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Attorneys for Representative Plaintiff
And the Plaintiff Classes

[Additional Counsel Appear On Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEIL WEINSTEIN, individually, and on)
behalf of all others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
METLIFE, INC., METROPOLITAN LIFE)
INSURANCE COMPANY, and METLIFE)
SECURITIES, INC.,)
)
Defendants.)

Case No. 3:06-CV-04444-SI

**STIPULATION AND [PROPOSED]
ORDER GRANTING LEAVE TO FILE
AN AMENDED COMPLAINT**

CRTRM: 10, 19th Floor
JUDGE: Honorable Susan Illston

1 WHEREAS, on July 20, 2006, Plaintiff Neil Weinstein filed a Complaint for Damages,
2 Injunctive Relief and Restitution [DKT No. 1];

3 WHEREAS, by Order dated September 30, 2008, the Court set the motion for class and/or
4 collective action certification for hearing on February 6, 2009 [DKT No. 160];

5 WHEREAS, in advance of the motion for class and/or collective action certification,
6 Plaintiff Neil Weinstein seeks to add additional proposed named plaintiffs who allege wage and
7 hour claims against MetLife, Inc. and MetLife Resources, Inc. and to amend the California class
8 definition to exclude the claims settled in *Sims v. Metropolitan Life Ins. Co.*, Case No. 05 CV
9 2980 THE (EDL) (N.D. Cal. filed July 21, 2005) ("*Sims*"); and

10 WHEREAS, the parties agree that Plaintiff should file an amended complaint to include
11 additional named parties and to exclude the *Sims* claims.

12 NOW, THEREFORE, the parties, by and through their counsel of record, hereby stipulate,
13 and jointly seek an Order that Plaintiff be granted leave to amend his complaint and to file the
14 First Amended Complaint, lodged herewith and attached as Exhibit A hereto as of the date of the
15 Court's Order.

16 DATED: November 13, 2008

17 WOLF HALDENSTEIN ADLER
18 FREEMAN & HERZ LLP
19 FRANCIS M. GREGOREK
20 BETSY C. MANIFOLD
21 RACHELE R. RICKERT

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Attorneys for Representative Plaintiff and the
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DATED: November 13, 2008

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Counsel for MetLife Securities, Inc., MetLife Inc.,
Metropolitan Life Insurance Company

Plaintiff Neil Weinstein is granted leave to file his First Amended Complaint and the First Amended Complaint lodged herewith is considered filed as of the date of this order.

IT IS SO ORDERED:

DATE: _____


THE HONORABLE SUSAN ILLSTON

METLIFE:16350

EXHIBIT A

1 WOLF HALDENSTEIN ADLER
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10 Attorneys for Representative Plaintiffs and the [Proposed] Plaintiff Classes

11
12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 NEIL WEINSTEIN, ABDULSALAM)
16 BORGI, CHARLES DOZER, PETER)
FERCIONI, AND HOOSHANG)
17 KERMANI individually, and on behalf of)
all others similarly situated,)

18 Plaintiffs,)

19 vs.)

20 METLIFE, INC., METROPOLITAN LIFE)
21 INSURANCE COMPANY, METLIFE)
22 RESOURCES, INC. and METLIFE)
SECURITIES, INC.,)

23 Defendants.)

Case No. 3:06-CV-04444-SI

CLASS ACTION

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

DEMAND FOR JURY TRIAL

CRTRM: 10, 19th Floor
JUDGE: Honorable Susan Illston

1 The Representative Plaintiffs allege as follows:

2 **PRELIMINARY STATEMENT**

3 1. This is a class/collective action, seeking unpaid wages, including unpaid overtime
4 compensation and interest thereon, reimbursement of business expenses, rest and meal period
5 penalties, waiting time penalties, liquidated damages and other penalties, injunctive and other
6 equitable relief and reasonable attorneys' fees and costs, under, *inter alia*, the Fair Labor Standards
7 Act of 1938 ("FLSA") §§6 and 7, 29 U.S.C. §§206 and 207 (2006). This action further invokes
8 diversity jurisdiction and the supplemental jurisdiction of this Court to consider claims arising
9 under California law (*e.g.*, Title 8 of the California Code of Regulations (2008), Cal. Labor Code
10 §§ 200-204, inclusive, 216-218.6, 221, 223, 226, 226.7, 400-410, 510, 1174, 1194, 1194.2, 1197
11 and 2802 (2007), Cal. Business and Professions Code §§17200, *et seq.* (2008) and Cal. Code of
12 Civil Procedure 1021.5 (2008)).

13 2. Representative Plaintiffs bring this action on behalf of themselves and all other
14 persons similarly situated (hereinafter referred to as the "Class Members," the "Plaintiff Classes"
15 and/or, more specifically, the "FLSA Class" and/or the "California Class") who are, or have been,
16 employed by the Defendants to sell and/or assist in selling and/or to market and/or assist in
17 marketing securities and other financial products to the public on their behalf within the applicable
18 statutory periods.

