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11 individually and on behalf of the Class and all similarly situated aggrieved employees

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Superior Court of California,
County of San Diego

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 Coordination Proceeding
11 Special Title (Rule 3.550)

12 **INFINITY ENERGY WAGE AND**
13 **HOURLY CASES**

14 Infinity Energy, Inc. v. Jeffrey

15 Bucio v. Infinity Energy, Inc.

16 Aznoe v. Infinity Energy, Inc.

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 5139

JCCP Trial Judge: Hon. Keri Katz
Dept: C-74

Superior Court Of California County Of
Riverside
NO. MVC1907343

Superior Court Of California County Of San
Diego
NO. 37-2020-00017124

Superior Court Of California County Of San
Diego
NO. 37-2020-00029660

FIRST AMENDED CLASS ACTION
CROSS-COMPLAINT IN CASE NO.
MVC1907343 FOR:

1. Expense Reimbursement (Lab. Code § 2802);
2. Unpaid Wages (Lab. Code §§ 201-202, 204 & 218);
3. Unpaid Minimum Wage (Lab. Code §§ 1194, 1194.2 & 1197);
4. Unpaid Overtime Wages (Lab. Code §§ 510 & 1194);
5. Waiting Time Penalties (Lab. Code §201, 202 & 203);
6. Inaccurate Itemized Wage Statements (Lab. Code § 226(a));
7. Violation of Bus. & Prof. Code §§ 17200 et

1 seq.; and
2 8. Declaratory Relief (Code Civ Proc. § 1060
3 & Cal. Const. Art. XV § 1)
4 9. Recovery of Penalties Under the California
5 Labor Code Private Attorneys General Act
6 of 2004 (PAGA)

7 **DEMAND FOR JURY TRIAL**

8 Cross-Complainants LUKAS JEFFERY, JOHN LYMAN, and LOUIS CISNEROS
9 (hereinafter “Plaintiffs”), by and through their attorneys of record, hereby allege on personal
10 knowledge as to themselves, and on information and belief as to all others, as follows:

11 **PARTY ALLEGATIONS**

12 1. Cross-Defendant INFINITY ENERGY, INC. (“INFINITY” or “Defendants”) is a
13 corporation organized and existing under the laws of the State of California which does business in
14 California as “INFINITY ENERGY.” INFINITY’s principal place of business in the State of
15 California is located at 3855 Atherton Road, Rocklin, California and INFINITY is licensed by the
16 Contractor’s State Licensing Board as a general and electrical contractor under license number
17 998627.

18 2. Cross-Complainant LUKAS JEFFERY “Jeffrey” is an adult resident of the State of
19 California. Jeffrey was hired by Defendants as an “Energy Advisor” and was employed by
20 Defendants during the four-year period preceding the filing of the Cross-Complaint in Riverside
21 County under Home Improvement Salesperson license number 99536 SP issued by the Contractor’s
22 State Licensing Board.

23 3. Cross-Complainant JOHN LYMAN “Lyman” is an adult resident of the State of
24 California. Lyman was hired by Defendants as an “Area Manager” and was employed by
25 Defendants during the four-year period preceding the filing of the Cross-Complaint in this action
26 in San Diego County under Home Improvement Salesperson license number 108217 SP issued by
27 the Contractor’s State Licensing Board.

28 4. Cross-Complainant LOUIS CISNEROS “Cisneros” is an adult resident of the State
of California. Cisneros was hired by Defendants as an “Energy Specialist,” and later as an “Energy

1 Advisor” and was employed by Defendants during the four-year period preceding the filing of the
2 Cross-Complaint in this action in San Diego County under Home Improvement Salesperson license
3 number 121429 SP issued by the Contractor’s State Licensing Board.

4 5. This action is brought to seek remedies from Defendants for certain labor code
5 violations that were committed by Defendants both during the time that INFINITY employed
6 Plaintiffs and the Class Members (as defined below) and the four year period preceding the date of
7 the Cross-Complaint until the date of Judgment.

8 6. Each Defendants, including those named as Roes 1 through 50, actively and directly
9 participated in the unlawful and unfair business practices as alleged in this Complaint.

10 7. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of Defendants sued herein as ROES 1 through 50, inclusive, are currently unknown to
12 Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
13 474. Plaintiffs are informed and believe and thereon allege that each Defendants named herein,
14 including ROES 1 through 50, is legally responsible for in some manner for the unlawful acts
15 alleged herein, acted in all respects pertinent to this action as the joint employer of Plaintiffs and
16 the Class, an agent of the other Defendants, carried out a joint scheme, business plan or policy in
17 all respects pertinent hereto, and the acts of each Defendants are legally attributable to the other
18 Defendants, including ROES 1 through 50.

19 8. Plaintiffs are informed, believe and thereon allege that each of the Defendants is the
20 agent, joint venture, managing agent, alter ego and/or employee of each of the remaining
21 Defendants and in doing the things hereinafter alleged, each was acting within the course and scope
22 of said agency, employment and/or joint venture with the advance knowledge, acquiescence or
23 subsequent ratification of each and every remaining Defendants in exercising control over the
24 wages, hours and working conditions of Plaintiffs and the Class, suffered or permitted Plaintiffs
25 and the Class to work, and otherwise engaged Plaintiffs and the Class to work.

26 9. Plaintiffs are informed, believes and thereon allege that each of ROES 1-10, is a
27 resident state unknown and the founder, officer and manager of Defendant INFINITY. As such,
28 each of ROES 1-10 was a person acting on behalf of INFINITY in connection with the creation,

1 management and enforcement of the wage, hours and working conditions described in this
2 Complaint, was responsible for supervising INFINITY's business and employment activities
3 occurring in the State of California and therefore, is personally liable for the obligations of
4 Defendants INFINITY arising under this Complaint pursuant, *inter alia*, to Labor Code Sections
5 226.8, 558.1, 1197.1, 2753 and 2698, et. seq. Each of ROES 1-10 is also the alleged alter ego of
6 Defendant INFINITY and each of the other Defendants.

