insurance Co.,” “Guardian,” and/or “Defendant”) at any time within the
4 applicable class period. On his own behalf and on behalf of the class, Representative Plaintiff
5 seeks unpaid wages, including unpaid overtime compensation and interest thereon,
6 reimbursement of business expenses, rest and meal period penalties, waiting time penalties, and
7 other penalties, injunctive and other equitable relief and reasonable attorneys’ fees and costs,
8 under, *inter alia*, California Labor Code §§ 200-204, 216-218.6, 221, 223, 226, 226.7, 400-410,
9 510, 512, 1174, 1194, and 2802, California Business and Professions Code §§ 17200, *et seq.*, and
10 California Code of Civil Procedure § 1021.5.

11 2. The “Plaintiff Class Period” is designated as the time from October 22, 2003
12 through the trial date, based upon the allegation that Defendant’s violations of California’s wage
13 and hour laws, as described more fully below, have been ongoing throughout this period.

14 3. During the Class Period, Guardian Life Insurance Co. has had a consistent policy
15 of: (1) permitting, encouraging, and/or requiring its allegedly-overtime exempt Financial
16 Representatives to work in excess of eight (8) hours per day and in excess of forty (40) hours per
17 week without paying them overtime compensation as required by California’s wage and hour
18 laws, (2) unlawfully denying the Representative Plaintiff and Class Members statutorily mandated
19 meal and rest periods, (3) requiring the Representative Plaintiff and Class Members to pay for
20 services and supplies necessary to the business matters of this employer, (4) willfully failing to
21 pay compensation (including unpaid overtime) in a prompt and timely manner to Representative
22 Plaintiff and/or the Class Members whose employment with Defendant terminated, and
23 (5) willfully failing to provide Representative Plaintiff and the Class Members with accurate
24 semi-monthly itemized wage statements of the total number of hours each worked, the applicable
25 deductions, and the applicable hourly rates in effect during each pay period.

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2 Avenue Securities, LLC), and Does 1 through 100, inclusive (collectively referred to as
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19 meal and rest periods, (3) requiring the Representative Plaintiff and Class Members to pay for
20 services and supplies necessary to the business matters of this employer, (4) willfully failing to
21 pay compensation (including unpaid overtime) in a prompt and timely manner to Representative
22 Plaintiff and/or the Class Members whose employment with Defendant terminated, and
23 (5) willfully failing to provide Representative Plaintiff and the Class Members with accurate
24 semi-monthly itemized wage statements of the total number of hours each worked, the applicable
25 deductions, and the applicable hourly rates in effect during each pay period.

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INTRODUCTION

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2 4. California's Labor Code and Industrial Welfare Commission Wage Orders provide
3 expansive protection to hourly workers, including, but not necessarily limited to, entitlements to
4 overtime pay for work performed beyond eight hours per day and substantial compensation for
5 the denial of rest and meal periods.

6 5. The validity of this policy is affirmed by both federal and California state studies
7 which have linked long work hours to increased rates of accident and injury and a loss of family
8 cohesion when either one or both parents are kept away from home for extended periods of time,
9 on either a daily or weekly basis.

10 6. Unfortunately, Defendant's employment practices fail to adhere to the basic tenets
11 of California's labor laws.

12 7. Defendant Guardian Life Insurance Co. is the fourth largest mutual life insurance
13 company in the United States with assets of \$40.7 billion (as of December 31, 2006). Defendant
14 employs 2,900 Financial Representatives nationwide to sell insurance and securities to the public.
15 Representative Plaintiff is informed and believes and, based thereon, alleges that, within the class
16 period, Defendant has employed hundreds of individuals in recent years alone in the Financial
17 Representative position, an employment position which has not, and currently does not, meet any
18 test for exemption from the payment of overtime wages or the entitlement to meal or rest periods.

19 8. Despite actual knowledge of these facts and legal mandates, Defendant has
20 enjoyed an advantage over its competition and has disadvantaged its employees by electing not
21 to pay premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to its Financial
22 Representatives.

23 9. Representative Plaintiff is informed and believes and, based thereon, alleges that
24 officers of Guardian Life Insurance Co. knew of these facts and legal mandates, yet, nonetheless,
25 repeatedly authorized and/or ratified the violation of the laws cited herein.

