

LAW OFFICES OF MARK ANCHOR ALBERT & ASSOC.

Mark Anchor Albert (SBN 137027)
601 South Figueroa Street, Suite 2370
Los Angeles, California 90017
Tel: (213) 687-1515; Fax: (213) 622-2144
Email: markalbert@maalawoffices.com

Attorneys for Defendants and Cross-Complainants
Westbridge Financial & Insurance Services, Inc., and Scott Brandt

**SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST DIVISION**

ROBERT AUCELLUZZO, an Individual; LORY AUCELLUZZO, an individual; SEYED AZIMI, an individual; FARIDEH AZIMI, an individual, MARILYN BADER, an individual; ALBERTO DUARTE, an individual; ADAM ELLFELDT, an individual; COLLEEN ELLFELDT, an individual; LELAND SCOTT FRAZIER, an individual; ALICE FRAZIER, an individual; JOEL GILBERT, an individual; SUE GILBERT, an individual; JIM GILL, an individual; JENNIFER GILL, an individual; TRACY HAYNES, an individual; MARSHA HAYNES, an individual; ORVILLE JACKSON, JR., an individual; CAROLYNN KIEL, an individual; LINDA LESSING, an individual; DONNA MAGID, an individual; MEYER MAGID, an individual; KIM MAGID, an individual, VICTOR PAZ, an individual; HAROLD SMITH, an individual; MARY SMITH, an individual; LUCILLE WREDE, an individual,

Plaintiffs,

vs.

DIRK ADAMS, an individual; RAY AREVELO, an individual; SCOTT BRANDT, an individual; JAMES KEVIN BRUNNER, an individual; ERIC CANNON, an individual; DAVID CARLSON, an individual; STEVEN CORZAN, an individual; THOMAS EDWARD DOHERTY, an individual; GLENN DUGGINS, an individual; MARK GUTENTAG, an individual; MEYER LEVY, an individual; HUSSEIN MAJID, an individual; ADAM MARKOWITZ, an individual; MARTIN MARKOWITZ, an individual;

Case No. BC450293

[Assigned for All purposes to the Hon. Elihu M. Berle, CCW Dept. 323]

**FIRST AMENDED CROSS-COMPLAINT
BY SCOTT BRANDT AND WESTBRIDGE
FINANCIAL & INSURANCE SERVICES,
INC. AGAINST CROSS-DEFENDANTS
METLIFE, INC., NEW ENGLAND LIFE
INSURANCE COMPANY, AND NEW
ENGLAND SECURITIES, FOR:**

- (1) **EQUITABLE INDEMNITY**
- (2) **IMPLIED CONTRACTUAL INDEMNITY**

1 CHRISTOPHER ORLANDO, an individual; H.
2 JOSEPH STECK, III, an individual; WILLIAM
3 TESSAR, an individual; NICK YEKANI, an
4 individual; AFFILIATED WEALTH
5 RESOURCES, a corporation; BRUNNER
6 FINANCIAL, a corporation; CARLSON
7 FINANCIAL SERVICES, a corporation;
8 CORZAN FINANCIAL MANAGEMENT, LLC,
9 a corporation; DAAT ASSET MANAGEMENT,
10 a corporation; EMC MORTGAGE, a corporation;
11 GLOBAL FUNDING SERVICE
12 CORPORATION, a corporation; MADISON
13 AVENUE SECURITIES, a corporation; MICHEL
14 FINANCIAL GROUP, a corporation; NEW
15 ENGLAND FINANCIAL SERVICES, a
16 corporation; RUSSON FINANCIAL SERVICES,
17 a corporation; SKYLINE FINANCIAL CORP., a
18 corporation; STRATEGIC BENEFITS
19 PLANNING GROUP, INC., a corporation;
20 WARNER, CORBETT & GUTENTAG
21 ACCOUNTANCY CORPORATION, a
22 corporation; WESTBRIDGE FINANCIAL &
23 INSURANCE SERVICES, INC., a corporation;
24 WEST COAST WEALTH MANAGEMENT, a
25 corporation and DOES 1-50, inclusive,

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SCOTT BRANDT, an individual; and
WESTBRIDGE FINANCIAL &
INSURANCE SERVICES, INC., a California
Corporation,

Cross-Complainants,

vs.

METLIFE, INC., a New York Corporation;
NEW ENGLAND LIFE INSURANCE
CORPORATION, a Massachusetts
Corporation; NEW ENGLAND SECURITIES
CORPORATION, a Massachusetts
Corporation; and Does 1-50,

Cross-Defendants.

TABLE OF CONTENTS

1
2
3 I. PREFATORY STATEMENT 1
4 II. INTRODUCTION 1
5 III. THE PARTIES 4
6 IV. INFORMATION AND BELIEF 6
7 V. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION 6
8 A. The MetLife Enterprise And Its Single Enterprise Liability 6
9 B. The MetLife Enterprise's Compliance Oversight, Supervision, And Control Structure 9
10 C. Russon Financial Service's Managing Agent/Managing Principal Status In The MetLife
11 Enterprise 15
12 D. Russon Financial Service's Role In Facilitating MetLife Enterprise's DLG Business
13 Dealings As To Brandt And Other Agents And Representatives 20
14 E. Cross-Defendants' Imputed And Actual Knowledge And Profitable Participation In The
15 MetLife/DLG Premium Financing Program 26
16 F. Cross-Defendants' Compliance And Related Supervisory Duties Owed To NELICO
17 Agents And NES Representatives, And To Their Clients 34
18 G. Cross-Defendants' Breaches Of Their Compliance And Supervisory Duties That Were A
19 Substantial Causative Factor Contributing To Plaintiffs' Damages In The Underlying
20 Actions 39
21 VI. CAUSES OF ACTION 41
22 *FIRST CAUSE OF ACTION* (Equitable Indemnity and Contribution) 41
23 *SECOND CAUSE OF ACTION* (Implied Contractual Indemnity and Contribution) 42
24 VII. PRAYER FOR RELIEF 46
25 DEMAND FOR JURY TRIAL 47
26
27
28

1 **I. PREFATORY STATEMENT**

2 1. Pursuant to sections 428.10 and 428.50 (a) of the California Code of Civil
3 Procedure, Defendants and Cross-Complainants Scott Brandt ("Brandt") and Westbridge Financial
4 & Insurance Services, Inc. ("Westbridge") set forth below their First Amended Cross-Complaint for
5 equitable indemnity and implied contractual indemnity (and related contribution) against Cross-
6 Defendant MetLife, Inc. ("MetLife") and its indirect wholly-owned subsidiaries, Cross-Defendants
7 New England Life Insurance Company of Boston, MA ("NELICO"), and New England Securities
8 Corporation ("NES"). (Brandt and Westbridge sometimes hereafter are referred to collectively as
9 "Cross-Complainants," whereas MetLife, NELICO and NES sometimes hereafter are referred to
10 collectively as "Cross-Defendants.")

11 2. Brandt and his insurance brokerage firm, Westbridge, have been named as defendants
12 in five of the coordinated actions in the *In re DLG Related Cases* (LASC Lead Case No.
13 BC446497), namely, *Lucenta v. Brandt, et al.*, (LASC Case No. BC44630), *Aucelluzzo v. Adams, et*
14 *al.* (LASC Case No. BC450293), *Quijano v MetLife, Inc., etc., et al.* (LASC Case No. BC452092),
15 *Hoffarth v. Carter, etc., et al.* (LASC Case No. BC456412), and *Poepping v. Brandt, etc., et al.*
16 (LASC Case No. BC456561) (collectively, the "Underlying Actions"). The basis for Brandt's and
17 Westbridge's claims for indemnity and contribution against Cross-Defendants is substantively the
18 same in each and all of the Underlying Actions. Consequently, for convenience, this First Amended
19 Cross-Complaint refers generally to the "plaintiffs" in the "Underlying Actions" without specifying
20 each particular plaintiff in the *Lucenta*, *Aucelluzzo*, *Quijano*, *Hoffarth*, or *Poepping* actions, as the
21 factual and legal predicates for indemnity and contribution are the same in each of the Underlying
22 Actions.

23 **II. INTRODUCTION**

24 3. The Underlying Actions for which indemnity and contribution are sought all arise
25 from the sale of investment contracts/promissory notes issued by a defunct company called
26 Diversified Lending Group ("DLG"), owned and operated by Bruce Friedman ("Friedman"). Brandt
27 and Westbridge seek to apportion fault and liability onto Cross-Defendants MetLife, NELICO and
28 NES, and each of them, resulting from their respective comparative negligence and contractual

1 breaches that were a substantial factor in causing the damages and injuries alleged by the plaintiffs
2 in the Underlying Actions. In breach of their duties, Cross-Defendants failed to warn and instruct
3 Brandt – despite Cross-Defendants’ actual and imputed knowledge that Brandt and other NELICO
4 agents and NES registered representatives were referring or selling DLG promissory notes as part of
5 a MetLife/DLG "premium financing program" and otherwise – that the DLG promissory notes may
6 be deemed to be unregistered securities that were not appropriate for marketing and sale at all.

7 4. By statute, rule and regulation, under the express and implied terms of the NES and
8 NELICO contracts with Tony Russon ("Russon") and Russon Financial Services, Inc. ("Russon
9 Financial"), and under the separate by related contracts with Brandt and other NELICO agents and
10 NES registered representatives, NELICO and NES were required to supervise, monitor, oversee,
11 investigate and audit the activities of Russon and Russon Financial, as well as the activities of the
12 registered representatives and agents whom they supervised and managed, with the object and
13 purpose of advising and correcting them with respect to their marketing and sales activities, as to the
14 DLG promissory notes, the MetLife/DLG premium financing program, and otherwise. These duties
15 ran to Brandt and other NELICO agents and NES registered representatives, both directly and as
16 third party beneficiaries of NELICO and NES contracts with Russon Financial, and under ordinary
17 negligence and agency principles. Russon, acting through Russon Financial, was a Managing
18 Partner of NELICO and a Field Management Registered Principal of NES. As such, Russon’s acts,
19 omissions, and knowledge are all attributable and imputed to NELICO and NES, and to MetLife.
20 The customers of Brandt and other NELICO agents and NES registered representatives also were
21 the beneficiaries of these joint obligations, which are designed in part to protect consumers of
22 NELICO/MetLife and NES/MetLife insurance and financial products and services.

23 5. Russon, acting within and pursuant to the scope of his agency relationship with
24 NELICO and NES, introduced and recommended Friedman and DLG to Brandt and other NES
25 registered representatives and NELICO agents at an official "Wholesalers" meeting. Russon
26 directly and indirectly touted DLG investment products to Brandt (and the other assembled agents
27 and representatives) as MetLife Enterprise-approved and -vetted products that could be used to
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1 finance premium payments for NELICO and MetLife insurance products. Reasonably relying on
2 Russon's endorsement of Friedman and DLG's investment products and the MetLife/DLG premium
3 financing program, Brandt invested more than \$950,000 on behalf of himself, his wife, two children,
4 brother, and elderly parents in DLG promissory notes. Russon and other NES registered
5 representatives went on to refer numerous clients to Brandt regarding the DLG promissory notes and
6 the MetLife/DLG premium financing program. With Russon's and Cross-Defendants' knowledge
7 and consent, Brandt sold the DLG promissory notes, individually and as part of the MetLife/DLG
8 premium financing program, to several clients. MetLife was paid handsome premiums in many of
9 these cases, often directly from DLG, through its subsidiary, Applied Equities - on Applied Equities
10 checks made payable to MetLife.

11 6. Every year, Brandt reported his participation in the sale of the DLG
12 contracts/promissory notes, individually and as part of the MetLife/DLG premium financing
13 program, to NELICO/NES/MetLife Compliance Officer Keith Devereaux, an experienced executive
14 with a nearly 30-year track record as an accomplished compliance officer in the MetLife Enterprise.
15 Brandt filled out appropriate MetLife Enterprise Outside Business Activity Disclosure Statements,
16 in which Brandt made the same disclosures of his DLG sales activities. Brandt participated in
17 MetLife's Compliance Department quarterly and annual audits at Russon Financial, making his
18 books, records, correspondence and other documents available for inspection to both Mr. Devereaux
19 and MetLife Home Office compliance auditors who periodically conducted such compliance audits,
20 inspections and reviews. If the DLG promissory notes were deemed to be unregistered securities or
21 otherwise inappropriate for sale, NELICO and NES, acting through Managing Partner Russon or
22 Compliance Officer Devereaux, as well as the MetLife Home Office Compliance Department,
23 should have said so. They never did so, however.