7 **ALTER EGO ALLEGATIONS**

8 10. Plaintiffs are informed and believe and thereon allege that some of the individuals,
9 corporations, limited liability companies, and entities named as Defendants herein, including as
10 Defendants ROES 1 through 50, (hereinafter occasionally collectively referred to as the "ALTER
11 EGO DEFENDANTS"), and each of them, were at all times relevant the alter ego individuals,
12 corporations, limited liability companies or entities of each other Defendants by reason of the
13 following:

14 (a) Plaintiffs are informed and believe and thereon allege that said individual
15 Defendants, at all times herein mentioned, dominated, influenced and controlled each of the
16 ALTER EGO DEFENDANTS and the officers and managers thereof as well as the business,
17 property, and affairs of each of said individuals, corporations, limited liability companies or entities
18 or entities.

19 (b) Plaintiffs are informed and believe and thereon allege that, at all times herein
20 mentioned, there existed and now exists a unity of interest and ownership between said individual
21 Defendants and each of the ALTER EGO DEFENDANTS; the individuality and separateness of
22 said individual Defendants and each of the ALTER EGO DEFENDANTS have ceased.

23 (c) Plaintiffs are informed and believe and thereon allege that, at all times since
24 the incorporation of each, each ALTER EGO DEFENDANTS has been and now is a mere shell
25 and naked framework which said individual Defendants used as a conduit for the conduct of their
26 personal business, property and affairs.

27 (d) Plaintiffs are informed and believe and thereon allege that, at all times herein
28 mentioned, each of the ALTER EGO DEFENDANTS was organized by said individual Defendants

1 as a device to avoid individual liability and for the purpose of substituting financially irresponsible
2 employer corporations, limited liability companies or entities in the place and stead of said
3 individual Defendants, limited liability companies or entities and each of them, and accordingly,
4 each ALTER EGO DEFENDANT was formed with capitalization totally inadequate for the
5 business in which said corporation, limited liability company or entity was engaged.

6 (e) Plaintiffs are informed and believe and thereon allege that each Defendant
7 and/or ALTER EGO DEFENDANT is insolvent and that profits of said ALTER EGO
8 DEFENDANTS were taken by said ALTER EGO DEFENDANTS.

9 (f) By virtue of the foregoing, adherence to the fiction of the separate corporate
10 existence of each of the ALTER EGO DEFENDANTS would, under the circumstances, sanction a
11 fraud and promote injustice in that Plaintiffs would be unable to realize upon any judgment in their
12 favor.

13 11. Plaintiffs are informed and believe and thereon allege that, at all times relevant
14 hereto, the individual Defendants and the ALTER EGO DEFENDANTS acted for each other in
15 connection with the conduct hereinafter alleged and that each of them performed the acts
16 complained of herein or breached the duties herein complained of as agents of each other and each
17 is therefore fully liable for the acts of the other.

18 **JURISDICTION & VENUE**

19 12. This Court has jurisdiction over this controversy under Article 6, § 10 of the
20 California Constitution and California Code of Civil Procedure § 410.10 and various provisions of
21 the Labor Code as alleged herein. Venue as to each Defendants is proper in this judicial district,
22 pursuant to Code of Civil Procedure § 395(a) and Labor Code § 925 in that Plaintiffs and a
23 substantial number of members of the class on whose behalf this action is brought work or worked
24 in Defendants' facilities in this judicial district and otherwise performed employment services in
25 this judicial district, a substantial part of the events or omissions giving rise to the claims stated
26 herein arose within this judicial district and and/or each Defendants either is found, maintains
27 offices, transacts business, and/or has an agent therein.

28 //

1 13. Plaintiffs are informed and believe that the amount in controversy as to the Plaintiffs
2 and each class member's individual claims does not exceed \$75,000.

3 **GENERAL ALLEGATIONS**

4 14. This is an action for relief from Defendants' unlawful treatment of their California
5 door-to-door sales solar sales and lead generation employees (hereafter "Energy Advisors" and
6 "Energy Specialists"), as further alleged herein.

7 15. Defendants (including ROES 1 through 50) are solar contractors in the State of
8 California who sell and install residential solar systems to California residents. As such, Defendants
9 are operating as a "contractor" as defined by Business and Professions Code 7150.1 and more
10 specifically, a "home improvement contractor" as defined in Business and Professions Code
11 7150.1.

12 16. To facilitate the sales of solar systems, Defendants employ numerous California
13 residents as "Energy Advisors" and "Energy Specialists" to conduct door to door sales and lead
14 generation in counties throughout the State of California. Energy Advisors are paid on a
15 commission only basis, while Energy Specialists are paid hourly wages plus bonuses and/or
16 commissions on generated sales leads. Each person employed by Defendants as an "Energy
17 Advisor" was required by California law to obtain a "home improvement salesperson" license
18 issued by the Contractor's State Licensing Board as defined by Business and Professions Code
19 7150.1 (the "HIS License").

20 17. During the four-year period preceding the filing of the Complaint in this action,
21 Defendants, *inter alia*, (i) failed to pay minimum and overtime wages for mandatory initial training,
22 mandatory weekly recurring training and meetings, and travel to and attendance at a mandatory bi-
23 annual sales conference called the "Solar Combine," (ii) failed to reimburse for business expenses
24 for personal cell phone, personal tablet, data plans, personal vehicle usage, and travel expenses, (iii)
25 failed to provide accurate, itemized wage statements, (iv) failed to timely pay all lawfully earned
26 compensation, and (v) failed to pay all lawfully earned compensation at termination.

27 18. Plaintiffs and the Class were required to and did execute written agreements (the
28 "Employment Agreements") upon hiring which outlined their duties and obligations to INFINITY.

1 A significant portion of these Employment Agreements signed by the Class Members provided that
2 Energy Advisors were independent contractors. However, these Energy Advisors were actually
3 misclassified as independent contractors for all purposes. Upon information and belief, INFINITY
4 did not provide these misclassified employees with worker's compensation insurance,
5 unemployment insurance or afford these workers any of the rights or protections afforded to
6 employees under the California Labor Code, as alleged herein.

