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7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10

11 KIM REEDER, MICHELLE ALVES, )  
12 ELMO CASH, DONALD MYERS, )  
13 ABDULSALAM BORGI, and DANIEL )  
CABALLERO, individually, and on )  
14 behalf of all others similarly situated, )  
Plaintiffs, )  
15 vs. )  
16 METROPOLITAN LIFE INSURANCE )  
COMPANY, )  
17 Defendant. )  
18 \_\_\_\_\_ )

Case No.: C07-00538 SC

**CLASS/COLLECTIVE ACTION**

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

19 Representative Plaintiffs allege as follows:  
20

21 **PRELIMINARY STATEMENT**

22 1. This is a class/collective action, seeking unpaid wages, including unpaid overtime  
23 compensation and interest thereon, reimbursement of business expenses, rest and meal period  
24 penalties, waiting time penalties, liquidated damages and other penalties, injunctive and other  
25 equitable relief and reasonable attorneys' fees and costs, under, *inter alia*, the Fair Labor Standards  
26 Act §§ 6 and 7, 29 U.S.C. §§ 206 and 207. This action further invokes diversity jurisdiction and the  
27 supplemental jurisdiction of this Court to consider claims arising under California law (e.g., Title  
28 8 of the California Code of Regulations, Labor Code §§ 200-204, inclusive, 216-218.6, 221, 223,

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1 226, 226.7, 400-410, 510, 1174, 1194, 1194.2, 1197 and 2802 , Business and Professions Code  
2 §§17200 et seq. and Code of Civil Procedure § 1021.5).

3 2. Representative Plaintiffs bring this action on behalf of themselves and all other  
4 persons similarly situated (hereinafter referred to as the “Class Members,” the “Plaintiff Classes”  
5 and/or, more specifically, the “FLSA Class” and/or the “California Class”) who are, or have been,  
6 employed by the Defendant to sell and/or assist in selling and/or to market and/or assist in marketing  
7 securities and other financial products to the public on their behalf within the applicable statutory  
8 periods.

9 3. The “California Class” period is designated as the time from January 25, 2003  
10 through the trial date, based upon the allegation that the violations of California’s wage and hour  
11 laws, as described more fully below, have been ongoing since that time. The “FLSA Class” period  
12 is designated as the time from January 25, 2004 through the trial date, based upon the allegation that  
13 the violations of the FLSA, as described more fully below, have been ongoing since at least this date.  
14 During the Class Periods, Metropolitan Life Insurance Company (hereinafter “Metlife” and/or  
15 “Defendant”) has had a consistent policy of (1) permitting, encouraging, and/or requiring their  
16 allegedly-overtime exempt “Financial Services Representatives” (including, but not being limited  
17 to, those persons employed during the respective class periods as “Special Agents”), the  
18 Representative Plaintiffs and members of both Classes, to work in excess of eight (8) hours per day  
19 and in excess of forty (40) hours per week without paying them overtime compensation as required  
20 by the FLSA and California’s wage and hour laws; (2) making deductions from the Representative  
21 Plaintiffs’ and California Class Members’ earned and paid commissions and requiring cash  
22 contributions be made back to Defendant for commissions previously paid and for claimed customer  
23 losses by Defendant’s customers; (3) requiring Representative Plaintiffs and California Class  
24 Members to pay other agents/employees of Defendant for their services to the clients in processing  
25 orders, assisting in sales, or otherwise handling business matters of the employer; (4) unlawfully  
26 denying the Representative Plaintiffs and the California Class Members statutorily mandated meal  
27 and rest periods; (5) willfully failing to pay compensation (including unpaid overtime) in a prompt  
28 and timely manner to Representative Plaintiffs and/or the California Class Members whose

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1 employment with Defendant terminated; and (6) willfully failing to provide Representative Plaintiffs  
2 and the California Class Members with accurate semi-monthly itemized wage statements of the total  
3 number of hours each of them worked, the applicable deductions and the applicable hourly rates in  
4 effect during the pay period.

5  
6 **INTRODUCTION**

7 4. The Fair Labor Standards Act of 1938, as amended, §§ 201 et seq., (hereinafter  
8 referred to as “the Act” or the “FLSA”) provides for minimum standards for both wages and  
9 overtime entitlement, and details administrative procedures by which covered work time must be  
10 compensated. The enactment of the provisions of the FLSA provide the Federal Courts with  
11 substantial authority to stamp out abuses of child labor, equal pay, portal-to-portal activities as well  
12 as the overtime pay provisions at issue in this Complaint.