24 7. The MetLife Enterprise Compliance Department's supervisory function is designed
25 not only for the protection of MetLife, NELICO and NES, it also is designed and intended to protect
26 NELICO agents and NES registered representatives - and their customers. Cross-Defendants
27 neglected their responsibilities and breached their compliance, oversight, supervisory, and corrective
28

1 duties and responsibilities, which foreseeably contributing in a substantial manner to plaintiffs'
2 alleged injuries in the Underlying Actions, and which in turn have proximately caused costs, fees
3 and other liabilities to be imposed upon Brandt and Westbridge. If NELICO, NES and MetLife had
4 done their supervisory compliance, advisory and corrective functions properly -- as they were
5 required to do by contract, statute and regulation -- Brandt would never have become involved with
6 DLG and Friedman in the first place, much less continued to sell DLG promissory notes over the
7 course of nearly four years while he remained a NELICO agent.

8 8. For their contractual breaches and negligence, which were a substantial causative
9 factor in the alleged harm and damages suffered by the plaintiffs in the Underlying Actions, Cross-
10 Defendants NELICO, NES, and MetLife jointly and severally should be required to indemnify
11 Brandt and Westbridge and hold them harmless in proportion to each Cross-Defendants' respective
12 comparative fault, as determined by a jury, and to contribute their proportionate share to any
13 judgment or settlement that Brandt and Westbridge may be required to pay, to the extent of each
14 Cross-Defendants' joint and several culpability. As alleged in detail below, MetLife also is
15 individually and jointly responsible under an alter ego and single enterprise theory of liability, and
16 under principles of agency law (including but not limited to respondeat superior), as well as directly
17 responsible given the MetLife Enterprise Home Office Compliance Department's direct and
18 ultimate responsibility for the supervisory compliance structure that proved so inadequate in this
19 case, for all concerned.

20 **III. THE PARTIES**

21 9. Cross-Complainant Brandt is an individual residing in Los Angeles County,
22 California.

23 10. Cross-Complainant Westbridge is a California Corporation engaged in the business
24 of insurance sales and brokerage, and related financial services in Los Angeles County. Brandt is
25 the owner and president of Westbridge.

26 11. Cross-Defendant MetLife is a financial services holding company incorporated and
27 headquartered in New York. MetLife has offices and conducts substantial, regular and systematic
28 business throughout Southern California, including Los Angeles County.

1 12. Cross-Defendant NELICO is a Massachusetts corporation engaged in the business of
2 selling insurance and insurance-related products. NELICO is headquartered in Boston,
3 Massachusetts. At all times alleged herein, NELICO has maintained offices and was licensed to and
4 conducted substantial, regular and systematic business throughout Southern California, including
5 Los Angeles County. NELICO is a wholly-owned subsidiary of Metropolitan Life Insurance
6 Company, which in turn is 100% owned by Cross-Defendant MetLife.

7 13. Cross-Defendant NES is a securities brokerage company (a broker/dealer)
8 incorporated in Massachusetts and headquartered in New York, New York. NES at all times alleged
9 herein maintained offices and was licensed to and conducted substantial, regular and systematic
10 business throughout Southern California, including Los Angeles County. NES is a wholly-owned
11 subsidiary of NELICO, is NELICO's registered broker/dealer, and is a registered member of the
12 Financial Industry Regulatory Authority ("FINRA"). NES is utilized by NELICO and MetLife to
13 sell stocks, bonds and other investment products and financial services to consumers in Los Angeles
14 County and elsewhere throughout the State of California. New England Financial ("NEF") is a
15 service mark owned and utilized by NELICO with respect to the securities and investment activities
16 of its broker/dealer affiliate, NES, and related NELICO and MetLife insurance-related activities
17 conducted as part of the MetLife Enterprise.

18 14. The true names and capacities, whether individual, corporate, associate or
19 otherwise, of Cross-Defendants Does 1 through 50, inclusive, are unknown to Cross-Complainants,
20 who sues these Cross-Defendants by such fictitious names. Cross-Complainants will seek leave of
21 court to amend this First Amended Cross-Complaint to show the true names, capacities and basis of
22 liability of these Cross-Defendants when they have been ascertained.

23 15. Cross-Complainants are informed and believe and thereon allege that all Cross-
24 Defendants, including the fictitiously-named Doe Cross-Defendants (collectively, with NELICO,
25 NES and MetLife, "Cross-Defendants"), were at all relevant times acting as actual agents,
26 conspirators, ostensible agents, partners and/or joint venturers and employees of all other Cross-
27 Defendants, and that all acts alleged herein occurred within the course and scope of said agency,
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1 employment, partnership, and joint venture, conspiracy or enterprise, and with the express and/or
2 implied permission, knowledge, consent, authorization and ratification of all other Cross-
3 Defendants; however, each of these allegations are deemed "alternative" theories wherever not
4 doing so would result in a contradiction with other allegations, to the fullest extent permitted by law.

5 **IV. INFORMATION AND BELIEF**

6 16. Except as to those allegations that pertain directly to Brandt and Westbridge which
7 are based on their personal knowledge, the allegations asserted in this First Amended Cross-
8 Complaint are based on information and belief. Cross-Complainants' information and belief is
9 based on the investigation, analysis, and pre-filing due diligence conducted by Cross-Complainants
10 and their counsel, after counsel's retention. The core allegations contained in this First Amended
11 Cross-Complaint have evidentiary support or, alternatively, are likely to have evidentiary support
12 after reasonable opportunity for further investigation and discovery by Cross-Complainants and their
13 counsel. However, counsel for Cross-Complainants has not been permitted to conduct any pre-
14 filing discovery, despite his request to do so at the April 7, 2011 Case Management Conference,
15 because of a stay of discovery imposed by the Honorable Elihu Berle. Consequently, the claims and
16 allegations set forth in this First Amended Complaint are based upon the pre-filing investigation and
17 analyses conducted by Brandt and his counsel, after counsel's retention, that were reasonably
18 possible to accomplish given the time constraints and resources available, without the benefit of
19 discovery.

20 **V. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

21 **A. The MetLife Enterprise And Its Single Enterprise Liability**

22 17. NELICO is a stock life insurer based in Boston, and is licensed in all 50 states and
23 the District of Columbia. The Company was originally chartered in 1980 in Delaware under the
24 name New England Variable Life Insurance Company ("NEVL"), and was a stock subsidiary of
25 New England Mutual Life Insurance Company ("NEML"). NEML was merged into Metropolitan
26 Life Insurance Company ("MetLife") in August 1996. As such, NEML policies became MetLife
27 policies. At the same time, NEML became a subsidiary of MetLife, re-domiciled from Delaware to
28 Massachusetts, and changed its name from NEML to NELICO. Subsequent to the merger, all new

1 business is written by NELICO; and policies previously sold by NEML are serviced by NELICO.
2 NELICO's functional and operational areas were consolidated with MetLife's operations, and by
3 2001 all NELICO employees outside of the agency system became MetLife employees as part of the
4 unitary MetLife Enterprise.

5 18. Distribution is conducted primarily through an agency system, which consists of
6 approximately 45 marketing firms - general agencies run by "Managing Partners" - and
7 approximately 3,500 agents appointed by NELICO throughout the United States. NELICO has
8 securities selling agreements its wholly-owned subsidiary, NES. NES does business out of
9 NELICO regional general agencies through registered representatives under the supervision of a
10 Field Management Registered Principal. NES and NELICO do business jointly, typically under the
11 NEF service mark, selling insurance, securities, and other investment and financial products and
12 services. In most cases, NELICO agents do not have exclusive contracts to sell NELICO products,
13 and generally sell products provided by other MetLife Enterprise affiliates, such as NES, and even
14 non-MetLife Enterprise products.

15 19. For purposes of the imposition of indemnity and contribution liability herein,
16 NELICO and NES are and should be deemed alter egos of their common parent, MetLife, which
17 together share a unity of interest and ownership, and operate together as a single enterprise – which
18 Cross-Defendants regularly characterize, internally and publicly, as the "MetLife Enterprise" or
19 simply "The Enterprise" - in that (Cross-Complainants are informed and believe):

20 (a) MetLife, as NELICO's and NES' ultimate parent company, uses both
21 subsidiaries as mere conduits through which it conducts insurance and financial products
22 business in California and other states.

23 (b) After it merged with MetLife, NELICO's functional and operational areas
24 were consolidated with MetLife's operations, and by 2001 all NELICO employees outside of
25 the agency system became MetLife employees.

26 (c) MetLife provides key marketing, sales, administrative services and support,
27 and financial management for NELICO and NES from MetLife's main offices in New York.
28

1 NELICO and NES use the same centralized computer systems, support personnel, and share
2 common officers and key employees.

3 (d) The directors and officers of NELICO and NES do not act independently
4 solely in the interest of those respective companies, but rather take their orders from the
5 parent (MetLife) and act in the interest of that company – MetLife –with respect to entering
6 into Corporate Managing Partner Contracts, Registered Rep. Agreements, and similar
7 agreements governing the operations and functions of the NELICO and NES businesses,
8 performing or not performing their obligations under such contracts, and in responding to
9 litigation resulting from such contracts.

10 (e) The same in-house legal department at MetLife is responsible handling legal
11 issues for NELICO and NES, which rely on MetLife in-house attorneys with respect to
12 NELICO and NES legal issues not assigned to outside counsel.

13 (f) NELICO, NES and MetLife disregard appropriate legal formalities and fail to
14 maintain arm's length relationships in their dealings with one another in that MetLife
15 conducts and controls all of the most basic back-office functions of NELICO and NES
16 (including contract drafting, marketing, sales, and compliance operations), without entering
17 into any written agreements with NELICO and NES in those specific regards, and, during
18 the relevant time period, without any input or approval by NELICO or NES independent
19 directors.

20 (g) All or most of NELICO's and NES' employees are paid by MetLife, not by
21 NELICO or NES, on checks issued through MetLife; and MetLife contributes to local
22 general agency and registered representative employee payments paid by Managing Partners
23 and Registered Principals.

24 (h) There exists an identical equitable ownership in the two entities, in that NES
25 and NELICO are ultimately owned 100% by MetLife.

26 (i) MetLife shares profits and losses with NES and NELICO from these joint and
27 coordinated activities, directly or indirectly, by (i) deriving income indirectly via dividends
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1 up-streamed from them, and also (ii) obtaining commissions and premium payments directly
2 from NELICO insureds and NES brokers and agents and their customers.

3 (j) MetLife, NELICO and NES file consolidated tax returns.

4 (k) In these key respects, MetLife, as the parent, dictates fundamental aspects of
5 NELICO's and NES' businesses, from broad policy decisions to routine matters of day-to-
6 day operations, including providing compliance monitoring for the protection of NELICO
7 agents and NES registered representatives and their respective customers.

8 20. An injustice will occur if the fiction of corporate separateness between the Cross-
9 Defendants is not disregarded, in that adherence to the general rule of corporate separateness would
10 deprive Cross-Complainants of redress against the party primarily responsible for their liability and
11 the damages suffered by the plaintiffs in the Underlying Actions. It would be inequitable for
12 MetLife to hide behind NELICO's and NES' corporate shell to escape liability for its own
13 misconduct and violation of its supervisory, compliance and corrective duties and responsibilities.
14 Manifest injustice occurs when a purported "holding company" erects a corporate structure that is
15 designed to insulate it from liability for its own direct misconduct and failure to supervise and
16 monitor the subsidiary functions directly under its control.

17 **B. The MetLife Enterprise's Compliance Oversight, Supervision, And Control**
18 **Structure**

19 21. Apart from its alter ego and single enterprise liability, MetLife is directly responsible
20 for the liability Brandt and Westbridge face as a result of the harm alleged by plaintiffs in the
21 Underlying Actions: MetLife not only was paid directly by DLG customers as part of the
22 MetLife/DLG premium financing program, but also was primarily responsible for the overall
23 structure and implementation of the MetLife Enterprise Home Office Compliance Program that
24 Brandt and other NELICO agents and NES representatives relied on to properly review, screen and
25 approve their outside business activities for compliance with applicable laws and regulations, and
26 company policies and guidelines. As alleged in detail below, it was MetLife's direct negligence and
27 culpability, not just its derivative and vicarious negligence and culpability through its subsidiaries,
28 NELICO and NES, that has contributed foreseeably and substantially to the harm suffered by

1 plaintiffs in the Underlying Actions, for which MetLife should indemnify and hold harmless Brandt
2 and Westbridge in proportion to MetLife's proportionate share of culpability. This culpability
3 derives primarily from MetLife's compliance, supervisory, oversight, monitoring and related
4 advisory and corrective roles and responsibilities.