26 10. Despite Guardian's knowledge of the Plaintiff Class' entitlement to premium
27 (overtime) pay, expense reimbursement, and meal and/or rest periods for all applicable work
28 periods, Guardian failed to provide same to members thereof, in violation of California state

1 statutes, any applicable Industrial Welfare Commission Wage Order, and Title 8 of the California
2 Code of Regulations. This action is brought to redress and end this long-time pattern of unlawful
3 conduct once and for all.

4
5 **JURISDICTION AND VENUE**

6 11. This Court has jurisdiction over the Representative Plaintiff's and Class Members'
7 claims for unpaid wages and/or penalties under, *inter alia*, any applicable Industrial Welfare
8 Commission Wage Order, Title 8 of the California Code of Regulations, Labor Code §§ 200-204,
9 216-218.6, 221, 223, 226, 226.7, 400-410, 510, 512, 1174, 1194, and 2802, and California Code
10 of Civil Procedure § 1021.5.

11 12. This Court also has jurisdiction over the Representative Plaintiff's and Class
12 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from
13 Defendant's unfair and/or fraudulent business practices under California Business & Professions
14 Code §§ 17200, *et seq.*

15 13. Venue as to Defendant is proper in this judicial district, pursuant to California
16 Code of Civil Procedure § 395(a). Guardian Life Insurance Co. employs Financial
17 Representatives who maintain offices in the City and County of Los Angeles and transacts
18 business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of
19 process. The unlawful acts alleged herein have a direct effect on Representative Plaintiff and
20 those similarly situated within this judicial district and the State of California. Guardian Life
21 Insurance Co. has employed numerous Class Members in this judicial district as well as
22 throughout the State of California.

23
24 **PLAINTIFF(S)**

25 14. Representative Plaintiff Benjamin Blakeman is a natural person and was, during
26 the relevant time period identified herein, employed in California by Guardian Life Insurance Co.
27 and/or Park Avenue Securities, LLC as a Financial Representative.

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1 15. In said position, the Representative Plaintiff was repeatedly paid a substandard
2 wage insofar as he was denied full pay for all hours worked, including overtime pay, denied
3 reimbursement for expenses made on behalf of his employer, and was frequently permitted to
4 work, and did work during the Class Period, shifts exceeding four hours or a major fraction
5 thereof (of at least two hours) without being afforded ten minute rest periods and mandatory meal
6 periods. The Representative Plaintiff is informed and believes, and based thereon, alleges that this
7 conduct of Guardian Life Insurance Co. is/was commonplace at every location where Guardian
8 Life Insurance Co. employed Financial Representatives to sell and broker its financial offerings.

9 16. At all times herein relevant, the Representative Plaintiff was, and now is, a person
10 within the class of persons further described and defined herein.

11 17. As used throughout this Complaint, the terms "Class Members" and/or "Plaintiff
12 Class" refer to the named Plaintiff herein as well as each and every person eligible for
13 membership in the Plaintiff Class, as further described and defined below.

14 18. The Representative Plaintiff brings this action on behalf of himself and as a class
15 action on behalf of all persons similarly situated and proximately damaged by the unlawful
16 conduct described herein, pursuant to California Code of Civil Procedure § 382.

17
18 **DEFENDANT**

19 19. At all times herein relevant, Guardian Life Insurance Co. was, and is, a corporation
20 doing business as a mutual life insurance company and as an NASD registered securities broker
21 with offices located within the City and County of Los Angeles, and elsewhere within the State
22 of California.

23 20. Representative Plaintiff is informed and believes and, on that basis, alleges that
24 Defendant has, and did, directly and/or indirectly employ(ed) and/or exercise(d) control over the
25 wages, hours and working conditions of the Representative Plaintiff and the Class Members.

26 21. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
27 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of
28 some/each of the remaining defendants. The Representative Plaintiff is informed and believes

1 and, on that basis alleges that, at all relevant times herein mentioned, each of the defendants
2 identified as Does 1 through 100, inclusive, employed and/or exercised control over the wages,
3 hours and/or working conditions of the Representative Plaintiff and Class Members at various
4 California locations, as identified in the preceding paragraph.

5 22. The Representative Plaintiff is unaware of the true names and capacities of those
6 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by
7 such fictitious names. The Representative Plaintiff will seek leave of Court to amend this
8 Complaint when same are ascertained. The Representative Plaintiff is informed and believes and,
9 on that basis, alleges that each of the fictitiously-named defendants is responsible in some manner
10 for, gave consent to, ratified and/or authorized the conduct herein alleged and that the
11 Representative Plaintiff's and Class Members' damages, as herein alleged, were proximately
12 caused thereby.