13 5. According to Congressional findings, the existence of labor conditions detrimental  
14 to the maintenance of the minimum standard of living engenders unfair commercial competition,  
15 labor disputes, barriers to commerce and the free flow of goods in commerce, and interferes with the  
16 orderly and fair marketing of goods.

17 6. California’s Labor Code and Industrial Welfare Commission Wage Orders provide  
18 even more expansive protection to hourly workers, including, but not necessarily limited to,  
19 entitlements to overtime pay and work performed beyond eight hours per day and substantial  
20 penalties for the denial of rest and meal periods.

21 7. Both Federal and California studies have linked long work hours to increased rates  
22 of accident and injury and a loss of family cohesion when either or both parents are kept away from  
23 home for extended periods of time, on either a daily or weekly basis.

24 8. Defendant has sold securities and financial products to the public. Representative  
25 Plaintiffs are informed and believe and, based thereon, allege that, within the Class Periods,  
26 Defendant has operated numerous facilities throughout the United States. In so doing, Defendant  
27 has employed hundreds, if not thousands, of individuals in recent years alone in allegedly-exempt  
28 “Financial Services Representative” positions, employment positions which have not, and currently

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1 do not, meet any test for exemption from the payment of overtime wages.

2 9. Despite actual knowledge of these facts and legal mandates, Defendant has enjoyed  
3 an advantage over their competition and have disadvantaged their workers by electing not to pay  
4 premium (overtime) and/or “penalty” (a.k.a. “waiting time”) wages to particular “Financial Services  
5 Representatives,” among other employment positions.

6 10. Representative Plaintiffs are informed and believe and, based thereon, allege that  
7 officers of Metlife knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized  
8 and/or ratified the violation of the laws cited herein.

9 11. Despite Metlife’s knowledge of the Plaintiff Classes’ entitlement to premium  
10 (overtime) pay, expense reimbursement, and meal and/or rest periods for all applicable work periods,  
11 Metlife failed to provide the same to members of the Plaintiff Classes in violation of the FLSA and  
12 California state statutes, Industrial Welfare Commission Orders and Title 8 of the California Code  
13 of Regulations. This action is brought to redress and end this long-time pattern of unlawful conduct.

14  
15 **JURISDICTION AND VENUE**

16 12. This Court has jurisdiction of this action pursuant to the provisions of the Fair Labor  
17 Standards Act of 1938 ("FLSA"), 29 U.S.C. §§ 201 et seq., including under 29 U.S.C. §§ 207, 216,  
18 and 217. This Court also has jurisdiction in light of the existence of a controversy arising under the  
19 laws of the United States (28 U.S.C. §1331), diversity jurisdiction under 28 U.S.C. §1332, and  
20 supplemental jurisdiction to consider claims arising under California state law, pursuant to 28 U.S.C.  
21 §1367.

22 13. Venue as to Defendant is proper in this judicial district, pursuant to 28 U.S.C. §1391.  
23 Metlife maintains offices in the Northern District of California and transacts business, has agents,  
24 and is otherwise within this Court’s jurisdiction for purposes of service of process. The unlawful  
25 acts alleged herein have a direct effect on Representative Plaintiffs and those similarly situated  
26 within the State of California and within this judicial district. Metlife operates said facilities and has  
27 employed numerous Class Members in this judicial district as well as throughout the State of  
28 California.

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**PLAINTIFFS**

14. Representative Plaintiffs Kim Reeder, Michelle Alves, Elmo Cash, Donald Myers, Abdulsalam Borgi and Daniel Caballero are natural persons and were, during the relevant time period identified herein, employed by Metlife in California as “Financial Services Representatives.”

15. In said position, the Representative Plaintiffs were repeatedly paid a substandard wage insofar as they were denied full pay for all hours worked, including overtime pay, denied reimbursement for expenses made on behalf of their employer, and were frequently permitted to work, and did work during the Class Periods, shifts exceeding four hours or a major fraction thereof (of at least three and one-half hours) without being afforded ten minute rest periods and without being afforded mandatory meal periods. The Representative Plaintiffs are informed and believe, and based thereon, allege that this conduct of Metlife is/was commonplace at every location owned and operated thereby.

16. As used throughout this Complaint, the terms “Class Members” and/or “Plaintiff Classes” refer to the named plaintiffs herein as well as each and every person eligible for membership in the Plaintiff Classes, as further described and defined below.

17. At all times herein relevant, the Representative Plaintiffs were, and now are, persons within each of the Classes of persons further described and defined herein.