5 22. In that regard, the MetLife Enterprise has a multi-tiered supervisory and compliance
6 structure that is designed to ensure that its agents and representatives, and MetLife Enterprise
7 supervisors – the so-called "Managing Partners" and "Managing Principals" of its NELICO general
8 agencies and NES registered representatives – all comply with applicable rules and regulations, and
9 other applicable laws, regarding their sales and business activities.

10 23. Both NELICO and NES are subject to oversight and supervision by the MetLife
11 Enterprise Home Office Compliance Department and related regional compliance and field
12 managers. The MetLife Enterprise Home Office Compliance Department has established a
13 comprehensive supervisory and compliance structure that is intended not only to protect the
14 company, but also to protect NELICO and NES supervisors, agents and representatives from
15 engaging in activities which might cause liability for any of them - including but not limited to the
16 marketing and sale of non-Enterprise investment products such as the DLG promissory notes. These
17 policies and procedures also are intended and designed to protect consumers dealing with NELICO
18 agents and NES representatives.

19 24. To that end, MetLife operates, for the benefit of NELICO and NES and their
20 respective agents and representatives, the "U.S. Business Compliance Department," which includes
21 the Broker Dealer Surveillance & Advisory Monitoring group, and field management teams
22 responsible for supervisory compliance within all MetLife Enterprise distribution channels,
23 including NELICO and NES. The Business Compliance Department is supposed to interface with
24 MetLife's Legal Department, Internal Audit, IT and Field Advisory Groups to ensure continuous
25 improvement of the firm's supervision and surveillance control environment with respect to the
26 business and operations of its NELICO Managing Partners and NES Field Management Registered
27 Principals, and the activities of agents and registered representatives whom they manage and
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1 supervise. The MetLife Enterprise's Compliance Department and related supervisory departments
2 and divisions are staffed with numerous attorneys, insurance and securities professionals, and
3 regulatory and compliance experts who are charged with reviewing, monitoring, auditing,
4 investigating and assessing the in-house and the outside business activities of NELICO and MetLife
5 Managing Partners and agents and NES Field Management Registered Principals and registered
6 agents, to monitor and ensure compliance with applicable laws and regulations.

7 25. The MetLife Enterprise Compliance Program depends, in the first instance, upon the
8 management level contract holder - e.g., the Managing Partner and Field Management Registered
9 Principal (here, Russon Financial and Russon) - to provide reasonably diligent and effective
10 supervisory and compliance oversight for all the "producers" who write business through their
11 agency or organization. (In MetLife Enterprise compliance literature, a "producer" is often referred
12 to as any individual or entity who writes any business for the agency on behalf of the MetLife
13 Enterprise, whether that business be insurance products or securities or other investment products, or
14 some combination thereof (such as, for example, annuity products which often have both insurance
15 and investment components).

16 26. Thus, Enterprise management level contract holders – such as NELICO Managing
17 Partners and NES Managing Principals who run NEF "general agencies" (e.g., Russon Financial and
18 Russon) – are contractually required to actively, continuously, and diligently monitor producers and
19 their activities to ensure that client needs are being met and that only appropriate products and
20 services are offered and sold. Producer oversight includes, for example:

- 21 (i) Training producers on MetLife Enterprise products, sales tools and sales
22 practices (for NELICO, NES and other parts of the unified MetLife Enterprise);
- 23 (ii) Communicating company policies and procedures to producers; educating
24 producers and demonstrating "best practices" for the insurance sales process;
- 25 (iii) Reviewing and assessing the individual producer's activities regarding his or
26 her sales practices and outside business activities; and
- 27 (iv) Auditing the correspondence, electronic mail, and other communications
- 28

1 relating to the producer's business activities to ensure that they correspond and comply with
2 the company's compliance rules and other applicable laws and regulations, including laws
3 and regulations promulgated and/or enforced by FINRA, the Securities and Exchange
4 Commission ("SEC"), the National Association of Insurance Commissions ("NAIC"), and
5 state insurance regulators.

6 27. With respect to the sale of securities and other investment products in particular,
7 FINRA Conduct Rule 3030 provides that "[n]o person associated with a member shall be employed
8 by, or accept compensation from, any other person as a result of any business activity... outside the
9 scope of his relationship with his employer firm, unless he has provided prompt written notice to the
10 member ... in the form required by the member." The purpose of Rule 3030 is to provide member
11 firms with prompt notice of outside business activities so that the member's objections, if any, to
12 such activities can be raised at a meaningful time, the member can exercise appropriate supervision
13 as necessary under applicable law, and the person or entity selling the objectionable or prohibited
14 product can stop doing so and correct the problem.

15 28. The MetLife Enterprise Compliance Rules, published in its Compliance Manual and
16 Supervision Guide and related bulletins and guidelines, are supposed to govern NELICO Managing
17 Partners and agents, and NES Registered Principals and registered representatives, and are supposed
18 to go even further than FINRA Conduct Rule 3030. The Outside Business Activity ("OBA") policy
19 of the MetLife Enterprise requires, for example, all registered representatives, registered principals,
20 registered personnel, and NELICO career agents such as Brandt (which the MetLife Enterprise
21 Compliance Rules often group together collectively as "representatives"), to inform their
22 management level contract holder prior to engaging in any outside activities (with or without
23 compensation) other than their own passive investments.

24 29. The management level contract holder, in turn, is required to communicate with the
25 MetLife Enterprise Home Office, via its Corporate Licensing and Registration Department (CL&R)
26 and/or Corporate Ethics and Compliance Department (CEC), both under the umbrella of the U.S.
27 Business Compliance Department, to seek their review, analysis and approval of any OBA sales of
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1 non-Enterprise investment products, such as the DLG promissory notes.

2 30. If a representative or agent such as Brandt wishes to engage in an outside business
3 activity, the representative or agent must complete and submit an OBA Disclosure Statement and the
4 required documentation to the branch office manager prior to engaging in the outside business
5 activity. If the branch office manager approves the activity, as happened here, he would sign the
6 OBA Disclosure Statement and forward the documentation to Cross-Defendants' Corporate
7 Licensing and Registration Department (CL&R) for official "Enterprise" review or, in certain other
8 circumstances, to Cross-Defendants' Corporate Ethics and Compliance Department (CEC) also for
9 review. In these instances, the branch office manager was required to contact CEC. CEC would
10 then provide guidance to the branch office manager on this activity.

11 31. If CEC agrees with the manager's approval of this activity, the branch manager may
12 forward the OBA Disclosure Statement to CL&R for processing. If CEC does not agree with the
13 branch manager's determination, and the branch manager still wanted to proceed with allowing the
14 representative to engage in the activity, the issue would be referred to the branch manager's
15 supervisor, Russon. If the branch office manager and/or branch manager's supervisor disapproves
16 the activity, this decision was required to be clearly communicated to the representative or agent
17 both orally and in writing. That never happened here regarding Brandt's DLG-related sales
18 activities.

19 32. A registered representative was prohibited from participating in any manner in the
20 purchase, sale, or solicitation of private securities transactions outside the scope of his/her
21 association with Cross-Defendants; and must sell only securities specifically authorized for sale by
22 the Cross-Defendants. A representative also was prohibited from selling or referring for sale
23 promissory notes, which *may* be deemed securities (but which on the other hand may *not* be
24 securities), unless the promissory notes have been reviewed, analyzed and pre-approved for sale by
25 Cross-Defendants pursuant to the OBA Disclosure Statement compliance procedures. Thus, if any
26 NES registered representative referred DLG customers to Brandt as a NELICO agent, for the
27 MetLife/DLG financing program or otherwise, they were supposed to have disclosed the DLG
28

1 product referrals for vetting and pre-approval from the MetLife Enterprise's Compliance
2 Department. That is what Brandt reasonably thought and believed had happened here.

3 33. For its part, NELICO also is a member of the American Council of Life Insurance's
4 Insurance Marketplace Standards Association (IMSA). As a member, NELICO agrees to -- and
5 represents publicly and privately to its agents and representatives as well as its customers -- that it
6 will maintain a system of supervision and review over its agents and representatives that is
7 reasonably designed to achieve compliance with IMSA's Principles of Ethical Market Conduct.
8 These Principles include, but are not limited to, (i) conducting its business according to high
9 standards of honesty and fairness, (ii) providing competent and client-focused sales and service of
10 its insurance and investment products; and (iii) providing proper and adequate training to its agents
11 and representatives to ensure that the insurance and investment products offered and sold by them --
12 whether generated within *or outside of* the MetLife Enterprise -- are legal, proper and appropriate.

13 34. NELICO's and NES' contractually-authorized and mandated audit and compliance
14 function (implemented through the MetLife Enterprise's Compliance Department) also was designed
15 to, and was supposed to, monitor both incoming and outgoing correspondence and electronic mail
16 (email) relating to the sales activities of agents and representatives.

17 35. This also was required FINRA Conduct Rule 3010(D)(2), pursuant to which NES,
18 operating in NEF offices with NELICO agents, and acting under the supervision of the MetLife
19 Enterprise's Compliance Department, were required to implement a system to review incoming and
20 outgoing email correspondence of all registered representatives, including a system to directly
21 monitor the emails of registered representatives to determine if they in fact were forwarding the
22 emails to the appropriate Compliance Officers and Registered Principals, as required. This
23 supervisory system is supposed to reasonably ensure compliance and enforcement of FINRA
24 Conduct Rules 3030 and 3040 as to participation of registered representatives and associated
25 persons, such as NELICO agents in the same NEF office, in prohibited outside business activities,
26 thereby protecting both NELICO and NES "producers"

27 36. This audit and compliance function also entailed periodic on-site physical inspections
28

1 of the books, records, correspondence, and operations of regional offices, including Russon
2 Financial. Periodic audits were performed by the MetLife Enterprise Compliance Department on
3 Russon Financial, by the so-called Field Compliance Review Unit. These audits were supposed to
4 comply with FINRA Conduct Rule 3010(c) and the other requirements of the MetLife Enterprise's
5 Compliance Program, which apply not only to NES registered representatives but also to NELICO
6 career agents.

7 37. Pursuant to the terms of the Corporate Managing Partner Contract, and, on
8 information and belief, the Registered Rep. Agreement, NELICO and NES (acting through the
9 MetLife Compliance Department), had the contractual right and discretion, and the corresponding
10 obligation, to undertake whatever remedial action that might be necessary or appropriate if a
11 Managing Partner, Corporate Manager, General Agent, Registered Principal or any agents or
12 registered representatives under their management and supervision failed to comply with any
13 applicable regulatory rules or any MetLife Enterprise policies and procedures, including but not
14 limited to OBA compliance guidelines.

15 38. NELICO agents and NES registered representatives are told to rely upon the fact that
16 the MetLife Enterprise ensures that their supervising Managing Partners and Field Management
17 Registered Principals are thoroughly trained to manage and supervise their activities, to ensure
18 compliance with applicable rules and regulations regarding their sales activities. NELICO agents
19 and NES registered representatives are taught to rely upon and follow the guidance and instruction
20 of their respective Managing Partners and Managing Principals, and the MetLife Home Office
21 Compliance Department, with respect to the legality and propriety of investment and insurance
22 products they market and sell to consumers, whether those products are generated by the MetLife
23 Enterprise or generated outside the MetLife Enterprise, but disclosed in agents' or registered
24 representatives OBA Disclosure Statements, Annual Compliance Meetings, audits, and other reports
25 to regional and Home Office compliance officials.