19 3. The "California Class" period is designated as the time from July 20, 2002 through
20 the trial date, based upon the allegation that the violations of California's wage and hour laws, as
21 described more fully below, have been ongoing since that time. The "FLSA Class" period is
22 designated as the time from July 20, 2003 through the trial date, based upon the allegation that the
23 violations of the FLSA, as described more fully below, have been ongoing since at least this date.
24 During the Class Periods, METLIFE, INC., METROPOLITAN LIFE INSURANCE COMPANY,
25 METLIFE RESOURCES, INC. and METLIFE SECURITIES, INC. (hereinafter collectively
26 "Metlife" and/or "Defendants") have had a consistent policy of (1) permitting, encouraging, and/or
27 requiring their allegedly-overtime exempt Financial Services Representatives (herein after
28 "FSRs"), including Representative Plaintiffs and members of both Classes, to work in excess of

1 eight (8) hours per day and in excess of forty (40) hours per week without paying them overtime
2 compensation as required by the FLSA and California's wage and hour laws; (2) making improper
3 deductions from the Representative Plaintiffs' and California Class Members' earned and paid
4 commissions and requiring cash contributions be made back to Defendants for commissions
5 previously paid and for claimed customer losses by Defendants' customers; (3) requiring
6 Representative Plaintiffs and California Class Members to pay other agents/employees of
7 Defendants for their services to the clients in processing orders, assisting in sales, or otherwise
8 handling business matters of Metlife; (4) unlawfully denying the Representative Plaintiffs and the
9 California Class Members statutorily mandated meal and rest periods; (5) willfully failing to pay
10 compensation (including unpaid overtime) in a prompt and timely manner to Representative
11 Plaintiffs and/or the California Class Members whose employment with Defendants terminated;
12 and (6) willfully failing to provide Representative Plaintiffs and the California Class Members
13 with accurate semi-monthly itemized wage statements of the total number of hours each of them
14 worked, the applicable deductions and the applicable hourly rates in effect during the pay period.

15 **INTRODUCTION**

16 4. The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§201, *et seq.*
17 (2006), (hereinafter referred to as "the Act" or the "FLSA") provides for minimum standards for
18 both wages and overtime entitlement, and details administrative procedures by which covered
19 work time must be compensated. The enactment of the provisions of the FLSA provide the
20 federal courts with substantial authority to stamp out abuses of child labor, equal pay, portal-to-
21 portal activities as well as the overtime pay provisions at issue in this Complaint.

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

26 6. California's Labor Code and Industrial Welfare Commission Wage Orders provide
27 even more expansive protection to hourly workers, including, but not necessarily limited to,
28

1 entitlements to overtime pay and work performed beyond eight hours per day, protection against
2 improper wage deductions and substantial penalties for the denial of rest and meal periods.

3 7. Defendants provide financial services including the sale of securities and financial
4 products to the public. Representative Plaintiffs are informed and believe and, based thereon,
5 allege that, within the Class Periods, Defendants have operated numerous facilities throughout the
6 United States. In so doing, Defendants have employed hundreds, if not thousands, of individuals
7 in recent years alone in allegedly-exempt "Financial Services Representative" ("FSRs") positions,
8 employment positions which have not, and currently do not, meet any test for exemption from the
9 payment of overtime wages. Metlife also improperly treats certain FSRs as "statutory employees"
10 or independent contractors when these individuals have not, and currently do not, meet any test for
11 designations and are not exempt from state and/or federal labor laws.

12 8. Despite actual knowledge of these facts and legal mandates, Defendants have
13 enjoyed an advantage over their competition and have disadvantaged their employees by electing
14 not to pay premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to FSRs,
15 particularly, by improper deductions from their wages and by failing to reimburse them for
16 expenses they incurred on Defendants' behalf and by failure to provide meal and rest breaks.

17 9. Representative Plaintiffs are informed and believe and, based thereon, allege that
18 officers of Metlife knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized
19 and/or ratified the violations of the laws cited herein.

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

26 **JURISDICTION AND VENUE**

27 11. This Court has jurisdiction of this action pursuant to the provisions of the Fair
28 Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. §§201, *et seq.* (2006), including under 29

1 U.S.C. §§207, 216, and 217. This Court also has jurisdiction in light of the existence of a
2 controversy arising under the laws of the United States (28 U.S.C. §1331 (2008)), diversity
3 jurisdiction under 28 U.S.C. §1332 (2008), and supplemental jurisdiction to consider claims
4 arising under California state law, pursuant to 28 U.S.C. §1367.

5 12. Venue as to Defendants is proper in this judicial district, pursuant to 28 U.S.C.
6 §1391 (2008). Metlife maintains offices in the Northern District of California and transacts
7 business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of
8 process. The unlawful acts alleged herein have a direct effect on Representative Plaintiffs and
9 those similarly situated within the state of California and within this judicial district. Metlife
10 operates said facilities and has employed numerous Class Members in this judicial district as well
11 as throughout the state of California.

12 **PLAINTIFFS**

13 13. Representative Plaintiff Neil Weinstein is a natural person and was, during the
14 relevant time period identified herein, employed by Metlife in its Oakland, California office and at
15 other places as a Financial Services Representative (“FSR”) pursuant to a series of successive
16 written compensation plans.

17 14. Representative Plaintiff Abdulsalam Borgi is a natural person and was, during the
18 relevant time period identified herein, employed by Metlife in its Riverside, California office and
19 at other places as a FSR pursuant to a series of successive written compensation plans.