7 19. As stated above, Defendants subjected a significant portion of the class to the above
8 alleged labor code violations based on Defendants' intentional misclassification of those Class
9 Members, like Plaintiff Lukas Jeffery, as independent contractors. However, those misclassified
10 members of the putative class were not properly classified as independent contractors because:

11 (a) California Labor Code §2750.5 imposes a presumption that a worker
12 performing services for which a license is required pursuant to the Contractor's State License Law,
13 or who is performing such services for a person who is required to obtain such a license, is an
14 employee rather than an independent contractor.

15 (b) California Unemployment Insurance Code § 621.5 and § 13004.5 defines as
16 a statutory employee as any individual who is an employee, pursuant to § 2750.5 of the Labor Code,
17 of a person who holds or is required to obtain a valid California contractor's license.

18 20. In addition to being statutory employees under California Labor Code § 2750.5 and
19 California Unemployment Insurance Code §§ 621.5 and 13004.5, Plaintiff Jeffery and the Class
20 Members were not properly classified as independent contractors because Defendants cannot
21 establish Plaintiff and the Class Members were independent contractors pursuant to the standards
22 set forth in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341,
23 *Assembly Bill 5, Labor Code Sections 621, 2750.3, 3351, or Dynamex Operations West, Inc. v.*
24 *Superior Court of Los Angeles*, 4 Cal.5th 903, 916-9170F0F¹. Plaintiff Jeffery and the Class

25 ¹ Pursuant to the California Supreme Court's recent holding in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, 4
26 Cal.5th 903, 916-917, Defendants have the burden of proving that Plaintiffs and the Infinity Class Members were independent
27 contractors, not intended to be included in the applicable Wage Order coverage, by proving each of the following three factors: (a)
28 Plaintiffs and the Infinity Class Members were free from control and direction of Defendants in connection with the performance of
the work, both under contract for such work, and in fact; (b) Plaintiffs and the INFINITY Class Members performed work outside
the usual course of Defendants' business; and (c) Plaintiffs and the INFINITY Class Members are/were customarily engaged in an
independently established trade, occupation or business of the same nature as the work performed (commonly referred to as the
"ABC Standard"). Absent all three factors, a worker hired by an entity is presumed an employee and protected under the applicable
Wage Orders, under California law.

1 Members were therefore misclassified as independent contractors, because:

2 (a) These employees, both contractually and actually, were not free from the
3 control and direction of Defendants in connection with performance of the sales services because,
4 *inter alia*, Defendants established and approved prices sold to customers, established territories and
5 sales quotas, required mandatory training and meetings, required Energy Advisors to report in from
6 the field, required Energy Advisors to train new hires, required purchasing and wearing of uniforms,
7 required Energy Advisors to perform work exclusively for Defendants, disciplined Energy Advisors
8 for not meeting sales quotas or complying with other company policies, and required Energy
9 Advisors to utilize Defendants' lead generation and bidding software (Sales Rabbit and Canvass);

10 (b) Plaintiff Jeffery and the Class Members did not perform work that was
11 outside the usual course of the Defendants' work because they sold residential solar systems for
12 installation by Defendants or their affiliates;

13 (c) Plaintiff Jeffery and the Class Members were not involved in an
14 independently established business because they were required to provide exclusive service to
15 Defendants, and were subject to termination for referring leads to other solar companies;

16 (d) Although Defendants treated Plaintiff Jeffery and the Class Members as
17 independent contractors for all purposes, there were numerous cumulative factors indicating that
18 the actual relationship was not a bona fide independent contractor relationship because, *inter alia*,
19 Plaintiff and the Class Members (i) had no substantial investment other than personal services in
20 the business, (ii) were precluded from holding themselves to be in business independently, (iii)
21 were not bargaining for a contract to complete a specific project for compensation by project and
22 had no ability to negotiate the amount of compensation to be paid for their services, (iv) did not
23 control the time and place where the work was performed because they were subject to mandatory
24 sales and training meetings and were required to check in from the field, (v) did not create or supply
25 the sales and marketing materials or the software used to complete sales; (vi) did not hire their own
26 employees to assist of facilitate sales, (vii) performed work that is solely in the course of the
27 Defendants' work, (viii) performed work that required no particular skill independent of the

1 business of Defendants; and (ix) the relationship was severable or terminable at will by Defendants.

2 21. Plaintiff is informed and believes that during all relevant times, Defendants
3 improperly classified Plaintiff and the Class as exempt employees to avoid paying minimum wage,
4 lawful overtime and paid rest periods for non-exempt worktime, such as mandatory training,
5 meetings” and other non-sales tasks for which lawful minimum wage, overtime and paid rest
6 periods were not provided and to avoid paying expense reimbursement.

7 **CLASS ACTION ALLEGATIONS**

8 22. This action may be properly maintained as a class action pursuant to § 382 of the
9 Code of Civil Procedure. The plaintiff classes are sufficiently numerous, since they are estimated
10 to include hundreds of persons throughout California, the joinder of whom in one action is
11 impracticable, and the disposition of whose claims in a class action will provide substantial benefits
12 to both the parties and the Court.

13 23. **Class Definition:** Without prejudice to later revision, the Classes which Plaintiffs
14 seek to represent and certify are composed of:

15 The **INFINITY Class:** All persons currently or formerly employed in the State of
16 California as a door-to-door sales and lead generation employees in the position of
17 “Energy Advisors” and “Energy Specialists” by Defendants and any of its
18 subsidiaries and predecessors (the “INFINITY Class”) within the four years prior
to the filing of this action through the time of trial (the “INFINITY Class Period”);

19 The **INFINITY Lead Generation Sub-Class:** All members of the INFINITY
20 Class employed as non-exempt door-to-door employees in the position of “Energy
21 Specialists” by Defendants and any of its subsidiaries and predecessors generating
sales leads and setting appointments for door-to-door salespersons and who were
not engaged in sales (the “INFINITY Lead Generation Sub-Class”); and

22 The **INFINITY Misclassified Sub-Class:** All members of the INFINITY Class
23 who worked as door-to-door solar sales employees in the position of “Energy
24 Advisor” who were classified by INFINITY as independent contractors (the
“INFINITY Misclassified Sub-Class”).