26 **C. Russon Financial Service's Managing Agent/Managing Principal Status In The**
27 **MetLife Enterprise**

28 39. At all relevant times, Russon Financial was an insurance brokerage and securities

1 registered representative and principal headquartered at 19935 Ventura Boulevard Floor 1,
2 Woodland Hills, CA 91364-9605. On information and belief, at all times relevant hereto Russon
3 Financial was a NELICO Corporate Managing Partner pursuant to a standard Corporate Managing
4 Partner Contract generated by NELICO with respect to its insurance sales and distribution
5 operations (the "Managing Partner Contract"). On information and belief, Russon Financial also is
6 a NES Corporate Registered Principal pursuant to a separate but related Registered Representative
7 Agreement contract with NES (the "Registered Rep. Agreement"). As such, Russon Financial was
8 the Office of Supervisory Jurisdiction ("OSJ") for NES, covering the MetLife Enterprise's NELICO
9 and NES sales and distribution operations, doing MetLife Enterprise's business under the service
10 mark New England Financial (NEF) in the Southern California territory.

11 40. On information and belief, Tony Russon ("Russon") owns all or a majority of the
12 shares of Russon Financial. Russon is an experienced and sophisticated insurance and securities
13 professional who was at all relevant times the lead "Managing Partner" of Russon Financial with
14 respect to its insurance operations under the terms of the Managing Partner Contract for the
15 Southern California territory. On information and belief, Russon also was the Field Management
16 Registered Principal for NES under the terms of the Registered Rep. Agreement for the Southern
17 California territory.

18 41. As a NELICO Managing Partner in the MetLife Enterprise, Russon held an executive
19 position high in the insurance distribution function of the Enterprise. That Russon's Corporate
20 Managing Partner Contract refers to him as an "independent contractor" does not change or
21 eliminate Russon's status as general agent for Cross-Defendants, including his supervisory, control
22 and reporting duties and responsibilities, among others, to:

23 (i) Recruit, appoint, training and supervise agents and insurance brokers so that
24 Cross-Defendants would be adequately represented throughout its territory, to maintain a
25 financially sound firm, to ensure the legal and professional provision of service to Cross-
26 Defendants customers, and the collection of premiums for the Cross-Defendants;

27 (ii) Recruit and appoint, and supervise, other Corporate Managers to supervise
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1 and monitor the activities of agents working for them to ensure their adherence to the
2 MetLife Enterprise's compliance guidelines and rules, and other applicable rules and
3 regulations, with respect to the marketing and sale of NELICO products and services *as well*
4 *as* non-MetLife Enterprise products and services, with the understanding and contractual
5 agreement that all acts of any of the Corporate Managers, whether or not authorized by the
6 other Corporate Managers, would be considered to be acts of the Corporate Managing
7 Partner and be attributed and imputed thereto;

8 (iii) Exclusively market Cross-Defendants' insurance products and not to market,
9 whether directly or indirectly, without Cross-Defendants' express written permission,
10 products of other companies which in Cross-Defendants' judgment compete with its
11 products;

12 (iv) Appoint, change the status of and contract with Brandt and other agents and
13 brokers, to procure, personally and through such agents and brokers, applications for all
14 products of Cross-Defendants and to forward them to Cross-Defendants' Home Office for
15 consideration and "binding";

16 (v) Deliver policies and premium receipts to Cross-Defendants upon compliance
17 with the terms and conditions governing such delivery;

18 (vi) Ensure adherence to all regulatory rules and regulations (as may be
19 promulgated or enacted from time to time by FINRA, the SEC, state insurance
20 commissioners, or otherwise) and Cross-Defendants policies and procedures, especially its
21 Compliance Guidelines and their Outside Business Activity reporting, review and approval
22 requirements, with respect to the solicitation, sale, and administration of products and
23 services;

24 (vii) Ensure that agents submit accurate and timely OBA Disclosure Statements,
25 and to ensure that they are sent to Cross-Defendants' Home Office Compliance Department
26 for review and approval;

27 (viii) Ensure that agents' outside business activities do not violate any applicable
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1 regulatory rules and regulations, and Cross-Defendants policies and procedures, especially
2 its Compliance Guidelines; and

3 (ix) Ensure that Russon's and other NES registered representatives' own activities
4 in referring non-Cross-Defendants products to NELICO agents, such as Brandt, have been
5 properly vetted and approved by the Met Life Enterprise Home Office Compliance
6 Department as consistent with and appropriate under any applicable regulatory rules and
7 regulations, including but not limited to the MetLife Enterprise's own compliance policies
8 and procedures.

9 42. In addition, as an NES Registered Representative and Field Management Registered
10 Principal, Russon also had extensive executive, supervisory oversight and control responsibilities
11 with respect to registered representatives working for him and under the umbrella of Russon
12 Financial, as an NES Office of Supervisory Jurisdiction ("OSJ"). These supervisory, control and
13 reporting duties and obligations, on behalf of NES (and the whole MetLife Enterprise), include, but
14 are not limited to, the following:

15 (i) To hire, train and supervise all registered representatives and registered
16 personnel to market and sell NES securities and other investment products in a legal, proper
17 and appropriate manner;

18 (ii) To ensure the legal and professional provision of service to NES customers
19 with respect to investment products offered and sold to them;

20 (iii) To market and sell NES investment products exclusively and not to market,
21 whether directly or indirectly, without the express written permission of the MetLife
22 Enterprise's Compliance Department, products of other companies;

23 (iv) To abide by and adhere to all regulatory rules and regulations (as may be
24 promulgated or enacted from time to time by FINRA, the SEC, state insurance
25 commissioners, and NES policies and procedures, especially the MetLife Enterprise's
26 Compliance Guidelines and its Outside Business Activity reporting, review and approval
27 requirements, with respect to the solicitation, sale, and administration of securities and other
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1 investment products and services, whether NELICO or NES products and services, or non-
2 NELICO and non-NES products and services disclosed in OBA Disclosure Statements;

3 (v) To ensure that registered representatives and registered personnel submit
4 accurate and timely OBA Disclosure Statements to the MetLife Enterprise's Compliance
5 Department, and to ensure that they are sent to the Home Office Compliance Department for
6 review and approval; and

7 (vi) To make certain that referrals of non-NES investment products by registered
8 representatives and registered personnel to NELICO agents (or anyone else) do not violate
9 any applicable regulatory rules and regulations, or MetLife Enterprise policies and
10 procedures, especially its Compliance Guidelines.

11 43. Pursuant to the terms of the Corporate Management Partner Contract, and, on
12 information and belief, the Registered Rep. Agreement, Russon Financial and Russon were required
13 to strictly adhere to all regulatory rules and regulations, and MetLife Enterprise policies and
14 procedures, including without limitation the MetLife Enterprise's Compliance Program, with respect
15 to the solicitation, sale, and administration of products and services by agents and registered
16 representatives working under the management and supervision of Russon Financial and Russon.

17 44. All books and records relating to any customers of agents and representatives
18 working under the management and supervision of Russon Financial and Russon also are
19 contractually deemed to be the property of NELICO or NES (and, by extension, the MetLife
20 Enterprise). NELICO and NES, acting through the Home Office Compliance Department of the
21 MetLife Enterprise, had the right to conduct audits of the books, records, operations and activities of
22 Russon Financial, Russon and the agents and representatives whom they supervised and managed.
23 This audit and compliance function, conducted through the Home Office Compliance Department or
24 one of its regional offices, was designed to, and was supposed to, review, analyze and follow up
25 with investigations as may be necessary or appropriate in response to OBA Disclosure Statements
26 provided by Managing Partners, Registered Principals, and agents and representatives whom they
27 supervised and managed.
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1 45. The purpose and intent of these supervisory, auditing, investigative, advisory and
2 corrective duties are not only to protect the MetLife Enterprise and its Managing Partners and
3 Managing Principals, but also to protect NES registered representatives and NELICO agents, as well
4 as their customers. Agents and representatives may not know that a particular OBA product may
5 constitute an unregistered security; and the OBA disclosure and review function allows the vast
6 compliance resources of the MetLife Enterprise - with its battery of lawyers and analysts - to review
7 and ensure that OBA products sold by NELICO agents or referred by NES registered representatives
8 comply with applicable law and company policy and guidelines.

9 **D. Russon Financial Service's Role In Facilitating MetLife Enterprise's DLG
10 Business Dealings As To Brandt And Other Agents And Representatives**

11 46. In December of 2004, Brandt was asked to attend a "Wholesalers Meeting" in the
12 MetLife office training room at Russon Financial's offices. Tony Russon made the call to Brandt
13 personally, which was unusual. Normally, Brandt would receive an electronic notice in his email in-
14 box about these types of meetings. Several other NELICO agents and NES registered
15 representatives were asked to and did attend the meeting, including but not limited to Helen Bass (a
16 NES registered representative), Nabil Rizkalla (a NES registered representative), Mitch Hesen (a
17 Russon Financial NELICO/NES Corporate Manager), Larry Bagby (a NES registered
18 representative), James Davidson (a NES registered representative), Bill Frankenstein (a NES
19 registered representative), Carolrose Schlesinger (a NES registered representative), Arthur Bertikian
20 (a NES registered representative), Sal D'Angelo (a NES registered representative), and Toni
21 Ianarelli (a Russon Financial Sales Manager).

22 47. At the December, 2004 meeting, Bruce Friedman ("Friedman") and Diane Cano
23 ("Cano") represented that they were from Applied Equities in Monrovia, California. In the meeting
24 Friedman presented the so-called "premium financing program," which involved the payment of
25 NELICO or MetLife insurance policy premiums from payments on Diversified Lending Group
26 ("DLG") investment contract/promissory notes, supposedly secured by apartment buildings and
27 other real estate generating rental income (the "MetLife/DLG premium financing program").
28 Russon indicated that the MetLife/DLG premium financing program would help to sell insurance for

1 Brandt and other NELICO/MetLife agents. Russon presented the MetLife/DLG premium financing
2 in the same way and same manner as Russon had previously presented other approved MetLife
3 financial products. With Russon at his side, Friedman explained to the agents and registered
4 representatives at the December, 2004 meeting that DLG offered two separate investment
5 "Contracts." Friedman represented that one DLG Contract paid investors a "minimum guaranteed
6 rate of 9%," and Friedman further represented that investors' principal invested in the 9% Contract
7 would be guaranteed to be repaid to the investor by the assignment by DLG to the investor of an
8 annuity issued by a highly-rated insurance company in the full principal amount of the investment.

9 48. Friedman also told the agents and registered representatives at the December 2004
10 meeting that DLG offered a second "contract," or promissory note, which allegedly paid a
11 "minimum guaranteed rate of 12%" to the investor. Friedman represented that the principal and
12 interest payments on the 12% promissory notes were guaranteed to be repaid to the investor by
13 DLG. Friedman explained that the payments on the DLG contracts could be used to pay for the
14 premiums on NELICO/MetLife insurance policies, either for existing customers who were
15 NELICO/MetLife insureds, or new customers. Russon did not correct or qualify any of these
16 statements.

17 49. During that presentation in December 2004, Friedman provided marketing materials,
18 including copies of DLG's "Welcome Packet" that the assembled NELICO agents and NES
19 registered representatives could utilize in soliciting Plaintiffs to participate in DLG Programs.
20 Russon knew that the agents and registered representatives who were provided with the marketing
21 materials, including the Welcome Packet, would utilize those marketing materials to solicit
22 prospective DLG investors as a vehicle for providing premium financing for NELICO and MetLife
23 insurance products.

24 50. Friedman then went through a Power Point presentation showing the ins and outs of
25 how premium financing worked. Russon encouraged the NES registered representatives and
26 NELICO agents to look closely at their current block of business for people with large amounts of
27 real estate that would be subject to estate taxes who had illiquid estates. Friedman said that he had
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1 a division in his company where he could arrange lines of credit on real estate and Second Trust
2 Deeds as well as first trust deeds. He said that he would waive all fees for people doing premium
3 financing except for the approximately \$600 fee paid for the title search. All points and expenses
4 would be shown as a credit upon the account being opened with DLG. Friedman's presentation
5 included explaining how DLG's 9% promissory notes and DLG 's 12% promissory notes could be
6 marketed to consumers to be utilized as "premium financing" to pay for premiums required under
7 NELICO and MetLife insurance products, pursuant to the MetLife/DLG premium financing
8 program.