20 15. Representative Plaintiff Charles Dozer is a natural person and was, during the
21 relevant time period identified herein, employed by Metlife in its San Diego, California office as a
22 FSR pursuant to a series of successive written compensation plans.

23 16. Representative Plaintiff Peter Fercioni is a natural person and was, during the
24 relevant time period identified herein, employed by Metlife from December 2001 to date in its
25 West Lake Village, California office and at other places as a FSR pursuant to a series of
26 successive written compensation plans. Metlife treats Mr. Fercioni as a “statutory employee.”

27 17. Representative Plaintiff Hooshang Kermani is a natural person and was, during the
28 relevant time period identified herein, employed by Metlife from December 2001 to date in its

1 West Lake Village, California office and at other places as a FSR pursuant to a series of
2 successive written compensation plans. Metlife treats Mr. Kermani as a “statutory employee.”

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

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

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

16 **DEFENDANTS**

17 21. At all times herein relevant, Defendants METLIFE, INC., METROPOLITAN LIFE
18 INSURANCE COMPANY, METLIFE RESOURCES, INC. and METLIFE SECURITIES, INC.
19 (hereinafter "Metlife" and/or "Defendants") were, and are, foreign corporations with a principal
20 place of business in New York City and doing business as a National Association of Securities
21 Dealers (“NASD”) registered securities brokerage firm with offices located in Oakland, California
22 and elsewhere. Despite Metlife’s attempt to avoid its obligations under California law by treating
23 its FSRs as statutory employees or independent contractors, at all relevant times herein, Metlife
24 served as the Representative Plaintiffs’ and California Class Members’ employer within the
25 meaning of Cal. Labor Code §233(b)(2) and Industrial Welfare Commission (“IWC”) Wage Order
26 No. 7-2001, 8 CA ADC §11070(2)(F) (2001).

27 22. Representative Plaintiffs are informed and believe and, on that basis, allege that
28 Defendants have, and do, directly and/or indirectly employed and/or exercised control over the

1 wages, hours and working conditions of the Representative Plaintiffs and the Class Members.

2 **CLASS ACTION ALLEGATIONS**

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

6 **FLSA Class:**

7 All persons who are, or have been, employed by the Defendants Metlife, Inc.,
8 Metropolitan Life Insurance Company, and/or Metlife Securities, Inc. in the United
9 States to sell and/or assist in selling and/or to market and/or assist in marketing
10 securities and other financial products on their behalf to the public within the
11 applicable statutory periods.

12 **California Class:**

13 All persons who are, or have been, employed by the Defendants Metlife, Inc.,
14 Metropolitan Life Insurance Company, and/or Metlife Securities, Inc. in the state of
15 California to sell and/or assist in selling and/or to market and/or assist in marketing
16 securities and other financial products on their behalf to the public within the
17 applicable statutory periods.

18 24. The **California Class** excludes claims settled in *Sims v. Metropolitan Life*
19 *Insurance Company*, No. C 05-2980 THE (EDL), (N.D. Cal. filed July 21, 2005) ("*Sims*"). The
20 Settlement Period in *Sims* was June 1, 2001 through June 11, 2007. The *Sims* settlement covered
21 only certain expense claims itemized in Metlife's Expense Allocation Plan and covered by the
22 Representative Plaintiffs' third cause of action. The *Sims* settlement also *excluded* (1) all Metlife
23 FSRs who were designated by Metlife as "General Agents," "Senior Partners" (an 055
24 Agreement), or "Statutory Employees;" (2) anyone who filed a Schedule C or was on a Career
25 Development Financing Plan; (3) all expenses that were not covered by credits afforded under
26 Metlife's Expense Allocation Plan ("EAP"); and (4) all claims arising after October 30, 2007.

27 25. Defendants, their officers and directors are excluded from each of these Classes.

28 26. This action has been brought and may properly be maintained as a class/collective
action under Fed. R. Civ. P. 23 and 29 U.S.C. §216 (2006) 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

1 joinder of all members is impracticable, if not impossible, insofar as Representative Plaintiffs are
2 informed and believe and, on that basis, allege that the total number of Class Members exceeds
3 hundreds of individuals. Membership in the Plaintiff Classes will be determined upon analysis of
4 employee and payroll, among other, records maintained by Defendants.

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

- 11 i. Whether Defendants violated the FLSA and/or California laws by
12 failing to pay overtime compensation to Metlife FSRs who worked in
 excess of 40 hours per week;
- 13 ii. Whether Defendants violated California Wage Order Nos. 7-98, 7-
14 2000, 7-2001 and Labor Code §510 by failing to pay overtime
15 compensation to Metlife FSRs who worked in excess of 40 hours per
 week and/or eight (8) hours a day;
- 16 iii. Whether Defendants violated California Business and Professions
17 Code §17200 by failing to pay overtime compensation to FSRs who
 worked in excess of forty (40) hours per week and/or eight (8) hours a
18 day;
- 19 iv. Whether Defendants violated Cal. Labor Code §§200, 202, 204 and
20 portions of applicable California Wage Orders by subjecting their
 FSRs to deductions from wages, including commissions and losses
 claimed by Defendants' customers;
- 21 v. Whether Defendants violated Cal. Labor Code §§400-410 and 2802
22 by charging and/or otherwise requiring their FSRs to pay all or a
 portion of the compensation of other agents/employees of the
23 Defendants, as well as other normal business expenses of the
 Defendants;
- 24 vi. Whether Defendants violated, and continues to violate, Cal. Labor
25 Code §§226.7 and/or 512 by failing to consistently provide meal
 and/or rest periods to the California Class Members;
- 26 vii. Whether Defendants violated, and continues to violate, Cal. Labor
27 Code §1174 by failing to keep accurate records of employees' hours
28 of work;