25 24. **Ascertainable Class:** The INFINITY Class, the INFINITY Lead Generation Sub-
26 Class, and the Infinity Misclassified Sub-Class are hereinafter collectively referred to as the
27 “Classes.” Each of the INFINITY Classes are ascertainable in that each member can be identified
28 using information contained in Defendants’ records.

1 25. **Common Questions of Law or Fact Predominate:** There is a well-defined
2 community of interest in the questions of law and fact involved affecting the parties to be
3 represented for each class. The questions of law and fact common to each of the INFINITY Classes
4 predominate over questions which may affect individual members of each of the INFINITY
5 Classes. These questions of law and fact include, but are not limited to, the following:

6 (a) Whether Defendants paid Plaintiffs and the INFINITY Class Members all
7 earned wages;

8 (b) Whether Defendants required Plaintiffs and the INFINITY Class Members
9 to pay necessary expenses or losses incurred by them in direct consequence to the discharge of their
10 duties while employed by Defendants, in violation of § 2802;

11 (c) Whether Defendants failed to pay Plaintiffs and the INFINITY Class
12 Members for all worked hours at the applicable minimum rates in violation of §§ 1194, 1194.2,
13 1197 & 510;

14 (d) Whether Defendants failed to promptly pay Plaintiffs and the INFINITY
15 Class Members all wages owed within 72 hours of the date they quit or were terminated in violation
16 of Labor Code §§ 201, 202, and 203;

17 (e) Whether Defendants failed to provide Plaintiffs and the INFINITY Class
18 Members with accurate itemized wage statements, in violation of § 226(a);

19 (f) Whether Defendants coerced Plaintiffs and the INFINITY Class Members
20 to purchase uniforms and other products from Defendants;

21 (g) Whether Defendants misclassified Plaintiffs and the INFINITY Class
22 Members as independent contractors for all purposes, and thereby deprived them of the benefits
23 and protections afforded employees under California law;

24 (h) Whether Defendants should be ordered to pay Plaintiffs and the INFINITY
25 Class Members compensatory damages equal to the fair market value of services rendered by each
26 Plaintiff and the INFINITY Class Members for the benefit of Defendants and/or any pro rata share
27 of the Retention Advance, based on principles of quantum meruit;

28 (i) Whether Defendants violated §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221,

1 226(a), 432.5, 1194, 1194.2, 1197, & 2802 of the California Labor Code, and § 17200 of the
2 California Bus. & Prof. Code and the applicable IWC Orders, as alleged herein;

3 (j) Whether amounts paid to Plaintiffs and the Class as “advances” were
4 actually earned wages not subject to forfeiture;

5 (k) Whether Defendants should be ordered to disgorge all monies unlawfully
6 and unfairly received from Plaintiffs and Class Members;

7 (l) Whether Defendants should be ordered to take corrective actions and provide
8 notice regarding its violations of California’s Labor Code.

9 26. **Numerosity:** Each of the INFINITY Classes are so numerous that the individual
10 joinder of all members is impractical under the circumstances of this case. While the exact number
11 of members of each of the INFINITY Classes are unknown to Plaintiffs at this time, Plaintiffs are
12 informed and believe each of the INFINITY Classes consists of hundreds of individuals. Individual
13 joinder of each member of the INFINITY Classes is also impracticable because the individual
14 members are geographically disbursed.

15 27. **Typicality:** Plaintiffs’ and each of the INFINITY Classes’ members’ claims arise
16 from and were caused by Defendants’ wrongful conduct. Plaintiffs are asserting claims that are
17 typical of the claims of each member of the INFINITY Classes. Plaintiffs are like all other members
18 of the INFINITY Classes because Plaintiffs have suffered the same harm as those suffered by the
19 INFINITY Classes. Since Plaintiffs’ claims and the claims of each member of the INFINITY
20 Classes all derive from a common nucleus of operative facts, Plaintiffs are asserting claims that are
21 typical of the claims of the entirety of each of the INFINITY Classes.

22 28. **Adequacy:** Plaintiffs will fairly and adequately represent and protect the interests
23 of each of the INFINITY Classes in that they has no disabling conflicts of interest that would be
24 antagonistic to those of the other members of the INFINITY Classes. Plaintiffs seek no relief that
25 is antagonistic or adverse to the members of the INFINITY Classes, and the infringement of the
26 rights and the damages he has suffered are typical of all other members of the INFINITY Classes
27 so that he will adequately represent the INFINITY Classes. Plaintiffs have retained competent
28 counsel experienced in class action litigation to further ensure such protection and intends to

1 prosecute this action vigorously.

2 29. **Superiority:** The nature of this action and the nature of laws available to Plaintiffs
3 and the INFINITY Classes make the use of the class action format a particularly efficient and
4 appropriate procedure to afford relief to Plaintiffs and Classes for the wrongs alleged because:

5 (a) The individual damages involved, while not insubstantial, are such that
6 individual actions or other individual remedies are impracticable and litigating individual actions
7 would be too costly;

8 (b) This case involves multiple large businesses and a large number of individual
9 residents with many relatively small claims with common issues of law and fact;

10 (c) If each member of the INFINITY Classes were required to file an individual
11 lawsuit, the Defendants would necessarily gain an unconscionable advantage since they would be
12 able to exploit and overwhelm the limited resources of each individual member of the INFINITY
13 Classes with their vastly superior financial and legal resources;

14 (d) The costs of individual suits could unreasonably consume the amounts that
15 would be recovered;

16 (e) Proof of a common business practice or factual pattern which Plaintiffs
17 experienced is representative of that experienced by the INFINITY Classes and will establish the
18 right of each of the members to recover on the causes of action alleged; and

19 (f) Individual actions would create a risk of inconsistent results and would be
20 unnecessary and duplicative of this litigation.