9 51. It was commonly known and the understanding of Brandt (and other NES
10 representatives and NELICO agents), that MetLife had a policy that only insurance products or
11 financial products that had been vetted and approved by the MetLife Enterprise (through its Home
12 Office or through NELICO and NES) could be sold or offered for sale by NES representatives or
13 NELICO agents affiliated with the MetLife Enterprise. It would be improper for a Managing
14 Partner and Managing Principal to present a promissory note for use in a MetLife Enterprise-related
15 premium financing program unless the MetLife Enterprise Home Office Compliance Department
16 had previously reviewed, examined, analyzed and pre-approved that product as appropriate for
17 NELICO agents to market and sell, and for NES registered representatives to refer to NELICO
18 agents for sale to other customers. Brandt and the other NELICO agents and NES registered
19 representatives had no reason to believe that Russon Financial and Russon had not disclosed to and
20 obtained such approval from the MetLife Home Office Compliance Department; and Brandt did
21 reasonably believe that normal and proper compliance procedures had been followed in this case.

22 52. In summary, the December 2004 DLG "pitch" meeting was a "NEF wholesalers"
23 conference in which it would have been improper to "pitch" an investment product that was not
24 previously vetted, examined and approved by Cross-Defendants' Home Office, pursuant to the
25 company's compliance rules and guidelines. When Friedman said that the DLG investment
26 contracts were an appropriate investment vehicle to fund NELICO and MetLife premium payments,
27 and Russon did not correct him, Brandt reasonably assumed that the MetLife Enterprise Home
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1 Office Compliance Department had pre-approved them for use in the premium financing program,
2 otherwise Russon would not be permitted to "pitch" that program.

3 53. By allowing Friedman to make a presentation about DLG investment products at the
4 December 2004 meeting at Russon Financial offices in Woodland Hills, it was foreseeable to
5 Russon and the Russon Financial that the assembled NELICO agents and NES registered
6 representatives would believe that Defendants MetLife, NEF and NES had conducted due diligence
7 into Friedman, DLG, AEI and the investment products of DLG, which Friedman presented to the
8 NELICO agents and NES registered representatives; and, further, it was reasonable for Brandt and
9 the other NELICO agents and NES representatives attending this presentation to assume that the
10 DLG promissory notes were appropriate for marketing and sale and were not unregistered securities
11 that should not be marketed and sold.

12 54. A few days of the December 2004 meeting, Russon contacted Brandt to inquire about
13 what Brandt thought about the DLG premium financing program. Russon said that he thought that
14 Brandt would have a number of clients that would benefit from the program. He asked Brandt to
15 attend an additional meeting in his office with Friedman to discuss the program further.

16 55. In the next meeting in Russon's office with Friedman, Brandt asked pointed
17 questions about how Friedman could do the program and deliver a 12% rate of return. Brandt also
18 asked Friedman if he took in investors to his program. Friedman informed Brandt that he had a \$2
19 million minimum investment threshold and that all of the investors were guaranteed by the
20 properties held in DLG's name.

21 56. During the next several months, Brandt had many discussions with both Russon and
22 Russon Financial's Compliance Officer, Keith Devereux, during lunch together, about the idea of
23 giving Friedman some of the money from the sale of Brandt's house, which Brandt had listed for
24 sale. Russon told Brandt that he had invested some money with Friedman and that his father was
25 also looking at the 9% accounts for himself. He cautioned Brandt and said that no matter what
26 happens company guarantees are only company guarantees. Russon he said that Friedman had
27 delivered on everything he promised.
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1 57. In subsequent discussions with Friedman, Friedman discussed with Brandt DLG's
2 real estate holdings that supposedly generated the funds to support the DLG promissory notes, and
3 that DLG's real estate holding stretched back to 1983, its holdings were private, and he wanted to be
4 "under the radar" because he shunned notoriety and was quietly building programs. He and Russon
5 both indicated to Brandt that they had an exclusive arrangement with MetLife that the only
6 insurance company that Friedman would do premium financing with is MetLife. All premium-
7 financed insurance policies Friedman arranged through DLG would go through MetLife and Russon
8 Financial. Friedman indicated that the exclusive arrangement was a "win-win" arrangement for
9 MetLife and Russon.

10 58. Brandt reasoned and reasonably concluded that, because Russon and MetLife had an
11 exclusive premium financing arrangement with Friedman, it would good for some of Brandt's clients
12 or potential clients to consider investing in the program.

13 59. During the next several months, Brandt consulted with his clients and Friedman
14 about the particulars of the MetLife/DLG premium financing program. During this time, Russon
15 asked Brandt how these discussions were going and pushed Brandt to keep presenting the program
16 to his clients under this exploratory format.

17 60. During this time, Brandt had many discussions with both Compliance Officer
18 Devereaux and Managing Partner/Principal Russon about the idea of investing some of the money
19 from the sale of Brandt's house in DLG promissory notes, as Brandt had put the house up for sale.

20 61. Russon told Brandt he had invested some of his own money with Friedman and that
21 his father was also looking at the DLG 9% contracts for himself. Brandt relayed to Russon during
22 this time the responses that Friedman gave to him regarding Brandt's inquiries regarding DLG's
23 business model; and Russon was never surprised with anything Brandt ever told him in that regard.
24 Russon had already heard all of the details Brandt was being told by Friedman, and consistently
25 replied: "Bruce told me the same thing." It appeared to Brandt as if Russon had asked and was
26 inquiring about all of the same questions Brandt had asked Freidman, and had already heard the
27 same answers from Friedman as Brandt had.
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1 62. In July, 2005, Brandt met with Russon and informed him that Brandt was going to
2 invest \$700,000 in proceeds from the sale of his house with DLG, as soon as the escrow closed.
3 Brandt informed Russon that we has going to have 3 DLG accounts: one in Brandt's name, one in
4 Brandt's son's name, and one in Brandt's daughter's name. Brandt also informed Russon that he
5 intended to represent DLG in selling DLG contracts for the MetLife/DLG premium financing
6 program, and for other clients. Russon informed Brandt that he would have to resign as a NES
7 registered representative, but would have two years to come back on board as an NES
8 representative. In meantime, however, Brandt would remain as a fully authorized and licensed
9 NELICO agent, and would be able to sell DLG contracts to facilitate the sale of NELICO and
10 MetLife insurance products pursuant to the MetLife/DLG premium financing program.

11 63. Brandt then wrote a letter of resignation with respect to his status as a NES registered
12 representative, and delivered it to Diana Cass with an emailed copy to Russon. Brandt then invested
13 more than \$950,000 in own funds and funds belonging to his wife, children, brother, and elderly
14 parents. It strains credulity to believe that Brandt would have invested his family's money in a
15 company he had any reason to believe was operating a "Ponzi" scheme. Indeed, Brandt has lost the
16 money he invested for himself and his family, just as other DLG victims have lost their DLG-related
17 investments. Brandt would never have invested *any* money in DLG contracts, or become involved
18 with Friedman or DLG in the first place, had Russon not placed the imprimatur and approval of the
19 MetLife Enterprise on the DLG contracts as pre-approved and vetted as appropriate for the
20 MetLife/DLG premium financing program, and otherwise.

21 64. After his resignation as a NES registered representative, Brandt continued to work as
22 a NELICO agent at Russon Financial's offices. He also conducted his DLG sales business from
23 Russon Financial's offices. These activities included numerous MetLife/DLG premium financing
24 deals. This continued though the end of 2008. During that time, and through 2009, the DLG
25 premium financing program was part and parcel of Brandt's standard "sales pitch" when discussing
26 the DLG promissory notes to prospective investors. Russon knew that was the case because Brandt
27 routinely discussed with Russon potential deals that we was working on with Russon Financial NES
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1 registered representatives Bagby, Davidson and Joe Brandenberg.

2 65. Through the end of 2007 through the middle of 2009, NES registered representatives
3 Bagby and Davidson referred other potential DLG customers to Brandt. Several of these referrals
4 lead to MetLife/DLG premium financing deals. MetLife was paid tens of thousands of dollars in
5 premiums by DLG under the MetLife/DLG premium financing deals Brandt arranged and closed
6 during this time. If the DLG contracts were unregistered securities, Russon would not be permitted
7 to have his NELICO agents use them for the premium financing program. If the DLG contracts
8 were unregistered securities, Russon, Bagby, Davidson and other NES registered representatives
9 would have been prohibited from referring DLG customers to Brandt for the MetLife/DLG premium
10 financing program or otherwise. Brandt was entitled, in short, to assume and rely upon the fact that
11 the NELICO Managing Partner and NES Registered Principal, Russon, Devereaux, the Compliance
12 Officer, and the MetLife Enterprise Compliance Department had vetted and approved his sale of
13 DLG products because he disclosed those sales in his OBA Disclosure Statements, and the
14 MetLife/DLG premium financing program and related sales were common knowledge in the office,
15 that was the subject of annual and quarterly compliance audits.

16 **E. Cross-Defendants' Imputed And Actual Knowledge And Culpable Participation**
17 **In The MetLife/DLG Premium Financing Program**

18 66. Cross-Defendants MetLife, NELICO and NES knew (or were reckless in not
19 knowing) that Brandt and other NELICO agents and NES registered representatives and principals
20 who solicited investors to purchase DLG products in the context of "pitching" the MetLife/DLG
21 premium financing program would be paid a commission by DLG, whether or not the investors
22 ultimately decided to purchase MetLife and NELICO insurance products. Cross-Defendants knew
23 or were reckless in not knowing that the DLG promissory notes might be deemed unregistered
24 securities and that NELICO agents such as Brandt, and NES registered representatives referring
25 DLG customers to Brandt, should be so informed of that fact and instructed to cease any further
26 marketing and sales efforts with respect to DLG promissory notes. Cross-Defendants' knowledge
27 and active participation was both imputed and vicarious, under respondeat superior and hornbook
28 agency doctrines, as well as actual and direct.

1 67. As to Cross-Defendants' imputed and vicarious knowledge about, and active
2 participation in, the DLG/MetLife Enterprise business arrangement, Russon was a NELICO general
3 agency Managing Partner and a NES Field Management Registered Principal. These titles and roles
4 placed Russon and Russon Financial in a position of management authority, control and
5 responsibility within the NEF insurance and investment product sales and distribution system within
6 the MetLife Enterprise.

7 68. Moreover, by designating Russon and Russon Financial as a "Managing Partner" of
8 NELICO, NELICO publicly held out Russon and Russon Financial as NELICO's partner with
9 respect to Russon and Russon Financial's insurance and related investment advisory services
10 provided by them within the scope of their authority as partners and agents of the NELICO/Russon
11 partnership. As such, under section 16308 of the California Corporations Code and comparable
12 common law principles, Russon and Russon Financial were at the very least the putative and
13 ostensible partners of NELICO (if not NELICO's actual partner) with respect to the MetLife/DLG
14 premium financing program and other DLG-related activities undertaken by them and the NELICO
15 agents (including Brandt) whom they supervised and managed.

16 69. NELICO is equitably estopped from denying the partnership status of Russon and
17 Russon Financial by permitting them to publicly, privately, and actively hold themselves out as
18 NELICO's partner, and to promote, advertise, market and sell NELICO products under the title of
19 NELICO "Managing Partner," which gave them an air of reliability and respectability, and the
20 imprimatur of corporate sanction and approval.

21 70. By using the title "Managing Partner" in its Managing Partner Contract, and
22 approving the use of that title by Russon, Russon Financial and other NELICO Managing Partners
23 in California and across the United States, NELICO has manifested its consent to their use of the
24 title "Managing Partner" and the acceptance of that partnership role by third parties with whom they
25 deal in that capacity.

26 71. Brandt reasonably relied upon Russon's and Russon Financial's title and role as a
27 NELICO "Managing Partner" in disclosing his DLG-related sales activities to Russon and Russon
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1 Financial's Compliance Officer, Devereaux, and in assuming that these disclosures were relayed, as
2 was required, to the MetLife Enterprise Home Office Compliance Department. Brandt closed
3 MetLife/DLG premium financing deals, sold DLG promissory notes to customers referred by NES
4 registered representatives who reported to Russon, and offered and sold DLG promissory notes to
5 other individuals while he worked as a NELICO agent under Russon's management and supervision,
6 in reliance on Russon's and Russon Financial's status, role, and responsibilities as a NELICO
7 Managing Partner.

8 72. During no part of the relevant time period did Russon or any other NELICO
9 authorized representative ever inform Brandt that Russon and Russon Financial in actuality were not
10 partners of NELICO but were supposedly only "independent contractors." The Managing Partner
11 Contract was not publicly or privately disclosed to Brandt or other NELICO agents; it was kept
12 strictly confidential. At all times, Brandt and other NELICO agents believed that Russon and
13 Russon Financial were NELICO partners; and NELICO actively encouraged that belief, permitting
14 Russon and other NELICO Managing Partners to actively tout their title and status as part of their
15 marketing and sales efforts locally and nationwide.