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- viii. Whether Defendants violated, and continue to violate, Cal. Labor Code §§201-203 by failing to pay overtime wages due and owing at the time Class Members' employment with Defendants terminated;
- ix. Whether Defendants violated, and continue to violate, Cal. 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;
- x. Whether the Representative Plaintiffs and the Class Members are entitled to "waiting time" penalties/wages pursuant to Cal. 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 Representative Plaintiffs are informed and believe, and based thereon allege, that Defendants, in refusing to pay overtime to the FLSA Class Members and the California Class Members, have acted and refused to act on grounds generally applicable to all claims, thereby making appropriate injunctive and monetary relief for all members of each class. Consequently, Class Certification is proper under Fed. R. Civ. P. 23(b)(2) and 29 U.S.C. §216(b).

e. Adequacy of Representation: The Representative Plaintiffs in this class action are an adequate representative of the Plaintiff Classes, in that the Representative Plaintiffs' claims are typical of those of the Plaintiff Classes and the Representative Plaintiffs have the same

1 interests in the litigation of this case as the Class Members. The Representative Plaintiffs are
2 committed to vigorous prosecution of this case, and have retained competent counsel experienced
3 in litigation of this nature. The Representative Plaintiffs are not subject to any individual defenses
4 unique from those conceivably applicable to the Class as a whole. The Representative Plaintiffs
5 anticipate no management difficulties in this litigation.

6 **COMMON FACTUAL ALLEGATIONS**

7 27. Metlife designates certain Financial Service Representatives, who perform the same
8 duties and responsibilities as all of the other FSRs, as “statutory employees” and unlawfully treats
9 these FSRs as independent contractors. Metlife does not pay them appropriate overtime wages,
10 makes improper deductions from their wages, and fails to reimburse them for penalties incurred on
11 behalf of Metlife. However, these FSRs are, in reality, employees of Metlife and not independent
12 contractors.

13 28. Metlife’s FSRs are all employees. Metlife retains all necessary control over a job
14 which can be done only in designated ways, and it controls all the details relating to Metlife’s
15 financial services. Metlife provides detailed instructions and guidelines to the FSRs on how to
16 conduct Metlife’s business and Metlife reviews and approves the process at each step. Metlife
17 maintains absolute overall control of the process. Metlife’s FSRs are statutory employees in name
18 only; in reality, they are employees and are entitled to all the benefits of employment under
19 California law.

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

28

1 30. California Labor Code §§510 and 1198 (2007), Code of Regulations §§11070 and
2 11090 (2001) and the corresponding IWC Wage Orders No. 7-2001 and 9-2001, provide that
3 employees in California shall not be employed more than eight (8) hours in any work day nor
4 more than forty (40) hours in any work week unless they receive additional compensation beyond
5 their regular wage in amounts specified by law.

6 31. During all times relevant to this Complaint, the aforementioned Labor Code
7 Sections and IWC Wage Orders were applicable to Plaintiffs' and Class Members' employment
8 and provided that any work performed in excess of 8 hours a day or more than 40 hours per week
9 be compensated at the rate of time and one-half.

10 32. Under the aforementioned Labor Code Sections and IWC Wage Orders, Plaintiffs
11 should have received between \$24.00 - \$56.69 per hour for work performed in excess of eight
12 hours in any day or more than 40 hours in one week. Plaintiffs, as did other Class members,
13 routinely worked two (2) to four (4) hours of overtime on a daily basis or more than 40 hours in
14 one week and were not compensated as required by the applicable authorities.

15 33. Defendants' actions of requiring employees to work an excessive amount of hours
16 in the absence of overtime pay is in direct violation of California labor law. Under Cal. Labor
17 Code §1194(a), Class members, including Plaintiffs, who received less than the legal overtime
18 compensation applicable to the employee are entitled to recover the unpaid balance of the full
19 amount of the overtime compensation, including interest, reasonable fees and costs of suit.

20 34. Even upon the termination or resignation of the employment of Representative
21 Plaintiffs and numerous California Class Members during the Class Period, Metlife declined to
22 pay these wages, in blatant violation of California Labor Code §§201 and/or 202 (2007).

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

27 36. Additionally, according to Defendants' policy, all California Class Members were
28 required to pay agents/employees of Defendants for their services to the clients in processing

1 orders, assisting in sales, or otherwise doing the business of the employer, either directly as wages,
2 as cash payments or through the diversion of commissions previously earned.

3 37. Cal. Labor Code §3751(a) provides, “[n]o employer shall exact or receive from any
4 employee any contribution, or make or take any deduction from the earnings of any employee,
5 either directly or indirectly, to cover the whole or any part of the costs of compensation under this
6 division.” This division covers any contribution from or deduction from earnings of employee to
7 cover cost of compensation.