**DEFENDANT**

18. At all times herein relevant, Defendant, Metropolitan Life Insurance Company, (hereinafter “Metlife” and/or “Defendant”) was, and is, a foreign corporation with a principal place of business in New York City and doing business as NASD registered securities brokerage firm with offices located within this judicial district and elsewhere.

19. Representative Plaintiffs are informed and believe and, on that basis, allege that Defendant has, and does, directly and/or indirectly employ and/or exercise control over the wages, hours and working conditions of the Representative Plaintiffs and the Class Members.

**CLASS ACTION ALLEGATIONS**

20. Representative Plaintiffs bring this action individually and as a class action on behalf of all persons similarly situated and proximately damaged by Metlife’s conduct, including, but not necessarily limited to, the following Plaintiff Classes:

**FLSA Class:**

All persons employed by the Defendant, Metropolitan Life Insurance Company, in the United States as financial sales representatives (including, but not limited to, those persons employed as “Special Agents”) within the applicable statutory period.

**California Class:**

All persons employed by the Defendant, Metropolitan Life Insurance Company, in the State of California as financial sales representatives (including, but not limited to, those persons employed as “Special Agents”) within the applicable statutory period.

21. Defendant, its officers and directors are excluded from each of these Classes.

22. This action has been brought and may properly be maintained as a class/collective action under FRCP, Rule 23 and 29 U.S.C. § 216 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable.

a. **Numerosity:** A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the classes are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiffs are informed and believe and, on that basis, allege that the total number of Class Members exceeds hundreds of individuals. Membership in the Plaintiff Classes will be determined upon analysis of employee and payroll, among other, records maintained by Defendant.

b. **Commonality:** The Representative Plaintiffs and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, thereby making a class action superior to other available methods for the fair and efficient adjudication of the controversy. Consequently, class certification is proper under FRCP, Rule 23(b)(3) and 29 U.S.C. § 216(b). These common questions include, but are not necessarily limited to:

1. Whether Defendant violated the FLSA and/or California laws by failing to pay overtime compensation to Metlife “Financial Services Representatives” who worked in excess of 40 hours per week;
2. Whether Defendant violated California Wage Order Nos. 7-98, 7-2000, 7-2001 and Labor Code § 510 by failing to pay overtime compensation to Metlife “Financial Services Representatives” who worked in excess of 40 hours per week and/or eight (8) hours a day;

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- 3. Whether Defendant violated California Business and Professions Code § 17200 by failing to pay overtime compensation to “Financial Services Representatives” who worked in excess of forty (40) hours per week and/or eight (8) hours a day;
- 4. Whether Defendant violated Cal. Lab. Code §§ 200, 202, 204 and portions of applicable California Wage Orders by subjecting their “Financial Services Representatives” to deductions from wages, including commissions and losses claimed by Defendant’s customers;
- 5. Whether Defendant violated Cal. Lab. Code §§ 400-410 and 2802 by charging and/or otherwise requiring their “Financial Services Representatives” to pay all or a portion of the compensation of other agents/employees of the Defendant, as well as other normal business expenses of the Defendant;
- 6. 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 California Class Members;
- 7. Whether Defendant violated, and continues to violate, California Labor Code § 1174 by failing to keep accurate records of employees’ hours of work;
- 8. Whether Defendant violated, and continues to violate, California Labor Code §§ 201-203 by failing to pay overtime wages due and owing at the time Class Members’ employment with Defendant terminated;
- 9. Whether Defendant violated, and continues to violate, California Labor Code § 226 by failing to provide semi-monthly itemized wage statements to Class Members of total hours worked and all applicable hourly rates in effect during the pay period;
- 10. Whether the Representative Plaintiffs and the Class Members are entitled to “waiting time” penalties/wages pursuant to California Labor Code § 203.

c. Typicality: The Representative Plaintiffs’ claims are typical of the claims of the Plaintiff Classes. The Representative Plaintiffs and all members of the Plaintiff Classes sustained injuries and damages arising out of and caused by Metlife’s common course of conduct in violation of state and federal 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 adjudications and/or may substantially impede their ability to adequately protect their interests. Moreover, the

1 Representative Plaintiffs are informed and believe, and based thereon allege,  
2 that Defendant, in refusing to pay overtime to the FLSA Class Members and  
3 the California Class Members, have acted and refused to act on grounds  
4 generally applicable to all claims, thereby making appropriate injunctive and  
5 monetary relief for all members of each class. Consequently, Class  
6 certification is proper under FRCP, Rule 23(b)(2) and 29 U.S.C. § 216(b).