13 23. The Representative Plaintiff is informed and believes and, on that basis, alleges
14 that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee
15 of each of the remaining defendants and, in doing the acts herein alleged, was acting within the
16 course and scope of such agency and/or employment.

17
18 **CLASS ACTION ALLEGATIONS**

19 24. Representative Plaintiff brings this action individually and as a class action on
20 behalf of all persons similarly situated and proximately damaged by Guardian Life Insurance
21 Co.'s conduct, including, but not necessarily limited to, the following Plaintiff Class:

22 All persons who were employed as a Financial Representative
23 (including, but not limited to, those persons employed under the
24 title of "Field Representative," "Registered Representative,"
25 "Financial Advisor," and/or "Account Manager") by Guardian Life
Insurance Co. and/or Park Avenue Securities at any time on or
after October 22, 2003.

26 25. Defendant, its officers and directors are excluded from this class.

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1 26. This action has been brought and may properly be maintained as a class action
2 under California Code of Civil Procedure § 382 because there is a well-defined community of
3 interest in the litigation and the proposed class is easily ascertainable.

4 a. Numerosity: A class action is the only available method for the fair and
5 efficient adjudication of this controversy. The members of the class are so
6 numerous that joinder of all members is impractical, if not impossible,
7 insofar as the Representative Plaintiff is informed and believes and, on
8 that basis, alleges that the total number of class members exceeds
9 hundreds of individuals. Membership in the Plaintiff Class will be
10 determined upon analysis of employee and payroll, among other, records
11 maintained by Defendant.

12 b. Commonality: The Representative Plaintiff and Class Members share a
13 community of interests in that there are numerous common questions and
14 issues of fact and law which predominate over any questions and issues
15 solely affecting individual members, thereby making a class action
16 superior to other available methods for the fair and efficient adjudication
17 of the controversy. Consequently, class certification is proper under
18 California Code of Civil Procedure § 382. These common questions
19 include, but are not necessarily limited to:

- 20 1. Whether Defendant violated the applicable California Wage
21 Order(s) and/or Labor Code § 510 by failing to pay overtime
22 compensation to Guardian and/or Park Avenue Securities
23 Financial Representatives who worked in excess of 40 hours per
24 week and/or eight (8) hours a day;
- 25 2. Whether Defendant violated California Business and Professions
26 Code §§ 17200, *et seq.* by failing to pay overtime compensation to
27 Financial Representatives who worked in excess of forty (40)
28 hours per week and/or eight (8) hours a day;
3. Whether Defendant violated Cal. Lab. Code §§ 400-410 and 2802
by charging and/or otherwise requiring its Financial
Representatives to pay normal business expenses of the
Defendant;
4. Whether Defendant violated, and continues to violate, California
Labor Code §§ 226.7 and/or 512 by failing to consistently provide
meal and/or rest periods to the Class Members;
5. Whether Defendant violated, and continues to violate, California
Labor Code § 1174 by failing to keep accurate records of Financial
Representatives' hours of work;
6. Whether Defendant violated, and continues to violate, California
Labor Code §§ 201-203 by failing to pay overtime wages due and
owing at the time Representative Plaintiff's and particular Class
Members' employment with Defendant terminated;
7. Whether Defendant violated, and continues to violate, California
Labor Code § 226 by failing to provide semi-monthly itemized

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wage statements to Class Members of total hours worked and all applicable hourly rates in effect during the pay period;

8. Whether the Representative Plaintiff and the Class Members are entitled to “waiting time” penalties/wages pursuant to California Labor Code § 203.

c. Typicality: The Representative Plaintiff’s claims are typical of the claims of the Plaintiff Class. The Representative Plaintiff and all members of the Plaintiff Class sustained injuries and damages arising out of and caused by Guardian’s common course of conduct in violation of state law, as alleged herein.

d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudication and/or may substantially impede their ability to adequately protect their interests. Moreover, the Representative Plaintiff is informed and believes, and based thereon alleges, that Defendant, in refusing to pay overtime to the Class Members, has acted and refused to act on grounds generally applicable to all claims, thereby making appropriate injunctive and monetary relief for all members of the class. Consequently, class certification is proper under California Code of Civil Procedure § 382.

e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class, in that the Representative Plaintiff’s claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

27. As described herein, Guardian Life Insurance Co. has, for years, knowingly failed to adequately compensate its Financial Representatives within the class definition identified above for overtime wages due under California Labor Code § 510 and/or any applicable California Wage Order. Moreover, Defendant has knowingly failed to provide said employees with mandatory meal and rest periods, thereby enjoying a significant competitive edge over other

1 insurance and securities brokerage firms.