8 38. Through the misclassification of Representative Plaintiffs and the Class Members
9 as exempt employees, Metlife has also incorrectly and unlawfully treated said Class Members as
10 exempt from the meal and rest period requirements established by California Labor Code §§226.7
11 and 512, California Wage Orders No. 7-2001, 8 CA ADC §11070, ¶¶11-12 (2001).
12 Representative Plaintiffs and the California Class Members were, and are, unlawfully denied meal
13 breaks and rest periods required by law.

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

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

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

3 41. Representative Plaintiffs and all persons similarly situated in the California Class
4 are entitled to unpaid compensation, yet, to date, have not received such compensation despite
5 their termination of their employment with Metlife.

6 42. More than 30 days have passed since Representative Plaintiffs and certain
7 California Class Members have left Metlife's employ.

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

11 44. As a direct and proximate result of Metlife's unlawful conduct, as set forth herein,
12 Representative Plaintiffs and Class Members have sustained damages, as described above,
13 including loss of earnings for hours of overtime worked on behalf of Defendants, in an amount to
14 be established at trial. As a further direct and proximate result of Defendants' unlawful conduct,
15 as set forth herein, Representative Plaintiffs and many Class Members herein are entitled to
16 recover "waiting time" penalties/wages (pursuant to California Labor Code § 203) and penalties
17 for failure to provide semi-monthly statements of hours worked and all applicable hourly rates
18 (pursuant to Labor Code §226) in an amount to be established at trial. As a further direct and
19 proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiffs and
20 Class Members are entitled to recover attorneys' fees and costs, pursuant to 29 U.S.C. § 216(b),
21 California Labor Code §§218.5 and 1194 and/or California Code of Civ. P. §1021.5, among other
22 authorities.

23 45. In addition to asserting class actions claims, pursuant to Bus. & Prof. Code §17204,
24 Plaintiffs assert claims as a private attorney general on behalf of the general public. Plaintiffs seek
25 to enjoin Defendants from engaging in the unfair, unlawful and/or deceptive business practices
26 alleged in this Complaint, and to require Defendants to make restitution of all monies wrongfully
27 obtained by them through their unfair, unlawful and/or deceptive business practices. A private
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1 attorney general (representative) action is necessary and appropriate because Defendants have
2 engaged in the wrongful acts described herein as a general business practice.

3 **FIRST CAUSE OF ACTION**
4 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
5 **(FLSA Class)**

6 46. Representative Plaintiffs incorporate 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 47. At all relevant times hereto, Defendants have been, and are, employers engaged in
10 commerce, as defined under 29 U.S.C. §203(b) and (d) (2008). As such, Metlife employed
11 members of the FLSA Class as "Financial Services Representatives," employment which engaged
12 the employees in commerce, as defined under 29 U.S.C. §§203(b), (e), (g) and 29 U.S.C.
13 §207(a)(1) (2008). At all times relevant hereto, Defendants have been an "[e]nterprise engaged
14 in commerce or in the production of goods for commerce," as defined under 29 U.S.C. §203(s)(1)
15 (2008).

16 48. 36. Representative Plaintiffs are informed and believe, and thereon allege, that
17 Metlife has required, or requires, the FLSA Class Members as part of their employment to work
18 without additional compensation, such as overtime, in excess of the forty hours per week
19 maximum under 29 U.S.C. § 207(a)(1). That Section provides the following:

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

25 49. Indeed, in the performance of their duties for Defendants, members of the FLSA
26 Class often did work over forty hours per week, yet did not receive overtime compensation for the
27 work, labor and services they provided to Defendants, as required by the FLSA, 29 U.S.C. §§206
28 and 207 (2008). The precise number of unpaid overtime hours will be proven at trial.

50. Representative Plaintiffs propose to undertake appropriate proceedings to have
such FLSA Class Members aggrieved by Defendants' unlawful conduct notified of the pendency

1 of this action and join this action as plaintiffs, pursuant to 29 U.S.C. §216(b) (2008), by filing
2 written consents to joinder with the Court.

3 51. Defendants' violations of the FLSA were willful.

4 52. As a result of the foregoing, Representative Plaintiffs seek judgment against
5 Defendants on his own behalf; and on behalf of those FLSA Class Members similarly situated
6 who filed written consents to joinder in this action, for all unpaid wages, including overtime wages
7 owed by Defendants to the Representative Plaintiffs and the FLSA Class, pursuant to 29 U.S.C.
8 §§206 and 207, together with an award of an additional equal amount as liquidated damages, and
9 costs, interest, and reasonable attorneys' fees, as provided for under 29 U.S.C. §216(b).

10 **SECOND CAUSE OF ACTION**
11 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
12 **(California Class)**

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

16 54. At all times herein relevant, the applicable Labor Code, Code of Regulations and
17 IWC Wage Orders referenced herein applied to Plaintiffs' and Class members' employment with
18 Metlife.

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

22 56. During said time period, Metlife refused to compensate Representative Plaintiffs
23 and the California Class Members for some and/or all of the overtime wages earned in violation of
24 applicable Wage Order(s) and the provisions of the California Labor Code.