21 30. Notice to the members of the INFINITY Classes may be made by e-mail or first-
22 class mail addressed to all persons who have been individually identified by Defendants through
23 access to Defendants' records. Alternatively, if Defendants cannot produce a list of Classes'
24 members' email addresses or names and addresses, the members of the INFINITY Classes may be
25 notified by publication in the appropriate media outlets, and by posting notices in Defendants'
26 places of business in the State of California.

27 31. Plaintiffs and the INFINITY Classes have all similarly suffered irreparable harm
28 and damages as a result of Defendants' unlawful and wrongful conduct. This action will provide

1 substantial benefits to Plaintiffs and Classes and the public since, absent this action, Plaintiffs and
2 the members of the INFINITY Classes will continue to suffer losses, thereby allowing Defendants'
3 violations of law to proceed without remedy and allowing Defendants to retain the proceeds of their
4 unlawful practices.

5 **FIRST CAUSE OF ACTION**
6 **(Violation of Labor Code § 2802 -Expense Reimbursement)**
7 **Plaintiffs and the INFINITY Class**
8 **As Against All Defendants and ROES 1-50**

9 32. Plaintiffs hereby incorporate all previous paragraphs by this reference.

10 33. Labor Code § 2802(a) provides, that “[a]n employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties...”

13 34. During the INFINITY Class Period, Defendants additionally failed to indemnify
14 from and reimburse Plaintiffs and the INFINITY Class Members for all business expenses incurred
15 by them, including uniforms, personal cellular phones and tablets, data plans, and personal vehicle
16 usage, in violation of this section.

17 35. During the INFINITY Class Period, Plaintiffs and the INFINITY Class Members
18 were required to connect remotely to INFINITY’s server through lead generation and sales software
19 programs. If Plaintiffs and the INFINITY Class Members were unable to connect to INFINITY’s
20 server through the sales platforms, they were unable to complete the work order process for leads
21 generated and sales made while out in the field. The software platforms were only accessible
22 through use of internet enabled tablets or smartphones. As a result, Plaintiffs and the INFINITY
23 Class Members were required to purchase tablets, smartphones, and/or other similar devices, and
24 maintain data plans, as necessary to complete work orders in direct consequence to discharge of
25 their duties. INFINITY failed to indemnify from and reimburse Plaintiffs and the INFINITY Class
26 Members for same, in violation of this section.

27 36. During the INFINITY Class Period, Plaintiffs and the INFINITY Class Members
28 were required to use their personal vehicles to travel to and around assigned territories without
reimbursement for those personal vehicle expenses incurred in the discharge of their duties.

37. During the INFINITY Class Period, Defendants failed to pay expenses incurred by the Misclassified Sub-Class including but not limited to, Defendants' lawful portion of state income tax contributions, state unemployment insurance contributions, and contributions to the state disability fund. As a result of Defendants' misclassification of the Misclassified Sub-Class Members as independent contractors, the Misclassified Sub-Class Members were required to pay 100% of all payroll taxes incurred in direct consequence to the discharge of their duties while employed by Defendants during the INFINITY Class Period.

38. The acts, omissions, and practices of Defendants, INFINITY, as alleged herein constituted violations of Labor Code § 2802.

39. Pursuant to § 2802, subd. (c), as representatives of the INFINITY Class, Plaintiffs seek to recover all necessary expenditures or losses incurred by Plaintiffs and the INFINITY Class Members, including all reasonable costs, attorneys' fees and interest accruing from the date of expenditure or loss.

SECOND CAUSE OF ACTION
(Violation of Labor Code §§ 201, 202, 204 & 218 – Unpaid Wages)
Plaintiffs and the INFINITY Class
As Against All Defendants and ROES 1-50

40. Plaintiffs hereby incorporate all previous paragraphs by this reference.

41. California has a strong public policy that favors full and prompt payment of wages due an employee because “[i]t has long been recognized that wages are not ordinary debts, that they may be preferred over other claims, and that, because of the economic position of the average worker and, in particular, his dependence on wages for the necessities of life for himself and his family, it is essential to the public welfare that he receive his pay when it is due.” (*Kerr’s Catering Service v. Department of Industrial Relations* (1962) 57 Cal.2d 319, 326 (internal quotes omitted)).

42. Labor Code §§ 201, 202, 204, and 218 require that an employer pay all wages earned and due to an employee promptly when earned, but not less than semi-monthly.

43. If the employer requires its employees to wear uniforms at work, the employer must furnish the uniform *and pay for its upkeep*. These payments are “wages.” (8 Cal. C. Regs. § 11070).

1 44. While Plaintiffs and the INFINITY Class Members were employed by Defendants
2 during the INFINITY Class Period, Defendants engaged in a pattern of practice of withholding
3 payment of Plaintiffs' and the INFINITY Class Members' earned commissions at the time they
4 were earned (or otherwise capable of being calculated), and failing to pay these commissions in the
5 legally mandated period.

6 45. While Plaintiffs and the INFINITY Class Members were employed by Defendants
7 during the INFINITY Class Period, Defendants engaged in a pattern of practice of manipulating
8 the commissions and applying unlawful deductions to deny Plaintiffs and the Class full
9 commissions earned.

10 46. Defendants also failed to timely pay Plaintiffs and the INFINITY Class promptly
11 for all earned wages withheld to buy uniforms and other expenses for the benefit of INFINITY
12 customers withheld from their pay.

13 47. The acts, omissions, and practices of Defendants, INFINITY, as alleged herein
14 constituted violations of Labor Code §§ 201, 202, 204 and 218.

15 48. Pursuant to § 201, 202, 204 and 218, as representatives of the INFINITY Class,
16 Plaintiffs seek to recover all earned and unpaid wages, including all penalties, reasonable costs,
17 attorneys' fees and interest accruing from the date such wages were earned.

18 **THIRD CAUSE OF ACTION**
19 **(Violation of Labor Code §§ 1194, 1194.2 & 1197 – Unpaid Minimum Wage)**
20 **Plaintiffs and the INFINITY Class**
 Against All Defendants and ROES 1-50

21 49. Plaintiffs hereby incorporate all previous paragraph by this reference.