7  
8 e. Adequacy of Representation: The Representative Plaintiffs in this class  
9 action are adequate representatives of the Plaintiff Classes, in that the  
10 Representative Plaintiffs' claims are typical of those of the Plaintiff Classes  
11 and the Representative Plaintiffs have the same interests in the litigation of  
12 this case as the Class Members. The Representative Plaintiffs are committed  
13 to vigorous prosecution of this case, and have retained competent counsel,  
14 experienced in litigation of this nature. The Representative Plaintiffs are not  
15 subject to any individual defenses unique from those conceivably applicable  
16 to the Class as a whole. The Representative Plaintiffs anticipate no  
17 management difficulties in this litigation.

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**COMMON FACTUAL ALLEGATIONS**

23. As described herein, Metlife has, for years, knowingly failed to adequately  
compensate those "Financial Services Representatives" within the class definitions identified above  
for premium (overtime) wages due under the FLSA (29 U.S.C. §§ 206 and 207), California Labor  
Code § 510 and applicable California Wage Orders. Moreover, Metlife has knowingly failed to  
provide said workers with mandatory meal and rest periods, thereby enjoying a significant  
competitive edge over other securities brokerage firms. Among other means, Metlife engaged in  
unlawful business practices requiring Financial Services Representatives to work numerous hours  
of overtime on a daily and/or weekly basis and prevented Financial Services Representatives from  
taking rest and meal breaks.

24. Even upon the termination or resignation of the employment of Representative  
Plaintiffs and numerous California Class Members during the Class Period, Metlife declined to pay  
these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

25. Moreover, according to Defendant's policy, all California Class Members suffered  
deduction from earned and paid commissions, as well as cash contributions made back to Defendant,  
for the commissions previously paid and the actual claimed customer losses themselves, on account  
of claims by Defendant's customers.

26. Additionally, according to Defendant's policy, all California Class Members were

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1 required to pay agents/employees of Defendant for their services to the clients in processing orders,  
2 assisting in sales, or otherwise doing the business of the employer, either directly as wages, as cash  
3 payments or through the diversion of commissions previously earned.

4 27. Through the misclassification of Plaintiffs and the Class Members as exempt  
5 employees, Metlife has also incorrectly and unlawfully treated said Class Members as exempt from  
6 the meal and rest period requirements established by California Labor Code §§ 226.7 and 512 and  
7 §§ 11 and 12 of the applicable California Wage Orders. Representative Plaintiffs and the California  
8 Class Members were, and are, unlawfully denied meal breaks and rest periods required by law.

9 28. Moreover, California Labor Code §§ 201 and 202 require Metlife to pay all wages  
10 due to members of the California Class immediately upon discharge. California Labor Code § 203  
11 provides that, if an employer willfully fails to timely pay such wages, the employer must, as a  
12 penalty, continue to pay the subject employees' wages until the back wages are paid in full or an  
13 action is commenced, for a period not to exceed 30 days of wages.

14 29. Furthermore, despite its knowledge of the Representative Plaintiffs' and the Class  
15 Members' entitlement to premium (overtime) pay for excess hours worked, Metlife violated  
16 California Labor Code § 1174[d] by failing to provide or require the use, maintenance or submission  
17 of time records by members of the California Class. Metlife also failed to provide Representative  
18 Plaintiffs and members of the California Class with accurate semi-monthly itemized wage statements  
19 of the total number of hours worked by each, and all applicable hourly rates in effect during the pay  
20 period, in violation of California Labor Code § 226. In so doing, Defendant has not only failed to  
21 pay their workers the full amount of compensation due, they have, until now, effectively shielded  
22 themselves from their employees' scrutiny for their unlawful conduct by concealing the magnitude  
23 (the full number of hours worked) and financial impact of their wrongdoing.

24 30. Representative Plaintiffs and all persons similarly situated in the California Class are  
25 entitled to unpaid compensation, yet, to date, have not received such compensation despite their  
26 termination of their employment with Metlife.

27 31. More than 30 days have passed since certain California Class Members have left  
28 Metlife's employ.

1 32. As a consequence of Metlife’s willful conduct in not paying compensation for all  
2 hours worked, certain California Class Members are entitled to 30 days wages as penalty under  
3 Labor Code section 203, together with interest thereon and attorneys’ fees and costs.

4 33. As a direct and proximate result of Metlife’s unlawful conduct, as set forth herein,  
5 Representative Plaintiffs and Class Members have sustained damages, as described above, including  
6 loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established  
7 at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein,  
8 Representative Plaintiffs and many Class Members herein are entitled to recover “waiting time”  
9 penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide semi-  
10 monthly statements of hours worked and all applicable hourly rates (pursuant to Labor Code § 226)  
11 in an amount to be established at trial. As a further direct and proximate result of Defendant’s  
12 unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members are entitled to  
13 recover attorneys’ fees and costs, pursuant to 29 U.S.C. § 216(b), California Labor Code §§ 218.5  
14 and 1194 and/or California Civil Code § 1021.5, among other authorities.