2 28. Even upon the termination or resignation of the employment of Representative
3 Plaintiff and numerous Class Members during the class period, Guardian Life Insurance Co.
4 declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

5 29. Additionally, according to Defendant's policy, Defendant required its Financial
6 Representatives to pay all or a portion of the normal business expenses of Defendant in violation
7 of California Labor Code §§ 406, 407 and 2802(a).

8 30. Through the misclassification of the Representative Plaintiff and Class Members
9 as exempt employees, Guardian Life Insurance Co. has also incorrectly and unlawfully treated
10 the Representative Plaintiff and Class Members as exempt from the meal and rest period
11 requirements established by California Labor Code §§ 226.7 and 512 and §§ 11 and 12 of any
12 applicable California Wage Order. Representative Plaintiff and the Class Members are and/or
13 were unlawfully denied meal and rest periods.

14 31. Moreover, California Labor Code §§ 201 and 202 require Guardian Life Insurance
15 Co. to pay all wages due to members of the Plaintiff Class immediately upon discharge.
16 California Labor Code § 203 provides that, if an employer willfully fails to timely pay such
17 wages, the employer must, as a penalty, continue to pay the subject employees' wages until the
18 back wages are paid in full or an action is commenced, for a period not to exceed 30 days of
19 wages.

20 32. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
21 Members' entitlement to premium (overtime) pay for excess hours worked, Guardian Life
22 Insurance Co. violated California Labor Code § 1174[d] by failing to provide or require the use,
23 maintenance or submission of time records by Class Members. Guardian Life Insurance Co. also
24 failed to provide Representative Plaintiff and Class Members with accurate semi-monthly
25 itemized wage statements of the total number of hours worked by each, and all applicable hourly
26 rates in effect during the pay period, in violation of California Labor Code § 226. In so doing,
27 Defendant has not only failed to pay its workers the full amount of compensation due, it has also,
28 until now, effectively shielded themselves from their employees' scrutiny for their unlawful

1 conduct by concealing the magnitude (the full number of hours worked) and the financial impact
2 of their wrongdoing.

3 33. Representative Plaintiff and all persons similarly situated in the Plaintiff Class are
4 entitled to unpaid compensation, yet, to date, have not received such compensation despite the
5 termination of their employment with Guardian Life Insurance Co.

6 34. More than 30 days have passed since Representative Plaintiff Benjamin Blakeman
7 and certain Class Members have left Guardian Life Insurance Co.'s and/or Park Avenue
8 Securities' employ.

9 35. As a consequence of Guardian Life Insurance Co.'s willful conduct in not paying
10 compensation for all hours worked, certain Class Members are entitled to 30 days wages as a
11 penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

12 36. Moreover, as a consequence of Defendant's willful conduct in not providing an
13 uninterrupted 30 minute meal period within the first five hours of Class Members' shifts, as
14 required under Labor Code § 512 and § 11 of any applicable IWC Wage Order, Class Members
15 are entitled to one hour of wages for each day that they were denied at least one meal period, as
16 provided under Labor Code § 226.7, together with interest thereon and attorney's fees and costs.

17 37. Finally, as a consequence of Defendant's willful conduct in not providing a ten
18 minute rest period once during each four hour segment of work, as prescribed by § 12 of any
19 applicable IWC Wage Order, Class Members are entitled to one hour of wages for each day that
20 they were denied at least one rest period, as provided under Labor Code § 226.7, together with
21 interest thereon and attorneys' fees and costs.

22 38. As a direct and proximate result of Guardian Life Insurance Co.'s unlawful
23 conduct, as set forth herein, Representative Plaintiff and the Class Members have sustained
24 damages, as described above, including loss of earnings for hours of overtime worked on behalf
25 of Defendant, in an amount to be established at trial. As a further direct and proximate result of
26 Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class Members
27 herein are entitled to recover "waiting time" penalties/wages (pursuant to California Labor Code
28 § 203) and penalties for failure to provide semi-monthly statements of hours worked and all

1 applicable hourly rates (pursuant to Labor Code § 226) in an amount to be established at trial. As
2 a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
3 Representative Plaintiff and Class Members are entitled to recover attorneys' fees and costs,
4 pursuant to California Labor Code §§ 218.5 and 1194 and/or California Civil Code § 1021.5,
5 among other authorities.