22 50. Labor Code § 1197 requires an employer to pay an employee no less than the
23 minimum wage, as established by the Industrial Welfare Commission, for each hour worked.

24 51. Labor Code § 1194 entitles an employee receiving less than the minimum wage to
25 recover, in a civil action, the unpaid balance of minimum wages owing, plus interest thereon,
26 reasonable attorney's fees, and costs of suit.

27 52. Labor Code § 1194.2 entitles an employee receiving less than the minimum wage to
28 recover liquidated damages in an amount equal to the unpaid minimum wages and interest thereon.

1 53. During the INFINITY Class Period, Plaintiffs and INFINITY Class Members were
2 regularly required to complete non-exempt work, such as initial training and to attend mandatory
3 training and work-related activities, outside of, and in addition to, regular sales work. Plaintiffs and
4 INFINITY Class Members consistently attended mandatory employee training meetings and
5 mandatory training sessions, both in-person and on-line. These non-sales tasks are not exempt work
6 and Plaintiffs and the INFINITY Class were not paid minimum wages for such work.

7 54. All of the foregoing caused Plaintiffs and the INFINITY Class to be compensated at
8 a rate that is less than the applicable minimum wage rate in violation of California law. As a result,
9 Plaintiffs, as representatives of the INFINITY Class, seek to recover all earned and unpaid
10 minimum wage, rest period premiums, including all liquidated damages, reasonable costs,
11 penalties, attorneys' fees and interest accruing from the date such wages were earned.

12 **FOURTH CAUSE OF ACTION**
13 **(Violation of Labor Code §§ 510 & 1194 – Unpaid Overtime)**
14 **Plaintiffs and the INFINITY Class**
 Against All Defendants and ROES 1-50

15 55. Plaintiffs hereby incorporate all previous paragraph by this reference.

16 56. Labor Code § 510 requires an employer to pay overtime compensation to all
17 employees, unless they are made exempt from the overtime pay requirements by the Legislature or
18 the IWC.

19 57. Plaintiffs and INFINITY Class Members have not qualified for any exemption from
20 the requirements of Labor Code § 510 at any time relevant to this action. Therefore, Plaintiffs and
21 the INFINITY Class Members have, at all times relevant to this action, been entitled to be paid
22 overtime compensation for all non-exempt overtime hours worked.

23 58. Labor Code § 1194 entitles an employee, receiving less than the legally required
24 overtime compensation rate for overtime worked, to recover, in a civil action, the unpaid balance
25 of overtime compensation owing, plus interest thereon, reasonable attorney's fees, and costs of suit.

26 59. During the INFINITY Class Period, Plaintiffs and INFINITY Class Members
27 regularly required, suffered, or permitted to work more than eight hours per day and/or forty hours
28 a week, and to work on all seven days of the workweek, including hours in excess of eight hours

1 on the seventh day of the workweek without receiving overtime compensation for non-exempt as
2 required by Labor Code § 510.

3 60. All of the foregoing caused Plaintiffs and the INFINITY Class to be compensated at
4 a rate that is less than the applicable overtime rate in violation of California law. As a result,
5 Plaintiffs, as representatives of the INFINITY Class, seek to recover all earned and unpaid
6 overtime, including all liquidated damages, reasonable costs, penalties, attorneys' fees and interest
7 accruing from the date such wages were earned.

8 **FIFTH CAUSE OF ACTION**
9 **(Violation of Labor Code §§ 201, 202, 203 & 204 – Waiting Time Penalties)**
10 **Plaintiffs and the INFINITY Waiting Time Sub-Class**
11 **Against All Defendants and ROES 1-50**

12 61. Plaintiffs hereby incorporate all previous paragraphs by this reference.

13 62. Labor Code § 201 requires an employer who discharges an employee to pay all
14 compensation due and owing to that employee immediately upon discharge.

15 63. Labor Code § 202 requires an employer to pay all compensation due and owing to
16 an employee who quits within 72 hours of that employee quitting, unless the employee provides at
17 least 72 hours' notice of quitting, in which case all compensation is due at the end of the employee's
18 final day of work.

19 64. Labor Code § 203 provides that if an employer willfully fails to pay compensation
20 promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting time
21 penalties in the form of continued compensation of up to 30 workdays.

22 65. As asserted above, during the INFINITY Class Period, Defendants engaged in a
23 pattern of practice of willfully failing to pay Plaintiffs and the INFINITY Class Members all
24 commissions, wages, expenses, and rest period premiums earned by them upon termination of
25 employment.

26 66. As a result, Plaintiffs, as the representatives of the INFINITY Class, seek to recover
27 statutory penalties pursuant to Labor Code §§ 201-203 attorneys' fees and interest accruing from
28 the date such wages were earned.

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SIXTH CAUSE OF ACTION
(Violation of Labor Code § 226(a) – Inaccurate Itemized Wage Statements)
Plaintiffs and the INFINITY Wage Statement Sub-Class
As Against All Defendants AND ROES 1-50

67. Plaintiffs hereby incorporate all previous paragraphs by this reference.

68. Labor Code § 226(a) requires that employers furnish accurate itemized wage statements showing no less than: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

69. During the INFINITY Class Period and especially during such times that Plaintiffs and the Class engaged in non-exempt work activities, the wage statements provided by Defendants to Plaintiffs and the INFINITY Class Members failed to comply with the requirements of § 226(a) by failing to provide all the information required by this section.

70. Plaintiffs and the INFINITY Class Members have therefore suffered an injury as a result of Defendants' knowing and intentional violation of § 226(a).

71. Plaintiffs, as representatives of the INFINITY Class, seek to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100.00 for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000.00, attorney fees, and costs of suit under Labor Code §226(e). Plaintiffs also seek injunctive relief in the form of an order enjoining Defendants from further violations of the law.