15  
16 **FIRST CAUSE OF ACTION**  
17 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**  
18 **(FLSA Class)**

19 34. Representative Plaintiffs incorporate in this cause of action each and every allegation  
20 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

21 35. At all relevant times hereto, Defendant has been, and is, an employer engaged in  
22 commerce, as defined under 29 U.S.C. § 203(b) and (d). As such, Metlife employed members of the  
23 FLSA Class as “Financial Services Representatives” (as defined above), employment which engaged  
24 the employees in commerce, as defined under 29 U.S.C. §§ 203(b), (e), (g) and 29 U.S.C. §  
25 207(a)(1). At all times relevant hereto, Defendant has been an “enterprise engaged in commerce or  
26 in the production of goods for commerce,” as defined under 29 U.S.C. §203(s)(1).

27 36. Representative Plaintiffs are informed and believe, and thereon allege, that Metlife  
28 has required, or requires, the FLSA Class Members as part of their employment to work without  
additional compensation, such as overtime, in excess of the forty hours per week maximum under

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1 29 U.S.C. § 207(a)(1). That Section provides the following:

2 Except as otherwise provided in this section, no employer shall  
3 employ any of his employees...for a workweek longer than forty hours  
4 unless such employee receives compensation for his employment in  
excess of the hours above specified at a rate which is not less than  
one and one-half times the regular rate at which he is employed.

5 37. Indeed, in the performance of their duties for Defendant, members of the FLSA Class  
6 often did work over forty hours per week, yet did not receive overtime compensation for the work,  
7 labor and services they provided to Defendant, as required by the FLSA, 29 U.S.C. §§ 206 and 207.  
8 The precise number of unpaid overtime hours will be proven at trial.

9 38. Representative Plaintiffs propose to undertake appropriate proceedings to have such  
10 FLSA Class Members aggrieved by Defendant’s unlawful conduct notified of the pendency of this  
11 action and join this action as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to  
12 joinder with the Court.

13 39. Defendant’s violations of the FLSA were willful.

14 40. As a result of the foregoing, Representative Plaintiffs seek judgment against  
15 Defendant on their own behalf, and on behalf of those FLSA Class Members similarly situated who  
16 file written consents to joinder in this action, for all unpaid wages, including overtime wages owed  
17 by Defendant to the Representative Plaintiffs and the FLSA Class, pursuant to 29 U.S.C. §§ 206 and  
18 207, together with an award of an additional equal amount as liquidated damages, and costs, interest,  
19 and reasonable attorneys’ fees, as provided for under 29 U.S.C. § 216(b).

20  
21 **SECOND CAUSE OF ACTION**  
22 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**  
**(California Class)**

23 41. Representative Plaintiffs incorporate in this cause of action each and every allegation  
24 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

25 42. During the Class Period, Representative Plaintiffs and the California Class Members  
26 worked in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek. The precise  
27 number of overtime hours will be proven at trial.

28 43. During said time period, Metlife refused to compensate Representative Plaintiffs and

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1 the California Class Members for some and/or all of the overtime wages earned in violation of  
2 applicable Wage Order(s) and the provisions of the California Labor Code.

3 44. At all relevant times, Defendant was aware of, and were under a duty to comply with,  
4 the overtime provisions of the California Labor Code, including, but not limited to, the 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 eight  
7 hours worked on the seventh day of work in any one workweek shall be  
8 compensated at the rate of no less than one and one-half times the regular rate  
9 of pay for an employee . . . .” (*effective at all times herein relevant*)

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 legal  
12 overtime compensation applicable to the employee is entitled to recover in  
13 a civil action the unpaid balance of the full amount of this minimum wage or  
14 overtime compensation, including interest thereon, reasonable attorney’s fees,  
15 and costs of suit. (*effective at all times herein relevant*)

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 of  
18 work and the standard conditions of labor for employees. The employment  
19 of any employee for longer hours than those fixed by the order or under  
20 conditions of labor prohibited by the order is unlawful.” (*effective at all times  
21 herein relevant*).

22 45. By refusing to compensate Representative Plaintiffs and the California Class  
23 Members for overtime wages earned, Defendant violated those California Labor Code provisions  
24 cited herein, as well as various Industrial Welfare Commission Wage Orders.