6 39. Representative Plaintiff seeks injunctive relief, prohibiting Defendant from
7 engaging in the illegal labor acts described herein in the future. Representative Plaintiff also seeks
8 restitution of costs incurred by Representative Plaintiff and Class Members under California's
9 Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will continue
10 unchecked, while Representative Plaintiff and Class Members bear the financial brunt of
11 Defendant's unlawful conduct. Representative Plaintiff and the Plaintiff Class are also entitled
12 to recover costs and attorneys' fees, pursuant to statute.

13
14 **FIRST CAUSE OF ACTION**
15 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
16 **(Violation of California Wage Order and California Labor Code §§ 510, 1194, and 1198)**

17 40. Representative Plaintiff incorporates in this cause of action each and every
18 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
19 herein.

20 41. During the class period, Representative Plaintiff and the Class Members worked
21 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek. The precise
22 number of overtime hours will be proven at trial.

23 42. During said time period, Guardian Life Insurance Co. refused to compensate
24 Representative Plaintiff and the Class Members for some and/or all of the overtime wages earned
25 in violation of any applicable Wage Order and the provisions of the California Labor Code.

26 43. Moreover, during said time period, many Class Members herein were employed
27 by and thereafter terminated or resigned from their position as Financial Representative with
28 Guardian Life Insurance Co., yet were not paid all wages due upon said termination or within
seventy-two (72) hours of said resignation of employment therefrom. Said non-payment of all

1 wages due was the direct and proximate result of a willful refusal to do so by Defendant.

2 44. At all relevant times, Defendant was aware of, and was under a duty to comply
3 with, the overtime provisions of the California Labor Code, including, but not limited to, the
4 following:

- 5 a. Labor Code §510: “Any work in excess of eight hours in one workday
6 and any work in excess of 40 hours in any one workweek and the first
7 eight hours worked on the seventh day of work in any one workweek shall
8 be compensated at the rate of no less than one and one-half times the
9 regular rate of pay for an employee”
- 10 b. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
11 wage, any employee receiving less than the legal minimum wage or the
12 legal overtime compensation applicable to the employee is entitled to
13 recover in a civil action the unpaid balance of the full amount of this
14 minimum wage or overtime compensation, including interest thereon,
15 reasonable attorney’s fees, and costs of suit.
- 16 c. Labor Code §1198: “[t]he maximum hours of work and the standard
17 conditions of labor fixed by the commission shall be the maximum hours
18 of work and the standard conditions of labor for employees. The
19 employment of any employee for longer hours than those fixed by the
20 order or under conditions of labor prohibited by the order is unlawful.”

21 45. By refusing to compensate the Representative Plaintiff and the Class Members for
22 overtime wages earned, Defendant violated those California Labor Code provisions cited herein,
23 as well as any applicable California Industrial Welfare Commission Wage Order.

24 46. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
25 herein, Representative Plaintiff and the Class Members have sustained damages, including loss
26 of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established
27 at trial, and are entitled to recover attorneys’ fees and costs of suit.

28
SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

47. Representative Plaintiff incorporates in this cause of action each and every
allegation of the preceding paragraphs, with the same force and effect as though fully set forth
herein.

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48. At all relevant times, Defendant was aware of, and was under a duty to comply with California Labor Code §§ 226.7 and 512.

49. California Labor Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

50. California Labor Code § 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

51. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

52. Section 11 of the applicable IWC Wage Order provides:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes... (C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

1 Moreover, Section 12 of the applicable IWC Wage Order provides:

2 (A) Every employer shall authorize and permit all employees to
3 take rest periods, which insofar as practicable shall be in the
4 middle of each work period. The authorized rest period time shall
5 be based on the total hours worked daily at the rate of ten (10)
6 minutes net rest time per four (4) hours or major fraction thereof...
7 (B) If an employer fails to provide an employee a rest period in
8 accordance with the applicable provisions of this order, the
9 employer shall pay the employee one (1) hour of pay at the
10 employee's regular rate of compensation for each workday that the
11 rest period is not provided.