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SEVENTH CAUSE OF ACTION
(Violation of California's Unfair Competition Law)
Plaintiffs and the INFINITY Class
As Against All Defendants and ROES 1-50

72. Plaintiffs hereby incorporate all previous paragraphs by this reference.

73. The acts, omissions, and practices of Defendants alleged herein constituted unlawful and unfair business acts and practices within the meaning of § 17200 et seq. of the California Business & Professions Code.

74. During the INFINITY Class Period, Defendants engaged in “unlawful” business acts or practices in that Defendants violated, *inter alia*, all prior allegations in this complaint, including §§ 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221, 225, 225.5, 226, 226.2, 226.3, 226.8(a), 432.5, 510, 558, 558.1, 621, 1021, 1021.5, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2750.3, 2751, 2753, 2800, 2802 & 3351 of the California Labor Code, also 29 C.F.R. § 541.705, 29 C.F.R. § 785.27, Unemployment Insurance Code §§ 976, 986, 987, 1110, and 13020, and by classifying the INFINITY Misclassification Sub-Class Members as independent contractors, when the INFINITY Misclassification Sub-Class Members did not qualify as independent contractors under California law, and withholding earned but unpaid wages earned during non-exempt work time.

75. Defendants engaged in “unfair” business acts or practices in that the harm caused by Defendants’ actions violates the policy or spirit of laws, because its effects are comparable to a violation of the law, and it provides Defendants with an unfair competitive advantage over those businesses that abide by the law. Defendants also engaged in “unfair” business acts or practices in that the harm caused by Defendants’ misconduct outweighs its benefits, is immoral, unethical, oppressive, unscrupulous, or substantially injurious to the public.

76. Pursuant to § 17203 of the Business & Professions Code, as representatives of the INFINITY Class, Plaintiffs seek an order of the Court awarding Plaintiffs and INFINITY Class full restitution of all monies wrongfully acquired by Defendants by their unlawful and unfair conduct, including but not limited to unpaid wages and business expenses paid or incurred by Plaintiffs and the INFINITY Class members, so as to restore all monies to Plaintiffs and INFINITY Class

1 members that were unlawfully acquired and obtained by Defendants' unlawful and unfair conduct.

2 77. Pursuant to § 17203 of the Business & Professions Code, as representatives of the
3 INFINITY Class, Plaintiffs seek an order of the Court for equitable or injunctive relief requiring
4 Defendants to take corrective actions and provide notice regarding violations of California's Labor
5 Code.

6 78. Plaintiffs also seek attorneys' fees and interest accruing from the date such wages
7 were wrongfully withheld by Defendants.

8 **EIGHTH CAUSE OF ACTION**
9 **(Code Civ Proc. § 1060 & Cal. Const. Art. XV § 1 - Declaratory Relief)**
10 **Plaintiffs and the INFINITY Class**
As Against All Defendants and ROES 1-50

11 79. Plaintiffs hereby incorporate all previous paragraphs by this reference.

12 80. An actual controversy has arisen and now exists between Plaintiffs and the
13 INFINITY Class, and Defendants. As described above, Plaintiffs contend that Defendants' policies,
14 practices, guidelines and/or procedures by which employees like Plaintiffs and the INFINITY Class
15 are compensated, reimbursed, and provided wage statements, is inconsistent and in violation of the
16 laws and regulations of the State of California. Plaintiffs seek that the Court declare that the
17 described policies of Defendants are unlawful.

18 81. Another actual controversy has arisen and now exists between Plaintiffs and the
19 Infinity Class, and Defendants. Plaintiffs contend that Defendants' policies, practices, guidelines
20 and/or other procedures by which employees are classified as independent contractors, and thus
21 compensated, reimbursed, and provided wage statements, is inconsistent and in violation of the
22 laws and regulations of the State of California. Plaintiffs seek that the Court declare that Plaintiff
23 Lukas Jeffery and the Misclassified Sub-Class were unlawfully classified as independent
24 contractors, and, are employees for all purposes.

25 82. Another actual controversy has arisen and now exists between Plaintiffs and the
26 INFINITY Class, and Defendants. Plaintiffs contend that certain provisions and clauses of
27 Plaintiff's and the INFINITY Class Members' Employment Agreements with INFINITY are void
28 and in violation of applicable California laws and regulations, including Labor Code §432.5.

1 Plaintiffs allege that at the time of hire, Defendants required as a condition of employment, that
2 Plaintiff Jeffery and the INFINITY Misclassified Sub-Class Members agree to unlawful contractual
3 provisions including, but not limited to, classification as independent contractors when it was
4 known to Infinity, its agents, managers, and officers that Plaintiff Lukas Jeffery and the INFINITY
5 Misclassified Sub-Class Members were not independent contractors, that willful misclassification
6 is prohibited under Labor Code § 226.8, and that Infinity's failure to withhold and pay payroll taxes,
7 including but not limited to state income tax contributions, state unemployment insurance
8 contributions, and contributions to the state disability fund is prohibited pursuant to Unemployment
9 Insurance Code §§ 976, 986, 987, 1110, and 13020. Plaintiffs seek that the Court declare that these
10 provisions are illegal, void, voidable, unconscionable and/or unenforceable.

11 83. A judicial determination of these issues and of the respective duties of Plaintiffs, the
12 INFINITY Class, and Defendants, is necessary and appropriate at this time under the circumstances.

13 84. Plaintiffs also seek an order of the Court for equitable or injunctive relief requiring
14 Defendants to take corrective actions and provide notice regarding violations of California's Labor
15 Code.

16 **NINTH CAUSE OF ACTION**
17 **(Recovery of Penalties Under the Labor Code Private Attorneys General Act of 2004)**
18 **Plaintiffs and The Aggrieved Employees**
As Against All Defendants and ROES 1-50

19 85. Plaintiffs hereby incorporate all previous paragraphs by this reference.

20 86. Each Plaintiff brings this representative claim on behalf of themselves and all other
21 aggrieved employees of Defendants under the Labor Code Private Attorneys General Act of 2004,
22 as codified in Labor Code §§ 2698, et seq. ("PAGA") to recover unpaid wages, expenses, and
23 statutory penalties.