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

**THIRD CAUSE OF ACTION**  
**FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND**  
**(California Class)**

47. Representative Plaintiffs incorporate 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.

48. During the Class Period, Defendant required Plaintiffs and Plaintiff Class Members

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1 to pay additional sums to Defendant's other agents employees for the labor necessary to complete  
2 the job of Financial Services Representative, as well as other normal business expenses of the  
3 Defendant.

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

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

9 51. California Labor Code § 2802(a) provides:

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

15 52. California Labor Code § 406 provides:

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

21 53. California Labor Code § 407 provides:

22 Investments and the sale of stock or an interest in a business in connection  
23 with the securing of a position are illegal as against the public policy of the  
24 State and shall not be advertised or held out in any way as a part of the  
25 consideration for any employment.

26 54. By requiring Plaintiffs and members of the California Class to incur uncompensated  
27 expenses in direct consequence of the discharge of their duties, Representative Plaintiffs and  
28 members of the California Class were forced and/or brought to contribute to the capital and expenses  
of the Defendant's business which is legally a cash bond and which must be refunded by Defendant  
to each California Class Member.

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

1 56. Therefore, Representative Plaintiffs demand reimbursement for expenditures or losses  
2 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her  
3 obedience to the directions of their employer, plus return of all cash bonds or other coerced  
4 investments in the business of the employer, with interest at the statutory rate and attorneys' fees.

5  
6 **FOURTH CAUSE OF ACTION:**  
7 **PROHIBITED WAGE CHARGEBACKS**  
8 **(California Class)**

9 57. Representative Plaintiffs incorporate in this cause of action each and every allegation  
10 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

11 58. California Labor Code § 200 states:

12 As used in this article: (a) "Wages" includes all amounts for labor performed  
13 by employees of every description, whether the amount is fixed or ascertained  
14 by the standard of time, task, piece, commission basis, or other method of  
15 calculation. (b) "Labor" includes labor, work, or service whether rendered  
16 or performed under contract, subcontract, partnership, station plan, or other  
17 agreement if the labor to be paid for is performed personally by the person  
18 demanding payment.

19 59. California Labor Code § 202 states:

20 If an employee not having a written contract for a definite period quits his or  
21 her employment, his or her wages shall become due and payable not later  
22 than 72 hours thereafter, unless the employee has given 72 hours previous  
23 notice of his or her intention to quit, in which case the employee is entitled  
24 to his or her wages at the time of quitting.

25 60. There was no definite term in any Class Member's employment contract.

26 61. California Labor Code § 204 requires all wages other than salaries to be paid not less  
27 than twice a month. California Labor Code § 204 states:

28 All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2,  
earned by any person in any employment are due and payable twice during  
each calendar month, on days designated in advance by the employer as the  
regular paydays. Labor performed between the 1st and 15th days, inclusive,  
of any calendar month shall be paid for between the 16th and the 26th day of  
the month during which the labor was performed, and labor performed  
between the 16th and the last day, inclusive, of any calendar month, shall be  
paid for between the 1st and 10th day of the following month. However,  
salaries of executive, administrative, and professional employees of  
employers covered by the Fair Labor Standards Act, as set forth pursuant to  
Section 13(a)(1) of the Fair Labor Standards Act, as amended through March  
1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that  
part now reads or may be amended to read at any time hereafter, may be paid

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1 once a month on or before the 26th day of the month during which the labor  
2 was performed if the entire month's salaries, including the unearned portion  
3 between the date of payment and the last day of the month, are paid at that  
4 time.

62. California Labor Code § 204 further states:

Notwithstanding any other provision of this section, all wages earned for  
labor in excess of the normal work period shall be paid no later than the  
payday for the next regular payroll period.

63. Section 8 of the Order of the Industrial Wage Commission, 8 C.C.R. § 11040(8)  
(Professional, Technical, et al.) states:

No employer shall make any deduction from the wage or require any  
reimbursement from an employee for any cash shortage, breakage, or loss of  
equipment, unless it can be shown that the shortage, breakage, or loss is  
caused by a dishonest or willful act, or by the gross negligence of the  
employee.

64. Defendant charged back both commissions and the actual value of the stock losses  
allegedly caused by the employee through simple negligence or no fault of the employee at all.

65. This is a species of cash shortages prohibited from being charged back.

66. Defendant systematically underpaid its employees by holding back a significant  
portion of commissions for their own purposes to pay others, and then either paying the wages later  
than the time required under California Labor Code § 204 or simply not paying them at all.