12 53. By failing to consistently provide uninterrupted thirty-minute meal periods within
13 the first five hours of work each day and/or uninterrupted ten-minute net rest periods to
14 Representative Plaintiff and the Class Members, Guardian Life Insurance Co. violated California
15 Labor Code and the IWC Wage Order provisions.

16 54. Representative Plaintiff is informed and believes and, based thereon, alleges that
17 Guardian Life Insurance Co. has never paid the one hour of compensation to any Class Members
18 due to its violations of the California Labor Code and the IWC Wage Order provisions.

19 55. As a direct and proximate result of Defendant's unlawful conduct, as set forth
20 herein, Representative Plaintiff and the Class Members have sustained damages, including lost
21 compensation resulting from missed meal and/or rest periods, in an amount to be established, in
22 a formulaic manner, at trial. As a further direct and proximate result of Guardian Life Insurance
23 Co.'s unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are
24 entitled to recover "waiting time" and other penalties, in amounts to be established at trial, as well
25 as costs and attorneys' fees, pursuant to statute.

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28
THIRD CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND
(California Labor Code §§ 406 and 2802(a))

56. Representative Plaintiff incorporates in this cause of action each and every
allegation of the preceding paragraphs, with the same force and effect as though fully set forth
herein.

///

1 57. During the Class Period, Defendant required Representative Plaintiff and Class
2 Members to pay normal business expenses of the Defendant to complete the job of Financial
3 Representative.

4 58. Thus, Representative Plaintiff and the Plaintiff Class had expenditures and losses
5 which were incurred in direct consequence of the discharge of their duties, or of their obedience
6 to the directions of the employer which have not yet been reimbursed by Defendant.

7 59. At all relevant times, Defendant was aware of and was under a duty to comply with
8 various provisions of California Labor Code §§ 406, 407 and 2802(a).

9 60. California Labor Code § 406 provides:

10 Any property put up by an employee, or applicant as a part of the contract
11 of employment, directly or indirectly, shall be deemed to be put up as a
12 bond and is subject to the provisions of this article whether the property
is put up on a note or as a loan or an investment and regardless of the
wording of the agreement under which it is put up.

13 61. California Labor Code § 2802(a) provides:

14 An employer shall indemnify his or her employee for all necessary
15 expenditures or losses incurred by the employee in direct consequence of
16 the discharge of his or her duties, or of his or her obedience to the
directions of the employer, even though unlawful, unless the employee, at
the time of obeying the directions, believed them to be unlawful.

17 62. By requiring Representative Plaintiff and Class Members to incur uncompensated
18 expenses in direct consequence of the discharge of their duties, Representative Plaintiff and the
19 Plaintiff Class were forced and/or brought to contribute to the capital and expenses of the
20 Defendant's business which is legally a cash bond and which must be refunded by Defendant to
21 each Class Member.

22 63. California Labor Code § 2802 (b) and (c) provides for interest at the statutory post
23 judgment rate of 10% simple interest per annum from the date of the expenditure plus attorneys'
24 fees to collect reimbursement.

25 64. Therefore, Representative Plaintiff demands reimbursement for expenditures or
26 losses incurred by the employee in direct consequence of the discharge of his duties, or of his
27 obedience to the directions of the employer, plus return of all cash bonds or other coerced
28 investments in the business of the employer, with interest at the statutory rate and attorneys' fees.

1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
3 **(California Labor Code §§ 226 and 1174)**

4 65. Representative Plaintiff incorporates in this cause of action each and every
5 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
6 herein.

7 66. California Labor Code § 226(a) provides:

8 Each employer shall semimonthly, or at the time of each payment
9 of wages, furnish each of his or her employees either as a
10 detachable part of the check, draft or voucher paying the
11 employee's wages, or separately when wages are paid by personal
12 check or cash, an itemized wage statement in writing showing: (1)
13 gross wages earned; (2) total number of hours worked by each
14 employee whose compensation is based on an hourly wage; (3) all
15 deductions; provided, that all deductions made on written orders
16 of the employee may be aggregated and shown as one item; (4) net
17 wages earned; (5) the inclusive date of the period for which the
18 employee is paid; (6) the name of the employee and his or her
19 social security number; and (7) the name and address of the legal
20 entity which is the employer.