16 73. But for Russon's and Russon Financial's touting -- in their capacity as a NELICO
17 "Managing Partner" -- of the DLG promissory notes, as part of the MetLife/DLG premium financing
18 program and otherwise, Brandt would never have bought, marketed or sold any DLG-related
19 products in the first place. He would not have continued to sell them as a NELICO agent but for his
20 reasonable assumption that, as a NELICO Managing Partner, Russon and Russon Financial had the
21 full approval and imprimatur of NELICO and the MetLife Enterprise (including vetting by the
22 Home Office Compliance Department).

23 74. Because NELICO publicly and affirmatively held out Russon and Russon Financial
24 as NELICO's "Managing Partner" with respect to all NELICO and related NEF business conducted
25 in the Southern California territory, NELICO is jointly and severally liable for "any wrongful act or
26 omission of any partner acting in the ordinary course of the business of the partnership or with the
27 authority of his copartners" under section 15013 of the California Corporations Code.
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1 75. The general law of agency - including imputation and vicarious liability - applies to
2 an actual or ostensible partnership such as NELICO erected here with Russon and Russon Financial,
3 under section 15004 of the California Corporations Code and analogous common law principles.
4 Russon and Russon Financial were an agent who represents another, NELICO (and NES and
5 MetLife), who are called the principal, in dealings with third persons, such as Brandt and his
6 customers; and such representation is called "agency" under section 2295 of the California Civil
7 Code. Moreover, as NELICO's Managing Partner, Russon and Russon Financial were an agent of
8 the partnership for the purpose of their business, under section 15009 of the California Corporations
9 Code.

10 76. Russon Financial's and Russon's conduct, which gave rise to the potential liability
11 facing Brandt and Westbridge and the damages alleged by the plaintiffs in the Underlying Actions,
12 was undertaken within the scope of Russon Financial's and Russon's actual and apparent authority
13 and the course of their agency relationship with MetLife, NELICO and NES. Russon Financial's
14 and Russon's conduct was motivated in substantial part to benefit MetLife and NELICO in
15 particular, by generating premium income for those companies, directly and indirectly, through the
16 MetLife/DLG premium financing program, and the indirect benefit coming from the sale of DLG
17 promissory notes even if those sales were not part of the MetLife/DLG premium financing program.

18 77. Russon knew, moreover, that "pitching" the MetLife/DLG premium financing
19 program to prospective DLG customers was part of the standard and approved sales and marketing
20 presentation that Brandt made to such prospective customers as a NELICO agent working under
21 Russon's management and supervision. Russon's knowledge in that regard is imputed to Cross-
22 Defendants. DLG sales to non-NELICO customers - that is, sales that did not end up as part of the
23 MetLife/DLG premium financing program - benefited NELICO, NES and MetLife directly and
24 indirectly by generating commission income that was used to pay for lease and office expenses at
25 Russon Financial's office, which was housed in a building leased by MetLife. Thus, NELICO, NES
26 and MetLife benefitted from DLG commission payment income used to pay for MetLife, NELICO
27 and NES expenses.
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1 78. Until the DLG operation was exposed as an elaborate Ponzi scheme, only after the
2 SEC intervened and sued DLG and Friedman in March 2009, there previously was never any
3 suggestion or reason to believe that the DLG investment products were not legitimate. During the
4 relevant time period, there was no reason to believe, and Brandt reasonably did not believe, and still
5 does not believe to this day that Russon or Russon Financial were acting adversely to the interests of
6 NELICO, NES or MetLife; that they were colluding with Friedman, DLG or any other related party
7 to defraud NELICO, NES or MetLife; or that they in any other respect were acting outside the scope
8 of their actual and ostensible authority as agents and partners of NELICO, NES or MetLife. Rather,
9 Brandt believed and continues to believe that Russon, Russon Financial, Devereaux and other
10 Russon Financial executives acted at all times in good faith for the best interests of NELICO, NES
11 and MetLife, in the proper course and scope of their agency and authority as NES/NELICO
12 executives in the MetLife Enterprise.

13 79. NELICO and NES (and, by extension, MetLife), as principals, on the one hand, and
14 Russon and Russon Financial, as agents, on the other hand, are deemed to have notice of whatever
15 either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to
16 communicate to the other. Thus, insofar as Russon and Russon Financial knew, or were reckless in
17 not knowing about Brandt's DLG sales activities as part of the MetLife/DLG premium financing
18 program or as part of Brandt's efforts as a NELICO agent to "up sell" NELICO/MetLife insurance
19 products to other DLG investors, that knowledge is imputed to NELICO and NES (and, by
20 extension, to MetLife) under California Civil Code section 2332 and other comparable statutory and
21 common law principles of agency and partnership law.

22 80. Accordingly, each Cross-Defendant is liable for the acts and omissions of its agents,
23 Russon Financial and Russon; and the knowledge of these agents regarding the DLG product sales,
24 and Brandt's sales activities, is imputed to each Cross-Defendant, under applicable agency
25 principles, including the doctrine of respondeat superior. Because corporations may act only
26 through their agents, a corporation may be held liable for the acts of its agents.

27 81. The fact that Russon Financial and Russon may be designated as "independent
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1 contractors" under the Corporate Managing Partner Contract and/or Registered Rep. Agreement
2 does not eliminate their status as actual and ostensible agents of MetLife, NELICO and NES.
3 Independent contractors properly may be agents of their principals as a matter of general agency law
4 (*Doctors' Co. v. Superior Court*, 49 Cal. 3d 39, 260 Cal. Rptr. 183, 775 P.2d 508 (1989); *Los*
5 *Angeles v. Meyers Bros. Parking System, Inc.*, 54 Cal. App. 3d 135, 138, 126 Cal. Rptr. 545 (1975));
6 and that is true in this circumstance, even if Russon and Russon Financial truly were "independent
7 contractors," which appears doubtful, rather than being the partners or employees of NELICO and
8 NES, which they publicly and ostensibly appeared to be, and as they held themselves out to be to
9 their agents, representatives, and customers, with NELICO's and NES' blessing and ratification,
10 both express and implied. What is clear is that, notwithstanding the use of the designation
11 "independent contractor" in contradistinction to "Managing Partner," "Managing Principal," and
12 "general agency," NELICO, NES (and MetLife) intended to share in Russon's and Russon
13 Financial's profits, losses and the management and control of the Russon enterprise, including but
14 not limited to supervisory control under the auspices of the MetLife Enterprise Home Office
15 Compliance Department.

16 82. Consequently, by virtue of Russon's titles, roles, responsibilities and actual, implied
17 and apparent authority to act for an on behalf of NELICO, NES and MetLife with respect to the
18 conduct alleged herein, what Russon knew and did and failed to do (which are coextensive with that
19 Russon Financial knew and did, and failed to do, as Russon completely owned, operated, dominated
20 and controlled Russon Financial) are imputed or otherwise attributable fully to NELICO and NES,
21 and by extension to MetLife. Because NELICO is operated as part of the MetLife umbrella - the so-
22 called "Enterprise" - and shares operating, financial, accounting, compliance and related functions
23 and management, which are controlled and directed by the MetLife Enterprise Home Office,
24 MetLife also is responsible for the NELICO- and NES-related acts and omissions - undertaken with
25 Russon's knowledge, participation and consent - that are at issue in this case.

26 83. In addition to Cross-Defendants' vicarious liability for Russon's errors and omissions,
27 Cross-Defendants are directly responsible and not simply vicariously responsible for, and Cross-
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1 Defendants have actual knowledge not just imputed knowledge about, the acts, omissions, and other
2 transactions and occurrences giving rise to Brandt potential liability in the state court actions, for the
3 following reasons:

4 (i) Brandt attended Annual Compliance and Certification Meetings, with all of
5 the other NES registered representatives and NELICO agents at Russon Financial;

6 (ii) Brandt reported to and disclosed his activities to Russon, as a NELICO
7 Managing Partner and a NES Managing Principal, as well as to NES/NELICO Compliance
8 Officer Devereaux.

9 (iii) Brandt filled out and submitted in a timely manner annual MetLife
10 Enterprise OBA Disclosure Statements to Compliance Officer Devereaux that were sent to
11 the MetLife Enterprise Home Office Compliance Department, in which Brandt disclosed
12 that, as a NELICO agent, he was selling DLG promissory notes.

13 (iv) Brandt participated in annual and quarterly onsite audits conducted by
14 MetLife Home Office compliance officials, and made all books, records, correspondence and
15 any other information requested available to such compliance officials.

16 (v) Bagby, Davidson and other NES registered representatives also participated
17 in these compliance audits and activities. Russon and other registered representatives and
18 agents involved in the sale or referral of DLG promissory notes, for use in the MetLife/DLG
19 premium financing program or otherwise, also were required on their part to disclose their
20 DLG-related activities (including their referrals of DLG clients to Brandt) on their own OBA
21 Disclosure Statements, whether or not they received any referral fees or other compensation
22 from such sales.

23 (vi) DLG (through Applied Equities) sent premium checks for investors in the
24 MetLife/DLG premium financing program, on Applied Equity checks made payable to
25 MetLife, that MetLife always accepted, deposited and cashed. While at some later point,
26 MetLife personnel requested that MetLife/DLG premium financing customer payments
27 should not be made on Applied Equities checks using Applied Equities' name, due to
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1 bookkeeping requirements, MetLife thereafter accepted MetLife/DLG premium financing
2 customer payments on Applied Equities checks, on the same account and issued from the
3 same office address, so long as the customers names were put on the checks, in place of
4 Applied Equities' name. MetLife always accepted the premium payments, and they totaled
5 tens if not hundreds of thousands of dollars annually.

6 (vii) Cross-Defendants obtained a substantial benefit from the purchase and sale of
7 DLG investment contracts because (i) they paid for premiums on Cross-Defendants
8 insurance contracts used in the DLG premium financing programs; (ii) they generated
9 income which was used to pay lease and other office expenses at Russon's office, which
10 reduced Cross-Defendants' proportionate share of such operating costs, thereby increasing its
11 own income and profits. All of this should have been known as a result of the actual onsite
12 audits, OBA Disclosure Statements, and other review and oversight that NELICO and NES,
13 through the MetLife Enterprise Home Office Compliance Department, did and was supposed
14 to conduct on a regular and systematic basis.

15 (viii) Brandt was reasonable to believe, based on their no-action response to their
16 audits and compliance examinations, that Brandt's DLG-related activities were proper,
17 authorized, and consistent with all applicable rules, regulations, and laws. Brandt was
18 entitled to assume that Russon, Devereaux, and the other MetLife Enterprise managers and
19 compliance officials were doing their jobs properly in approving Brandt's sale of DLG
20 products and in reporting Brandt's OBA Disclosure Statements to Cross-Defendants' CL&R
21 Department and Compliance Department. Brandt had no reason to believe, and did not
22 believe, that they were not abiding by all compliance rules and regulations, and applicable
23 law, or not doing their jobs properly. But neither Managing Partner/Managing Principal
24 Russon, Compliance Officer Devereaux, or Cross-Defendants' CL&R Department and
25 Compliance Department ever informed Brandt that the DLG contracts were unregistered
26 securities or otherwise were inappropriate for Brandt's sale as a career life agent of NELICO
27 under the circumstances.
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1 (ix) Accordingly, Cross-Defendants knew or were reckless in not knowing about
2 Russon's and Brandt's DLG-related activities because of the OBA Disclosure Statements,
3 periodic compliance audits, and Cross-Defendants' receipt of and cashing of DLG checks for
4 NELICO insureds participating in the DLG premium financing program. If they had done
5 their jobs properly, Brandt would not have sold any DLG-related products in the first place.

6 **F. Cross-Defendants' Compliance And Related Supervisory Duties Owed To**
7 **NELICO Agents And NES Representatives, And To Their Clients**

8 84. NELICO, NES and MetLife, in discharging their respective responsibilities under the
9 Managing Partner Contract, the Registered Rep. Agreement, and the Career Incentive Contract,
10 respectively, owed a duty to NELICO agents and NES registered representatives, respectively, either
11 as direct contracting parties or as third party beneficiaries of such contracts, to abide by their
12 supervisory, auditing, compliance, and advisory responsibilities. These responsibilities include, as
13 previously alleged, the duty to carefully review their OBA Disclosure Statements and to conduct
14 such reasonable and diligent inquiries, audits and follow-up investigations as may be necessary or
15 appropriate to advise NELICO agents and NES representative whether investment products they
16 either refer for sale or actually market and sell - whether NELICO or NES-generated products or not
17 - meet the MetLife Enterprise's Compliance Guidelines.