25 57. At all relevant times, Defendants were aware of, and were under a duty to comply
26 with, the overtime provisions of the California Labor Code, including, but not limited to, the
27 following:

- 28 a. Labor Code §510: "Any work in excess of eight hours in one workday and
any work in excess of 40 hours in any one workweek and the first eight
hours worked on the seventh day of work in any one workweek shall be

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compensated at the rate of no less than one and one-half times the regular rate of pay for an employee . . ." (effective at all times herein relevant)

b. Labor Code §1194: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. (effective at all times herein relevant)

c. Labor Code §1198: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." (effective at all times herein relevant).

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

59. Metlife has intentionally and improperly designated certain FSRs, including Plaintiffs Peter Fercioni, Hooshang Kermani and the members of the Class, as statutory employees and has treated them as "independent contractors" in order to avoid payment of overtime wages and other benefits in violation of the Cal. Labor Code and the orders issued by the Industrial Wage Commission, and has completely failed to pay members of the Class appropriate overtime.

60. The Representatives Plaintiffs, individually and on behalf of others similarly situated, request payment of overtime compensation according to proof, penalty wages, interest, attorneys' fees and costs pursuant to the Cal. Labor Code, as well as the assessment of any other statutory penalties against Metlife in a sum as provided by the Labor Code and/or other statutes.

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

61. 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.

62. During the Class Period, Defendants required Plaintiffs and Plaintiff Class

1 Members to pay additional sums to Defendants' other agents/employees for the labor necessary to
2 complete the job of FSRs, as well as other normal business expenses of the Defendants.

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

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

8 65. California Labor Code § 2802(a) provides:

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

12 66. California Labor Code §406 provides:

13 Any property put up by an employee, or applicant as a part of the contract
14 of employment, directly or indirectly, shall be deemed to be put up as a
15 bond and is subject to the provisions of this article whether the property is
16 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.

17 67. California Labor Code §407 provides:

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

21 68. By requiring Plaintiffs and members of the California Class to incur
22 uncompensated expenses in direct consequence of the discharge of their duties, Representative
23 Plaintiffs and members of the California Class were forced and/or brought to contribute to the
24 capital and expenses of the Defendants' business which is legally a cash bond and which must be
refunded by Defendants to each California Class Member.

25 69. California Labor Code §2802 (b) and (c) provides for interest at the statutory post
26 judgment rate of 10% simple interest per annum from the date of the expenditure plus attorneys'
27 fees to collect reimbursement.
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1 70. Therefore, Representative Plaintiffs demand reimbursement for expenditures or
2 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
3 his or her obedience to the directions of the employer, plus return of all cash bonds or other
4 coerced investments in the business of the employer, with interest at the statutory rate and
5 attorneys' fees.

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

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

12 72. California Labor Code §200 states:

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

20 73. California Labor Code §202(a) states:

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

26 74. There was no definite term in any Class Member's employment contract.

27 75. California Labor Code §204 requires all wages other than salaries to be paid not
28 less than twice a month. California Labor Code §204(a) states:

29 All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2,
30 earned by any person in any employment are due and payable twice during
31 each calendar month, on days designated in advance by the employer as the
32 regular paydays. Labor performed between the 1st and 15th days, inclusive,
33 of any calendar month shall be paid for between the 16th and the 26th day
34 of the month during which the labor was performed, and labor performed
35 between the 16th and the last day, inclusive, of any calendar month, shall be
36 paid for between the 1st and 10th day of the following month. However,
37 salaries of executive, administrative, and professional employees of

1 employers covered by the Fair Labor Standards Act, as set forth pursuant to
2 Section 13(a)(1) of the Fair Labor Standards Act, as amended through
3 March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations,
4 as that part now reads or may be amended to read at any time hereafter,
5 may be paid once a month on or before the 26th day of the month during
6 which the labor was performed if the entire month's salaries, including the
7 unearned portion between the date of payment and the last day of the
8 month, are paid at that time.

9 76. California Labor Code §204(b) further states:

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

13 77. Section 8 of the Order of the Industrial Wage Commission, 8 C.C.R. §11040(8)
14 (Professional, Technical, *et al.*) (2008) states:

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

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

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

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

26 81. Defendants did not pay Plaintiffs all wages due as required by California Labor
27 Code §204.

28 82. 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)

83. 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.

1 84. At all relevant times, Defendants were aware of, and were under a duty to comply
2 with California Labor Code §512 and §226.7.

3 85. California Labor Code §512(a) provides:

4 An employer may not employ an employee for a work period of more than
5 five hours per day without providing the employee with a meal period of
6 not less than 30 minutes, except that if the total work period per day of the
7 employee is no more than six hours, the meal period may be waived by
8 mutual consent of both the employer and employee. An employer may not
9 employ an employee for a work period of more than 10 hours per day
10 without providing the employee with a second meal period of not less than
11 30 minutes, except that if the total hours worked is no more than 12 hours,
12 the second meal period may be waived by mutual consent of the employer
13 and the employee only if the first meal period was not waived.

14 86. Moreover, California Labor Code §226.7 provides:

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

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

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

25 88. IWC Wage Order No. 7-2001(¶11) provides:

26 (A) No employer shall employ any person for a work period of more than
27 five (5) hours without a meal period of not less than 30 minutes...

28 (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.

89. 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

1 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
2 or major fraction thereof.