21 67. Moreover, California Labor Code § 226(e) provides:

22 An employee suffering injury as a result of a knowing and
23 intentional failure by an employer to comply with subdivision (a)
24 is entitled to recover the greater of all actual damages or fifty
25 dollars (\$50) for the initial pay period in which a violation occurs
26 and one hundred dollars (\$100) per employee for each violation in
27 a subsequent pay period, not exceeding an aggregate penalty of
28 four thousand dollars (\$4,000), and is entitled to an award of costs
and reasonable attorney's fees.

68. Finally, California Labor Code § 1174 provides:

Every person employing labor in this state shall: (d) Keep, at a
central location in the state...payroll records showing the hours
worked daily by and the wages paid to...employees.... These
records shall be kept in accordance with rules established for this
purpose by the commission, but in any case shall be kept on file
for not less than two years.

69. Representative Plaintiff seeks to recover actual damages, costs and attorneys' fees
under these provisions on behalf of himself and the Plaintiff Class.

70. Guardian Life Insurance Co. failed to provide timely, accurate itemized wage
statements to the Representative Plaintiff and the Plaintiff Class in accordance with Labor Code

1 § 226(a). Representative Plaintiff is informed and believes and, on that basis, alleges that, none
2 of the statements provided by Defendant has accurately reflected actual gross wages earned, net
3 wages earned, or the appropriate deductions of such Class Members.

4 71. As a direct and proximate result of Defendant's unlawful conduct, as set forth
5 herein, Representative Plaintiff and the Class Members have sustained damages in an amount to
6 be established at trial, and are entitled to recover attorneys' fees and costs of suit.

7
8 **FIFTH CAUSE OF ACTION**
9 **FAILURE TO PAY WAGES ON TERMINATION**
10 **(California Labor Code § 203)**

11 72. Representative Plaintiff incorporates in this cause of action each and every
12 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
13 herein.

14 73. California Labor Code § 203 provides that:

15 "If an employer willfully fails to pay, without abatement or
16 reduction, in accordance with Sections 201, 201.5, 202, and 205.5,
17 any wages of an employee who is discharged or who quits, the
18 wages of the employee shall continue as a penalty from the due
19 date thereof at the same rate until paid or until an action therefor
20 is commenced; but the wages shall not continue for more than 30
21 days."

22 74. Representative Plaintiff and Class Members were employed by Guardian Life
23 Insurance Co. during the class period and were thereafter terminated or resigned from their
24 positions, yet they were not paid all premium (overtime) wages due upon said termination or
25 within seventy-two (72) hours of said resignation of employment therefrom. Said non-payment
26 was the direct and proximate result of a willful refusal to do so by Defendant.

27 75. More than thirty days has elapsed since Representative Plaintiff and certain Class
28 Members were terminated and/or resigned from Defendant's employ.

76. As a direct and proximate result of Defendant's willful conduct in failing to pay
said Class Members for all hours worked, Representative Plaintiff and certain Class Members are
entitled to recover "waiting time" penalties of up to thirty days' wages pursuant to Labor Code
§ 203, in an amount to be established at trial, together with interest thereon and attorneys' fees

1 and costs.

2
3 **SIXTH CAUSE OF ACTION**
4 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
5 **(California Business & Professions Code §§ 17200, *et seq.*)**

6 77. Representative Plaintiff incorporates in this cause of action each and every
7 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
8 herein.

9 78. Representative Plaintiff further brings this cause of action seeking equitable and
10 statutory relief to stop the misconduct of Guardian Life Insurance Co., as complained of herein,
11 and to seek restitution from Defendant of amounts acquired through the unfair, unlawful and
12 fraudulent business practices described herein.

13 79. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful
14 and/or fraudulent business practice, as set forth in California Business & Professions Code §§
15 17200-17208. Specifically, Defendant conducted business activities while failing to comply with
16 the legal mandates cited herein.

17 80. Defendant's knowing failure to adopt policies in accordance with and/or to adhere
18 to these laws, all of which are binding upon and burdensome to Defendant's competitors,
19 engenders an unfair competitive advantage for Defendant, thereby constituting an unfair business
20 practice, as set forth in California Business & Professions Code §§ 17200-17208.

21 81. Guardian Life Insurance Co. has clearly established a policy of accepting a certain
22 amount of collateral damage, as represented by the damages to Representative Plaintiff and the
23 Plaintiff Class herein alleged, as incidental to its business operations, rather than accept the
24 alternative costs of full compliance with fair, lawful and honest business practices ordinarily
25 borne by responsible competitors of Defendant and as set forth in legislation and the judicial
26 record.