18 85. Thus, while NELICO agents and NES registered representatives had compliance
19 obligations (including the provision of OBA Disclosure Statements), for their part NELICO and
20 NES (and by extension, MetLife) had reciprocal responsibilities and duties under the Career
21 Incentive Contract, the applicable Corporate Managing Partner Contract and the Registered Rep.
22 Agreement. The contractual obligation of NELICO and NES, and, by extension, MetLife (under
23 alter ego and enterprise liability principles) to perform their supervisory, OBA vetting and
24 compliance oversight functions carries with it an implied agreement to indemnify and to discharge
25 foreseeable damages resulting to Brandt from the Cross-Complainants' negligent performance.

26 86. In particular, all and each of these contracts required joint and reciprocal obligations
27 of compliance reporting, supervision, monitoring, investigation, and, when necessary or appropriate,
28 correction and prohibition of improper Outside Business Activities. Brandt and other NEF agents

1 and registered representatives were entitled to rely upon the MetLife Enterprise's Compliance
2 Department to review their OBA Disclosure Statements and advise and correct them if outside
3 business activities were improper or ill advised. The customers of Brandt and other NEF agents and
4 registered representatives also were entitled to rely upon the satisfactory performance of the
5 supervisory and oversight functions of Russon as a NELICO Managing Partner and NES Managing
6 Representative Principal, as well as MetLife Enterprise's Compliance Department. When, as here,
7 contracting parties are alleged to be jointly responsible for injuring a third party, recovery is
8 available on the theory that the contracts implied in them an obligation to perform in a proper
9 manner and to discharge foreseeable damages resulting from improper performance.

10 87. For example, Brandt's agency contract with NELICO (the "Incentive Career
11 Contract") provides that "The Agent shall strictly adhere to all rules and procedures established by
12 the Company's Compliance Program." It further provides that Brandt and other NELICO agents
13 must follow NELICO's (and therefore the MetLife Enterprise's) rules and procedures, as well as the
14 rules established by the Managing Partner. Brandt did so; and NELICO and the NELICO
15 Managing Partner had reciprocal responsibilities to ensure that they also exercised due care in
16 fulfilling their oversight, compliance, management, monitoring and corrective duties, under the
17 MetLife Enterprise Home Office Compliance Program, and otherwise.

18 88. Thus, by way of illustration and not limitation, when Brandt fully disclosed his DLG-
19 related sales activities to Russon, as a NELICO Managing Partner and NES Managing Principal, to
20 Devereaux, as a NELICO and NES Compliance Officer, and they did not inform him either that the
21 DLG promissory notes may be deemed to be unregistered securities or otherwise improper or
22 inappropriate for sale, Brandt was entitled to assume, and reasonably did assume that his DLG-
23 related sales activities complied with and adhered to the MetLife Enterprise's Compliance Program
24 and applicable laws and regulations.

25 89. In addition, the Managing Partner Contract provided that NELICO (for itself or
26 acting through a MetLife Enterprise representative) has the right and obligation to audit and inspect
27 any books and records of Russon Financial or any books and records to which Russon Financial had
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1 access which relate to Russon's operations and the operations of agents and registered
2 representatives acting under his supervision, with respect to any entity marketing or providing
3 financial advice, products or services. If there were any problems associated with the marketing and
4 sale of DLG products, in connection with the MetLife/DLG premium financing program or
5 otherwise, Cross-Defendants should have audited Russon and the agents and registered
6 representatives supervised by him to uncover and remedy that problem.

7 90. Under the Managing Partner Contract, the books and records maintained by Russon
8 Financial regarding financial transactions or which contain customer information whether or not
9 physically located at Russon Financial contractually were be the property of NELICO. Russon
10 Financial was required to furnish during regular business hours to NELICO's compliance officers or
11 other authorized representative such books and records of Russon Financial as NELICO may have
12 requested. Thus, all of Russon Financial's books and records regarding its DLG referrals and related
13 transactions, under the DLG premium financing program and otherwise, were the property of
14 NELICO and subject to its inspection and review at any time, during its regular compliance audits,
15 and otherwise.

16 91. Because NELICO agents are subject to training, supervision, control and direction of
17 the Managing Partner and the MetLife Enterprise's Compliance Departments (pursuant to the
18 Managing Partner Contract and the related Incentive Career Contract), NELICO agents are intended
19 and expected to be third party beneficiaries of the Managing Partner's and NELICO's reciprocal
20 obligations under the Managing Partner Contract. The parties' contractual intent to make NELICO's
21 obligation inure to the benefit of the third party was clearly manifested by NELICO, Russon
22 Financial and Russon by virtue of the explicit reference in the Managing Partner Contract to life
23 insurance agents whom Russon Financial and Russon would supervise, train and manage; and,
24 consequently, Brandt was a member of the class of NELICO agents for whose benefit the Managing
25 Partner Contract was made.

26 92. By the same token, NES registered representatives and registered personnel are
27 subject to the training, supervision, control and directions of the NES Office of Supervisory
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1 Jurisdiction and the Field Management Registered Principal, and the MetLife Enterprise's
2 Compliance Departments. Accordingly, NES registered representatives also are the intended and
3 expected third party beneficiaries of the Registered Rep. Agreement. The parties' contractual intent
4 to make NES' obligation inure to the benefit of the third party - i.e., Brandt - was clearly manifested
5 by NES, Russon Financial and Russon by virtue of the explicit reference in the Registered Rep.
6 Agreement to registered representatives whom Russon Financial and Russon would supervise, train
7 and manage, which included Brandt at the time of the December 2004 "Wholesalers" meeting
8 through his resignation as a NES registered representative in July 2005. At the time of the
9 Wholesalers meeting in December 2004 through his resignation as a NES registered representative in
10 July 2005, Brandt was a member of the class of NES registered representatives for whose benefit the
11 Registered Rep. Agreement was made.

12 93. Cross-Defendants' auditing right and obligation, which also is reflected in other
13 Cross-Defendants guidelines and rules, including but not limited to the MetLife Enterprise's
14 Compliance Guidelines and Rules, are designed in material part for the protection of NELICO
15 agents and NES registered representatives, as well as the customers whom they serve. As a
16 NELICO agent, Brandt was in this context an intended third party beneficiary of Cross-Defendants'
17 auditing and compliance supervisory and oversight responsibilities.

18 94. Thus, the MetLife Enterprise compliance rules and regulations that are referred to, or
19 by reference and implication are otherwise made a part of, the Managing Partner Contract, the
20 Registered Rep. Agreement, and the Career Incentive Contract, include NELICO's, NES', and
21 MetLife's reciprocal supervisory, oversight, and advisory roles and responsibilities with respect to
22 the MetLife Enterprise's Compliance Program. In addition to these MetLife Enterprise compliance
23 rules and regulations (and correlative responsibilities) that comprise part of the applicable contracts
24 at issue here - which inure to Brandt's benefit either directly or as a third party beneficiary - all
25 applicable laws and regulations with respect to such roles and responsibilities in existence when the
26 contracts were made also are presumed to be known by NELICO, NES and MetLife (and Russon
27 Financial and Russon), who are presumed to have had them in mind, and which all necessarily enter
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1 into those contracts and form a part of them as a matter of law, without any stipulation to that effect,
2 as if they were expressly referred to and incorporated therein. These laws and regulations include,
3 without limitation, FINRA's Conduct Rules governing supervision, monitoring and correction of
4 outside business activities and related referrals by Field Management Registered Principals like
5 Russon Financial and Russon, and registered representatives working under their management and
6 supervision, and related agency principles of imputation and vicarious liability.

7 95. The compliance duties made part of the Managing Partner Contract, the Registered
8 Rep. Agreement, and the Career Incentive Contract y include the obligation to monitor emails,
9 correspondence, and other books and records of the Managing Partner and Field Management
10 Registered Principal, as well as other registered representatives working at a NEF general agency, to
11 ensure that outside investment products referred to NELICO agents for sale also meet the MetLife
12 Enterprise's Compliance Guidelines or not. Brandt believed during the relevant time period, and
13 had no reason to suspect otherwise, that Bagby and Davidson were disclosing their DLG customer
14 referrals to Brandt in their own OBA Disclosure Statements, and that Russon, as NELICO's regional
15 Managing Partner and NES' Field Management Registered Principal, and Devereaux, as Compliance
16 Officer, were informing the MetLife Compliance Department of his and their respective DLG-
17 related activities.

18 96. Brandt further assumed, reasonably and appropriately, that MetLife compliance
19 officials' annual and quarterly onsite audits also ensured that the MetLife/DLG premium financing
20 program and Brandt's related DLG-related marketing and sales activities as a NELICO agent were
21 known, examined, and approved - as no one ever said otherwise, which NELICO and NES managers
22 and supervisors were required to do if there were a problem or prohibition in that regard. Because
23 NELICO and NES, acting through MetLife Enterprise Compliance officers and auditors, conducted
24 regular onsite compliance audits at Russon Financial, Cross-Defendants knew or were reckless in
25 not knowing about the DLG-related business taking place there.

26 97. Given the importance and sophistication of NELICO's compliance program, Brandt
27 was entitled to rely, and was reasonable in relying, on the fact that Russon, and the local compliance
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1 officer, Devereaux, did not indicate that the DLG contracts were securities that were prohibited from
2 sale, and that the MetLife Enterprise's Home Office Compliance Department also never told Brandt
3 to stop such activities even though Brandt disclosed them as required under applicable compliance
4 guidelines.

5 98. Brandt made the requisite OBA Disclosure Statement and audit disclosures; and the
6 contracts and compliance policies of Cross-Defendants imposed a reciprocal duty on them (and on
7 Russon Financial) to fulfill their own compliance supervisory role and responsibilities to ensure that
8 Brandt and other agents that complied with the OBA Disclosure Statement rules were not "stepping
9 out of line" as to outside sales activities reported for approval by the company.

10 **G. Cross-Defendants' Breaches Of Their Compliance And Supervisory Duties That**
11 **Were A Substantial Causative Factor Contributing To Plaintiffs' Damages In**
12 **The Underlying Actions**

13 99. As previously alleged, by contract, statute, and related rules and regulations,
14 NELICO, NES and MetLife were under an affirmative duty to maintain and enforced a reasonable
15 and proper system of supervision and internal control to ensure, among other things, that NELICO
16 Managing Partners and NES Field Management Registered Principal s (and their executive staff,
17 including regional office Compliance Officers) were properly trained, monitored, supervised, and
18 instructed by the MetLife Home Office Compliance Department and related Compliance
19 departments, divisions and managers to make reasonably certain that NELICO agents and NES
20 registered representatives did not engage in outside business activities that were not properly vetted
21 and approved by the MetLife Enterprise as legal and appropriate under the circumstances of their
22 marketing and sale by NELICO agents and NES registered representatives.

23 100. NELICO, NES and MetLife breached this duty by failing to exercise ordinary care, in
24 violation of the internal MetLife Enterprise compliance rules and guidelines and related agency rules
25 and regulations (including but not limited to FINRA Conduct Rule 3030 and related supervisory
26 requirements), with respect to the activities and conduct of Russon Financial and Russon in (among
27 other things):

- 28 (a) Offering to and encouraging NES registered representatives and NELICO
agents to use DLG investment products to "pitch" NELICO and MetLife insurance sales via

1 the MetLife/DLG premium financing program;

2 (b) Neglecting and failing to inform Brandt and other NES registered
3 representatives and NELICO agents whom he managed and supervised that the DLG
4 promissory notes could be, and might be deemed to be unregistered securities that should not
5 be offered for sale or sold to NELICO customers, or referred by NES registered
6 representatives, or sold to anyone else, absent proper registration;

7 (c) Neglecting and failing to investigate and follow up with the MetLife
8 Enterprise's Compliance Department regarding the OBA Disclosure Statements made by
9 Brandt and possibly other agents and representatives which disclosed his (and possibly their)
10 marketing and sale of the DLG promissory notes and the "pitching" of the MetLife/DLG
11 premium financing program;

12 (d) Neglecting and failing to ensure that Russon and other NES registered
13 representatives filed timely, complete and non-misleading OBA Disclosure Statements of
14 their own, disclosing their referral of potential DLG customers to Brandt and other NELICO
15 agents, whether of the referring representatives received any commissions or other
16 compensation in consideration of such referrals;

17 (e) Permitting Russon Financial representatives to refer potential DLG clients to
18 Brandt (and possibly other NELICO agents) with the express and implied assurance and
19 representation that such referrals were authorized, vetted and approved under the MetLife
20 Enterprise's Compliance Program; and

21 (f) Permitting Brandt (and possibly other NELICO agents) to "pitch" the
22 MetLife/DLG premium financing program to prospective clients with the express and
23 implied assurance and representation that such referrals were authorized, vetted and
24 approved under the MetLife Enterprise's Compliance Program.