3 (B) If an employer fails to provide an employee a rest period in accordance
4 with the applicable provisions of this order, the employer shall pay the
5 employee one (1) hour of pay at the employee's regular rate of
6 compensation for each workday that the rest period is not provided.

7 90. By failing to consistently provide meal and rest periods to Representative Plaintiffs
8 and the California Class Members, Metlife violated these California Labor Code and IWC Wage
9 Order provisions.

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

14 **SIXTH CAUSE OF ACTION**
15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
16 **(California Class)**

17 92. Representative Plaintiffs incorporate 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 93. California Labor Code §226(a) provides:

21 Each employer shall semimonthly, or at the time of each payment of wages,
22 furnish each of his or her employees either as a detachable part of the check,
23 draft or voucher paying the employee's wages, or separately when wages
24 are paid by personal check or cash, an itemized wage statement in writing
25 showing: (1) gross wages earned;

26 (2) total number of hours worked by each employee except for any
27 employee whose compensation is solely based on a salary and who is
28 exempt from payment of overtime under subdivision (a) of section 515 or
any applicable order of the Inclusive Welfare Commission; (4) all
deductions; provided, that all deductions made on written orders of the
employee may be aggregated and shown as one item; (5) net wages earned;
(6) the inclusive date of the period for which the employee is paid; (7) the
name of the employee and his or her social security number... and (8) the
name and address of the legal entity which is the employer.

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

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

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

96. 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.

97. Representative Plaintiffs seek to recover actual damages, costs and attorneys' fees under these provisions on behalf of themselves and the California Class.

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

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

SEVENTH CAUSE OF ACTION
FAILURE TO PAY WAGES ON TERMINATION
(California Class)

100. 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.

101. California Labor Code §203 provides that:

If an employer willfully fails to pay, without abatement or reduction, 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

1 continue as a penalty from the due date thereof at the same rate until paid or
2 until an action therefor is commenced; but the wages shall not continue for
more than 30 days.

3 102. Representative Plaintiffs and numerous California Class Members were employed
4 by Metlife during the Class Period and were thereafter terminated or resigned from their positions,
5 yet they were not paid all premium (overtime) wages due upon said termination or within seventy
6 two (72) hours of said resignation of employment therefrom. Said non-payment was the direct
7 and proximate result of a willful refusal to do so by Defendants.

8 103. More than thirty days has elapsed since Representative Plaintiffs and the Class
9 Members were terminated and/or resigned from Defendants' employ.

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

14 **EIGHTH CAUSE OF ACTION**
15 **UNFAIR BUSINESS PRACTICES**
16 **(California Class)**

17 105. Representative Plaintiffs incorporate 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
herein.

19 106. Representative Plaintiffs further bring this cause of action seeking equitable and
20 statutory relief to stop the misconduct of Metlife, as complained of herein, and to seek restitution
21 from Defendants of amounts acquired through the unfair, unlawful and fraudulent business
22 practices described herein.

23 107. Metlife improperly deducted business expenses from the FSRs' wages. Metlife
24 also unlawfully treated members of the Class as independent contractors or statutory employees in
25 direct violation of state law. This improper conduct constitutes, and was intended to constitute,
26 unfair competition and unlawful, fraudulent, and unfair acts and practices within the meaning of
27 the Unfair Competition Law ("UCL"). Metlife's acts constitute a continuing and ongoing
28 unlawful activity prohibited by California labor law, the California common law as herein

1 described, and the UCL and justifies the issuance of an injunction, restitution and other equitable
2 relief pursuant to Bus. & Prof. Code §17203.

3 108. Cal. Labor Code §90.5(a) articulates the public policy of this state to vigorously
4 enforce minimum labor standards, including the requirement to pay overtime and reimburse
5 employees for all expenses incurred on behalf of or for the benefit of their employer and prevent
6 improper wage deductions pursuant to Labor Code §§510 and 1198. Metlife's conduct of
7 unlawfully treating members of the Class as independent contractors directly violates state law,
8 constitutes, and was intended to constitute, unfair competition and unlawful, fraudulent, and unfair
9 acts and practices within the meaning of the UCL.

10 109. Through the wrongful and illegal conduct alleged herein, Metlife has acted contrary
11 to the public policy of this state.

12 110. As a result of Metlife's violations of the California UCL, it has unjustly enriched
13 itself at the expense of Plaintiffs, the members of the Class, and the general public.

14 111. To prevent this unjust enrichment, Metlife should be required to disgorge its illegal
15 gains and should be required to make restitution to members of the Class.

16 112. Representative Plaintiffs and the members of the Class also request that this Court
17 enter such orders or judgment as may be necessary to restore to any person in interest any money
18 which may have been acquired by means of such unfair practices, as provided in the UCL, Bus. &
19 Prof. Code §17203, and for such other relief as set forth below.

20 113. The Representative Plaintiffs are "persons" within the meaning of Bus. & Prof.
21 Code §17204 (2008) and have standing to bring this claim for injunctive and equitable relief.

22 114. Injunctive relief is necessary to prevent Metlife from continuing to engage in unfair
23 business practices, as alleged herein. Metlife and persons acting in concert with it, have done, or
24 are now doing, and will continue to do or cause to be done, the above-described illegal acts unless
25 restrained or enjoined by this Court.