26 ///
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28 ///

RELIEF SOUGHT

1
2 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the **Plaintiff**
3 **Class**, prays for judgment and the following specific relief against Defendant Guardian Life
4 Insurance Co. as follows:

5 1. That the Court declare, adjudge and decree that this action is a proper class
6 action and certify the proposed Plaintiff Class and/or any other appropriate subclasses under
7 California Code of Civil Procedure § 382;

8 2. That the Court declare, adjudge and decree that Defendant violated the
9 overtime provisions of the California Labor Code and any applicable Industrial Welfare
10 Commission Wage Order as to the Representative Plaintiff and the Plaintiff Class;

11 3. That the Court declare, adjudge and decree that Defendant willfully violated its
12 legal duties to pay overtime under the California Labor Code and the applicable California
13 Industrial Welfare Commission Wage Order;

14 4. That the Court declare, adjudge and decree that (a) the Representative Plaintiff
15 and the Class Members were at all times relevant hereto, and are, entitled to be paid overtime
16 for work beyond 40 hours in a week;

17 5. That the Court declare, adjudge and decree that Defendant violated California
18 Labor Code §§ 406 and 2802(a) by willfully failing to reimburse Representative Plaintiff and
19 Class Members for normal business expenses made on behalf of Defendant;

20 6. That the Court declare, adjudge and decree that Defendant violated California
21 Labor Code §§ 226.7 and 512 and any applicable IWC Wage Order by willfully failing to
22 provide meal periods (including second meal periods) and/or rest periods to Representative
23 Plaintiff and Class Members;

24 7. That the Court declare, adjudge and decree that Defendant violated the record
25 keeping provisions of California Labor Code §§ 226(a) and 1174 as to Representative Plaintiff
26 and the Plaintiff Class, and willfully failed to provide accurate semi-monthly itemized wage
27 statements thereto;

28 ///

1 8. That the Court declare, adjudge and decree that Defendant violated California
2 Labor Code § 203 by willfully failing to pay all compensation owed at the time of the
3 termination of the employment of Representative Plaintiff and certain Class Members;

4 9. That the Court declare, adjudge and decree that Defendant violated California
5 Business and Professions Code §§ 17200, *et seq.* by failing to pay Representative Plaintiff and
6 Class Members overtime compensation, failing to provide meal and/or rest periods to said
7 employees, failing to pay all wages due on termination (“waiting time” penalties) and/or by
8 failing to provide Class Members with accurate itemized wage statements;

9 10. That the Court make an award to Representative Plaintiff and the Plaintiff
10 Class of damages and/or restitution for the amount of unpaid overtime compensation,
11 including interest thereon, and penalties in an amount to be proven at trial;

12 11. That the Court make an award to the Representative Plaintiff and the Plaintiff
13 Class of reimbursement for all employer related expenses;

14 12. That the Court make an award to the Representative Plaintiff and the Plaintiff
15 Class of one (1) hour of pay at each employee’s regular rate of compensation for each
16 workday that a meal period was not provided;

17 13. That the Court make an award to the Representative Plaintiff and the Plaintiff
18 Class of one (1) hour of pay at each employee’s regular rate of compensation for each
19 workday that a rest period was not provided;

20 14. That the Court order Defendant to pay restitution to Representative Plaintiff
21 and the Plaintiff Class due to Defendant’s unlawful activities, pursuant to Business and
22 Professions Code §§ 17200, *et seq.*;

23 15. That the Court further enjoin Defendant, ordering them to cease and desist
24 from unlawful activities in violation of Business and Professions Code §§ 17200, *et seq.*;

25 16. For all other Orders, findings and determinations identified and sought in this
26 Complaint;

27 17. For interest on the amount of any and all economic losses, at the prevailing
28 legal rate;

1 18. For reasonable attorneys' fees, pursuant to California Labor Code §1194 and/or
2 California Civil Code §1021.5; and

3 19. For costs of suit and any and all such other relief as the Court deems just and
4 proper.

5
6 **JURY DEMAND**

7 Representative Plaintiff and the Plaintiff Class hereby demand trial by jury on all
8 issues triable of right by jury.

9
10 Dated: October 19, 2007

11 **SCOTT COLE & ASSOCIATES, APC**

12
13 By: 

14 Scott Edward Cole, Esq.
15 Attorneys for the Representative Plaintiff
16 and the Plaintiff Class

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