67. Defendant did not pay Plaintiffs all wages due as required by California Labor Code  
§ 204.

68. Therefore, Plaintiffs demand an accounting and payment of all wages due, plus  
interest provided under California Labor Code § 218.6 and attorneys' fees allowed by law.

**FIFTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL AND REST PERIODS**  
**(California Class)**

69. Representative Plaintiffs incorporate 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.

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

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71. 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.

72. Moreover, 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.

73. Industrial Wage Commission Wage Order Nos. 7-2001(11) and (12) also mandate that employers provide all applicable meal and/or rest periods to their workers.

74. IWC Wage Order No. 7-2001(11) 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...

...

(D) 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.

75. IWC Wage Order No. 7-2001(12) provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof...

(B) If an employer fails to provide an employee a rest period in

1 accordance with the applicable provisions of this order, the employer  
2 shall pay the employee one (1) hour of pay at the employee's regular  
3 rate of compensation for each workday that the rest period is not  
4 provided.

4 76. By failing to consistently provide meal and rest periods to Representative Plaintiffs  
5 and the California Class Members, Metlife violated these California Labor Code and IWC Wage  
6 Order provisions.

7 77. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
8 Representative Plaintiffs and the California Class Members have sustained damages, including lost  
9 wages, and are entitled to recover such damages, penalties and attorneys' fees and costs under  
10 California law, in an amount to be established at trial.

11  
12 **SIXTH CAUSE OF ACTION**  
13 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
14 **(California Class)**

14 78. Representative Plaintiffs incorporate in this cause of action each and every allegation  
15 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

16 79. California Labor Code § 226(a) provides:

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

24 80. The IWC Wage Orders also establish this requirement in § 7(B) thereof (8 Cal. Code  
25 Regs. § 11010 et. seq.).

26 81. Moreover, California Labor Code § 226(e) provides:

27 An employee suffering injury as a result of a knowing and intentional  
28 failure by an employer to comply with subdivision (a) is entitled to  
recover the greater of all actual damages or fifty dollars (\$50) for the

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1 initial pay period in which a violation occurs and one hundred dollars  
2 (\$100) per employee for each violation in a subsequent pay period,  
3 not exceeding an aggregate penalty of four thousand dollars (\$4,000),  
4 and is entitled to an award of costs and reasonable attorney's fees.

5 82. Finally, California Labor Code § 1174 provides:

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

12 83. Representative Plaintiffs seek to recover actual damages, costs and attorneys' fees  
13 under these provisions on behalf of himself and the California Class.

14 84. Metlife failed to provide timely, accurate itemized wage statements to Representative  
15 Plaintiffs and the California Class in accordance with Labor Code § 226(a) and the IWC Wage  
16 Orders. None of the statements provided by Defendant have accurately reflected actual gross wages  
17 earned, net wages earned, or the appropriate deductions of such Class Members.

18 85. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
19 herein, Representative Plaintiffs and the California Class Members have sustained damages in an  
20 amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

21 **SEVENTH CAUSE OF ACTION**  
22 **FAILURE TO PAY WAGES ON TERMINATION**  
23 **(California Class)**

24 86. Representative Plaintiffs incorporate in this cause of action each and every allegation  
25 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

26 87. California Labor Code § 203 provides that:

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

88. Representative Plaintiffs and numerous California Class Members were employed  
by Metlife during the class period and were thereafter terminated or resigned from their positions,

1 yet they were not paid all premium (overtime) wages due upon said termination or within seventy-  
2 two (72) hours of said resignation of employment therefrom. Said non-payment was the direct and  
3 proximate result of a willful refusal to do so by Defendant.

4 89. More than thirty days has elapsed since Representative Plaintiffs and the Class  
5 Members were terminated and/or resigned from Defendant’s employ.

6 90. As a direct and proximate result of Defendant’s willful conduct in failing to pay said  
7 Class Members for all hours worked, Representative Plaintiffs and certain Class Members are  
8 entitled to recover “waiting time” penalties of thirty days’ wages pursuant to Labor Code § 203, in  
9 an amount to be established at trial, together with interest thereon and attorneys’ fees and costs.

10  
11 **EIGHTH CAUSE OF ACTION**  
12 **UNFAIR BUSINESS PRACTICES**  
13 **(California Class)**

14 91. Representative Plaintiffs incorporate in this cause of action each and every allegation  
15 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

16 92. Representative Plaintiffs further bring this cause of action seeking equitable and  
17 statutory relief to stop the misconduct of Metlife, as complained of herein, and to seek restitution  
18 from Defendant of amounts acquired through the unfair, unlawful and fraudulent business practices  
19 described herein.