26 115. The conduct of Metlife and its agents as alleged herein, have been and continue to
27 be, deleterious to the Representative Plaintiffs, the members of the Class, and the general public.
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1 By this action, Representative Plaintiffs seek to enforce important rights affecting the public
2 interest within the meaning of Cal. Code of Civ. P. §1021.5.

3 116. Pursuant to Bus. & Prof Code §17203, Representative Plaintiffs, on behalf of
4 themselves and all current and former FSRs, request injunctive relief, restitution and/or
5 disgorgement of all sums obtained by Metlife in violation of Bus. & Prof. Code §§17200, *et seq.*

6 117. The knowing conduct of Defendants, as alleged herein, constitutes an unlawful till
7 and/or fraudulent business practice, as set forth in California Business & Professions Code
8 §§17200-17208 (2008). Specifically, Defendants conducted business activities while failing to
9 comply with the legal mandates cited herein.

10 118. Defendants' knowing failure to adopt policies in accordance with and/or to adhere
11 to these laws, all of which are binding upon and burdensome to Defendants' competitors,
12 engenders an unfair competitive advantage for Defendants, thereby constituting an unfair business
13 practice, as set forth in California Business & Professions Code §§17200-17208.

14 119. Metlife has clearly established a policy of accepting a certain amount of collateral
15 damage, as represented by the damages to Representative Plaintiffs and the Class herein alleged,
16 as incidental to its business operations, rather than accept the alternative costs of full compliance
17 with fair, lawful and honest business practices ordinarily borne by responsible competitors of
18 Defendants and as set forth in legislation and the judicial record.

19 **RELIEF SOUGHT**

20 WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the Plaintiff
21 Classes, pray for judgment and the following specific relief against Defendants Metlife, Inc.,
22 Metropolitan Life Insurance Company and Metlife Securities, Inc., as follows:

23 1. That the Court declare, adjudge and decree that this action is a proper
24 class/collective action and certify the proposed FLSA Class, the California Class and/or any other
25 appropriate subclasses under Fed. R. Civ. P. 23 and/or 29 U.S.C. §216;

26 2. That the Court declare, adjudge and decree that Defendants violated the overtime
27 provisions of the FLSA, the California Labor Code and the Industrial Wage Commission Wage
28 Orders as to the Representative Plaintiffs and the Plaintiff Classes;

1 3. That the Court declare, adjudge and decree that Defendants willfully violated their
2 legal duties to pay overtime under the FLSA, the California Labor Code and the IWC Wage
3 Orders;

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

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

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

15 7. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code §§226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide
17 meal periods (including second meal periods) and/or rest periods to California Class Members;

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

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

25 10. That the Court declare, adjudge and decree that Defendants violated California
26 Business and Professions Code §§17200, *et seq.* by failing to pay Representative Plaintiffs and
27 California Class Members overtime compensation, failing to provide meal and/or rest periods to
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1 said employees, failing to pay all wages due on termination ("waiting time" penalties) and/or by
2 failing to provide Class Members with accurate itemized wage statements;

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

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

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

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

14 15. That the Court order Defendants to pay restitution to Representative Plaintiffs and
15 the California Class due to Defendants' unlawful activities, pursuant to Cal. Business and
16 Professions Code §§17200-08;

17 16. That the Court further enjoin Defendants, ordering them to cease and desist from
18 unlawful activities in violation of Business and Professions Code §§17200, *et seq.*;

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

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

23 19. For reasonable attorneys' fees, pursuant to 29 U.S.C. §216(b), California Labor
24 Code §§218.5 and 1194 and/or California Code of Civ. P. §1021.5;

25 20. For an accounting to determine all monies wrongfully obtained and held by
26 Defendants; and

27 21. For costs of suit and any and all such other relief as the Court deems just and
28 proper.

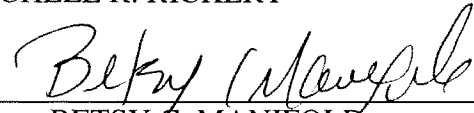
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JURY DEMAND

Representative Plaintiffs and the Plaintiff Classes hereby demand trial by jury on all issues triable of right by jury.

DATED: November 13, 2008

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11 Attorneys for Representative Plaintiff
12 And the Plaintiff Classes

13 [Additional Counsel Appear On Signature Page]

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEIL WEINSTEIN, individually, and on) Case No. 3:06-CV-04444-SI
18 behalf of all others similarly situated,)
19 Plaintiffs,) **DECLARATION OF SERVICE**
20 vs.)
21 METLIFE, INC., METROPOLITAN LIFE)
22 INSURANCE COMPANY, and METLIFE)
23 SECURITIES, INC.,)
Defendants.)

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DECLARATION OF SERVICE

I, Marta Stasik, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 750 B Street, Suite 2770, San Diego, California 92101.

2. That on November 13, 2008, declarant served
STIPULATION AND [PROPOSED] ORDER GRANTING LEAVE TO FILE AN AMENDED COMPLAINT
via the CM/ECF system on parties as indicated on the service list.

3. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13th day of November 2008, at San Diego, California.



MARTA STASIK

METLIFE: 16465

METLIFE INC.
SERVICE LIST – JAN. 12, 2007
PAGE 1

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**All parties on service list
served via CM/ECF**