25 101. These breaches by NELICO, NES and MetLife of their compliance, oversight,
26 auditing, monitoring, advisory and corrective duties under the Corporate Managing Partner Contract,
27 the Registered Rep. Agreement, and the Career Incentive Contract resulted in foreseeable damages
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1 to Brandt. The plaintiffs' claims against Brandt (and Westbridge) in the Underlying Actions, and
2 the harm plaintiffs' allegedly suffered, would never have occurred if Cross-Defendants had properly
3 fulfilled their contractual responsibilities because Brandt would never have purchased, marketed or
4 sold any DLG promissory notes in the first place, whether as part of the MetLife/DLG premium
5 financing program or otherwise. By remaining silent, the Cross-Defendants Compliance
6 Department, and Brandt's direct supervisors (Russon and Devereaux) led Brandt reasonably to
7 believe that Brandt's DLG-related outside business activities were proper and authorized by Cross-
8 Defendants. This reasonable reliance on Brandt's part is buttressed by the fact that Russon, Bagby
9 and Davidson referred prospective DLG clients to Brandt, both directly and indirectly.

10 **VI. CAUSES OF ACTION**

11 ***FIRST CAUSE OF ACTION***

12 **(For Equitable Indemnity and Contribution Against All Cross-Defendants)**

13 102. Cross-Complainants re-allege and incorporate herein by this reference the allegations
14 in paragraphs 1 through 101 hereof, inclusive, as though set forth in full herein.

15 103. If as a result of the matters alleged in plaintiff's complaint, Cross-Complainants are
16 held liable for all or any part of the claim and damages asserted against them, or other of them,
17 Cross-Defendants, and each of them, to the extent that their fault was a proximate cause of plaintiff's
18 damages and losses in the Underlying Actions, and, insofar as their negligence was a substantial
19 factor in causing plaintiff's alleged damages and losses in the Underlying Actions, each of the Cross-
20 Defendants is responsible for said damages and losses in proportion to each Cross-Defendants'
21 comparative fault under the totality of relevant circumstances.

22 104. Accordingly, if either Brandt or Westbridge is required to pay any sums to any
23 plaintiff in the Underlying Actions, MetLife, NELICO and NES, as indemnitors, must reimburse
24 Brandt and Westbridge, as indemnitees, based on their proportionate share of responsibility. As
25 previously alleged, MetLife, NELICO and NES were negligent by failing to comply with their own
26 supervisory, auditing, review, monitoring, inspection, and oversight duties and responsibilities, and
27 related compliance rules, with respect to Russon Financial and Russon, who knew about and
28 approved Cross-Complainants' DLG-related sales activities, including but not limited to their

1 promotion of the MetLife/DLG premium financing program. The comparative fault of MetLife,
2 NELICO and NES as concurrent tortfeasors (if it is determined that tortious conduct indeed
3 occurred), contributed as a substantial factor in causing the harm allegedly suffered by plaintiffs in
4 the Underlying Actions, as Brandt and Westbridge would not have ever become involved with DLG
5 products in the first place, and thereafter would have stopped marketing and selling them, if
6 MetLife, NELICO and NES had fulfilled, as they were duty-bound to do, their own supervisory,
7 auditing, review, monitoring, inspection, advisory and corrective duties and responsibilities, and
8 related compliance rules.

9 105. Cross-Complainants are incurring and have incurred attorney's fees, court costs,
10 investigative costs and other costs in connection with defending against plaintiffs' claims, the exact
11 amount of which is unknown at this time. When the same has been ascertained, Cross-
12 Complainants will seek leave of Court to amend this First Amended Cross-Complaint to set forth the
13 true nature and amount of said costs and expenses, or according to proof at trial. These defense fees
14 and costs are part of the foreseeable damages resulting from Cross-Defendants' negligence and other
15 misconduct alleged herein, for which Brandt and Westbridge also are entitled to indemnity.

16 ***SECOND CAUSE OF ACTION***

17 **(For Implied Contractual Indemnity and Contribution Against All Cross-Defendants)**

18 106. Cross-Complainants re-allege and incorporate herein by this reference the allegation
19 in paragraphs 1 through 101 hereof, inclusive, as though set forth in full herein.

20 107. As previously alleged, Section 4 of NELICO's Incentive Career Contract provides
21 that the "Agent shall strictly adhere to all rules and procedures established by the Company's
22 Compliance Program." Brandt did so by Brandt disclosing to the Managing Partner, Russon, the
23 local Compliance Officer, Keith Devereaux, and to MetLife Enterprise Home Office Compliance
24 Department in his annual OBA Disclosure Statements and annual Compliance Meetings, his
25 participation in marketing and sale of the DLG promissory notes. Section 5 of Brand's Incentive
26 Career Contract provides that, while Brandt "shall be free to determine for himself/herself the time,
27 place and manner for the solicitation of applications for Products, but so far as is consistent with
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1 such freedom shall conform to the rules of the Company and of the Managing Partner in the conduct
2 of business." NELICO's rules include its compliance rules and the related Managing Partner and
3 MetLife Enterprise Home Office supervisory and oversight functions.

4 108. Brandt also is an intended and expected third party beneficiary of the Corporate
5 Managing Partner Contract and the Registered Rep. Agreement between Russon Financial and
6 Russon, on the one hand, and NELICO and NES, respectively, on the other hand. These joint
7 obligations run not just to Brandt and other NELICO agents and NEC registered representatives, but
8 also to their customers, as such compliance obligations as a matter of law and public policy also are
9 intended for the protection of consumers purchasing insurance and investment products from
10 NELICO agents and NES registered representatives.

11 109. Moreover, applicable laws and regulations, including but not limited to FINRA's
12 Conduct Rules governing supervision, monitoring and correction of outside business activities and
13 related referrals by Registered Principals like Russon Financial and Russon, and registered
14 representatives working under their management and supervision, are incorporated into the
15 applicable contracts as a matter of law.

16 110. These express and implied contractual provisions carry with them the express and
17 implied obligations of the NELICO Managing Partner, the NES Registered Principal, and the
18 MetLife Enterprise Home Office Compliance Department to properly supervise, review, audit,
19 oversee and monitor the activities of Brandt with respect to his Outside Business Activities
20 regarding DLG and its premium financing program, that Brandt disclosed to the Managing Partner
21 and the MetLife Enterprise Home Office Compliance Department in his annual OBA Disclosure
22 Statements and annual Compliance Meetings. These compliance, supervisory, auditing,
23 investigatory, advisory and corrective obligations are and were owed not only to Brandt and other
24 NELICO agents and NES representatives, for their protection, but also to their customers, as such
25 obligations, grounded largely in law, are designed also to protect insurance and financial product
26 consumers. This is a joint obligation and duty arising as a matter of law and under the express and
27 implied terms of the contracts, including MetLife Enterprise compliance rules incorporate therein by
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1 reference or implication.

2 111. While Brandt had an express and implied contractual obligation to not market or sell
3 investment products as a NELICO agent unless they were disclosed in his OBA Disclosure
4 Statements, to his regional Compliance Officer and Managing Partner/Principal, unless such
5 products were vetted and approved by the Compliance Officer, Managing Partner/Principal, and the
6 MetLife Home Office Compliance Department, Cross-Defendants had a express and implied
7 contractual obligation -- that was reciprocal and jointly owed to both agents, registered
8 representatives and to their customers -- to undertake their compliance review, investigation,
9 advisory and corrective duties in a diligent, careful, prudent, and competent manner.

10 112. MetLife, NELICO and NES each failed to use reasonable care in performing their
11 supervisory, review, audit, corrective, and other oversight responsibilities under the MetLife
12 Enterprise's Compliance Program. Cross-Defendants' failure to do their jobs properly under the
13 MetLife Enterprise's Compliance Program was a substantial factor in causing plaintiff's alleged
14 damages and harm in the Underlying Actions, and it was foreseeable that Brandt would be damaged
15 by Cross-Defendants' breach of their compliance, supervisory, auditing, investigatory, advisory and
16 corrective duties, in that Brandt and Westbridge would not have ever become involved with DLG
17 products in the first place, and thereafter would have stopped marketing and selling them, if
18 MetLife, NELICO and NES had complied with their contractual obligations, as required under the
19 MetLife Enterprise's Compliance Program.

20 113. If Cross-Defendants had informed Brandt that the often-disclosed DLG promissory
21 notes he was selling with Russon's encouragement and approval were in fact unregistered securities,
22 as Cross-Defendants were required to and should have done, Brandt would never have become
23 embroiled in these lawsuits because he would never have sold any DLG contracts to anyone.
24 Moreover, Cross-Defendants' supervisory indifference or tacit authorization of Russon's negligence
25 (in not flagging the DLG promissory notes as unregistered securities) was a substantial causative
26 factor in the damages alleged by plaintiffs in the Underlying Actions, which have imposed liability
27 on Brandt and Westbridge, including costs and fees incurred in defending against plaintiffs' claims
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1 in the Underlying Actions.

2 114. Brandt fulfilled his contractual duties to disclose his DLG-related activities in his
3 OBA Disclosure Statements, participated in Annual Compliance Reviews, disclosed his activities to
4 Russon, the NELICO Managing Partner and NES Registered Representative, and to Devereaux, the
5 NES/NELICO local Compliance Officer. However, to the extent Brandt breached his express or
6 implied obligations with respect to his participation in DLG-related sales - whether pursuant to the
7 MetLife/DLG premium financing program or regarding DLG sales made to customers who did not
8 buy any NELICO or MetLife insurance products, despite Brandt's effort to "up-sale" them - then
9 Cross-Defendants nonetheless are responsible in proportion to their comparative fault for the
10 damage and liability foreseeably resulting from their breach of their joint contractual obligations
11 with respect to such compliance errors.

12 115. NELICO's and NES' duty (and MetLife, through its control of the compliance
13 oversight function of NELICO and NES) to indemnify Brandt and Westbridge is implied from the
14 obligation of the contracting parties under the Managing Partner Contract, the Registered Rep.
15 Agreement, and the Career Incentive Agreement, to perform their promises properly, because Cross-
16 Defendants' promise to perform includes an implied promise to perform properly. Accordingly, if
17 Brandt or Westbridge is required to pay any sums to any plaintiff in the Underlying Actions,
18 MetLife, NELICO and NES, as indemnitors, must reimburse Brandt and Westbridge, as
19 indemnitees, based on their proportionate share of responsibility.

20 116. Cross-complainants are incurring and have incurred attorney's fees, court costs,
21 investigative costs and other costs in connection with defending against plaintiffs' claims, the exact
22 amount of which is unknown at this time. When the same has been ascertained, Cross-
23 Complainants will seek leave of Court to amend this First Amended Cross-Complaint to set forth the
24 true nature and amount of said costs and expenses, or according to proof at trial. These defense fees
25 and costs are part of the foreseeable damages resulting from Cross-Defendants' negligence and other
26 misconduct alleged herein, for which Brandt and Westbridge also are entitled to indemnity.


DEMAND FOR JURY TRIAL

Cross-Complainants demand a trial by jury of all factual issues that are triable by a jury.

DATED: June 24, 2011

**LAW OFFICES OF
MARK ANCHOR ALBERT & ASSOCIATES**

By: _____


Mark Anchor Albert
Attorneys for Defendants and Cross-Complainants
Scott Brandt and Westbridge Financial & Insurance
Services, Inc.

Law Offices of Mark Anchor Albert
Los Angeles, California

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