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

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

28 95. Metlife has clearly established a policy of accepting a certain amount of collateral  
damage, as represented by the damages to Representative Plaintiffs and the Class herein alleged, as

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1 incidental to its business operations, rather than accept the alternative costs of full compliance with  
2 fair, lawful and honest business practices ordinarily borne by responsible competitors of Defendant  
3 and as set forth in legislation and the judicial record.

4  
5 **RELIEF SOUGHT**

6 **WHEREFORE, the Representative Plaintiffs**, on behalf of themselves and the **Plaintiff**  
7 **Classes**, pray for judgment and the following specific relief against **Defendant, Metropolitan Life**  
8 **Insurance Company**, as follows:

9 1. That the Court declare, adjudge and decree that this action is a proper class/collective  
10 action and certify the proposed FLSA Class, the California Class and/or any other appropriate  
11 subclasses under FRCP, Rule 23 and/or 29 U.S.C. § 216;

12 2. That the Court declare, adjudge and decree that Defendant violated the overtime  
13 provisions of the FLSA, the California Labor Code and the Industrial Wage Commission Wage  
14 Orders as to the Representative Plaintiffs and the Plaintiff Classes;

15 3. That the Court declare, adjudge and decree that Defendant willfully violated its legal  
16 duties to pay overtime under the FLSA, the California Labor Code and the IWC Wage Orders;

17 4. That the Court declare, adjudge and decree that (a) the Representative Plaintiffs and  
18 the FLSA Class Members were at all times relevant hereto, and are, entitled to be paid overtime for  
19 work beyond 40 hours in a week; and (b) the amounts to which Representative Plaintiffs and the  
20 FLSA Class Members are entitled is to be doubled as liquidated damages and awarded thereto;

21 5. That the Court declare, adjudge and decree that Defendant violated California Labor  
22 Code §§ 406, 407 and 2802(a) by willfully failing to reimburse California Class Members for  
23 expenses made on behalf of Defendant;

24 6. That the Court declare, adjudge and decree that Defendant violated California Labor  
25 Code §§ 200, 202 and 204 and applicable IWC Wage Orders by charging back both commissions  
26 and the actual value of the stock losses from wages of members of the California Class;

27 7. That the Court declare, adjudge and decree that Defendant violated California Labor  
28 Code §§ 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide meal periods

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1 (including second meal periods) and/or rest periods to California Class Members;

2 8. That the Court declare, adjudge and decree that Defendant violated the record keeping  
3 provisions of California Labor Code §§ 226(a) and 1174(d) and section 7 of the Wage Orders as to  
4 Representative Plaintiffs and the California Class, and willfully failed to provide accurate semi-  
5 monthly itemized wage statements thereto;

6 9. That the Court declare, adjudge and decree that Defendant violated California Labor  
7 Code § 203 by willfully failing to pay all compensation owed at the time of the termination of the  
8 employment of Representative Plaintiffs and other terminated California Class Members;

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

14 11. That the Court make an award to Representative Plaintiffs, the FLSA Class and the  
15 California Class of damages and/or restitution for the amount of unpaid overtime compensation,  
16 including interest thereon, and penalties in an amount to be proven at trial;

17 12. That the Court make an award to the Representative Plaintiffs and the California  
18 Class of reimbursement for all employer related expenses;

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

22 14. That the Court make an award to the Representative Plaintiffs and the California  
23 Class of one (1) hour of pay at each employee’s regular rate of compensation for each workday that  
24 a rest period was not provided;

25 15. That the Court order Defendant to pay restitution to Representative Plaintiffs and the  
26 California Class due to Defendant’s unlawful activities, pursuant to Business and Professions Code  
27 §§ 17200-08;

28 16. That the Court further enjoin Defendant, ordering them to cease and desist from

1 unlawful activities in violation of Business and Professions Code §§ 17200 et seq.;

2 17. For all other Orders, findings and determinations identified and sought in this  
3 Complaint;

4 18. For Interest on the amount of any and all economic losses, at the prevailing legal rate;

5 19. For reasonable attorneys' fees, pursuant to 29 U.S.C. § 216(b), California Labor Code  
6 §1194 and/or California Civil Code §1021.5; and

7 20. For costs of suit and any and all such other relief as the Court deems just and proper.  
8

9 Dated: February 5, 2007

**SCOTT COLE & ASSOCIATES, APC**

10  
11 By: /s/ Scott Edward Cole  
12 Scott Edward Cole, Esq.  
13 Attorneys for the Representative Plaintiff  
14 And the Plaintiff Classes  
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