24 87. Defendants are "persons" as contemplated within the meaning of subd. (b) of § 2699
25 of the Labor Code. Plaintiffs are "aggrieved employees" of Defendants as contemplated within the
26 meaning of subd. (c) of § 2699 of the Labor Code.

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1 **A. Infinity Employed License Required Workers Without a Valid State**
2 **Contractors License in Violation of Labor Code § 1021.5**

3 88. Labor Code § 1021.5 states that “Any person who holds a valid state contractor's
4 license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business
5 and Professions Code, and who willingly and knowingly enters into a contract with any person to
6 perform services for which a license is required as an independent contractor, and that person does
7 not meet the burden of proof of independent contractor status pursuant to Section 2750.5 or hold a
8 valid state contractor's license, shall be subject to a civil penalty in the amount of two hundred
9 dollars (\$200) per person so contracted with for each day of the contract. The civil penalties
10 provided for by this section are in addition to any other penalty provided by law.

11 89. On information and belief, while Plaintiffs were employed by Infinity, Infinity
12 employed workers that did not hold the required HIS Licenses to perform sales of solar systems.

13 **B. Infinity Willfully Misclassified Individuals as Independent Contractors in**
14 **Violation of Labor Code §§ 226.8(a) and Unemployment Insurance Code §650**

15 90. Labor Code § 226.8(a)(1) states that “It is unlawful for any person or employer to
16 engage in...willful misclassification of an individual as an independent contractor.”

17 91. § 226.8 provides for a penalty of between \$5,000 and \$15,000 for each “individual”
18 who has been willfully misclassified as an independent contractor. (See § 226.8(b)). These penalties
19 increase to between \$10,000 and \$25,000 per individual if the court determines the employer has
20 “engaged in or is engaging in a pattern or practice of” willfully misclassifying its employees. (*Noe*
21 *v. Superior Court of Los Angeles*, et al. 2015 DJDAR 5997).

22 92. California Unemployment Insurance Code §§ 621.5 and 13004.5 define as a
23 statutory employee as any individual who is an employee, pursuant to Section 2750.5 of the Labor
24 Code, of a person who holds or is required to obtain a valid state contractor's license. In addition to
25 being statutory employees under California Labor Code § 2750.5, and California Unemployment
26 Insurance Code §§ 621.5 and 13004.5. Misclassified aggrieved employees were not properly
27 classified as independent contractors because they could not meet the tests set forth in *S.G. Borello*
28 *& Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341; Assembly Bill 5; Labor Code

1 §§ 621, 2750.3, 3351, or *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018)
2 4 Cal.5th 903, 913–914, & fn. 3.

3 93. While Plaintiffs were employed by Infinity, it directed and controlled how the sales
4 services were accomplished by, inter alia, establishing and approving prices sold to customers,
5 establishing territories and sales quotas, requiring mandatory training and meetings, requiring
6 Advisors to report in from the field, requiring Advisors train new hires, requiring uniforms,
7 disciplining Advisors for not meeting sales quotas and complying with other company policies, and
8 requiring Advisors to utilize Infinity’s lead generation and bidding software;

9 94. Although aggrieved misclassified employees signed purported independent
10 contractor agreements, there were numerous cumulative factors indicating that the agreements and
11 the actual relationship was not a bona fide independent contractor relationship because the
12 aggrieved employees (i) had no substantial investment other than personal services in the business,
13 (ii) were not bargaining for a contract to complete a specific project for compensation by project
14 and had no ability to negotiate the amount of compensation to be paid for their services, (iii) did
15 not control the time and place where the work was performed because they were subject to
16 mandatory sales and training meetings and were required to check in from the field, (iv) did not
17 create or supply the sales and marketing materials or the software used to complete sales; (v) did
18 not hire their own employees to assist of facilitate sales, (vi) performed work that is solely in the
19 course of the Infinity’ work, (vii) performed work that required no particular skill independent of
20 the business of Infinity; and (viii) the relationship was severable or terminable at will by Infinity.

21 95. Infinity therefore engaged in a pattern or practice of willfully misclassifying
22 Plaintiffs and other similarly situated aggrieved employees as independent contractors, in violation
23 of § 226.8.

24 96. Labor Code § 2753 states that “A person who, for money or other valuable
25 consideration, knowingly advises an employer to treat an individual as an independent contractor
26 to avoid employee status for that individual shall be jointly and severally liable with the employer
27 if the individual is found not to be an independent contractor.”

28 //

1 97. Upon information and belief, persons whose identities are currently unknown to
2 Plaintiffs, in exchange for money or other valuable consideration, advised Infinity to treat the
3 aggrieved employees as independent contractors and are therefore jointly and severally liable for
4 any damages resulting from the aggrieved employees' misclassification, pursuant to § 2753.

5 **C. Infinity Failed to Reimburse for Work Expenses in Violation of Labor Code §§**
6 **2800, 2802, and IWC Wage Order No. 7-2001.**

7 98. Labor Code § 2800 states that "An employer shall in all cases indemnify his
8 employee for losses caused by the employer's want of ordinary care."

9 99. Labor Code § 2802(a) states, in relevant part "(a) An employer shall indemnify his
10 or her employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties...."

12 100. Also, while Plaintiffs were employed by Infinity, Infinity required Advisors to
13 purchase and/or use their own personal cell phone or tablet, maintain a data plan for the use of each,
14 travel to and from work locations via their personal vehicle, and purchase uniforms. Infinity failed
15 to reimburse the aggrieved employees for any or all of these necessary business expenses in
16 violation of § 2802.

17 101. While Plaintiffs were employed by Infinity, Infinity failed to pay its portion of
18 payroll taxes and required aggrieved employees to pay all payroll expenses incurred as a direct
19 consequence of their employment duties, including 100% of all state income tax contributions, state
20 unemployment insurance contributions, contributions to the state disability fund, and all business
21 expenses such as personal cell phone and vehicle usage, in violation of this section.

22 102. Labor Code § 2802(c) provides that "For purposes of this section, the term
23 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to,
24 attorney's fees incurred by the employee enforcing the rights granted by this section." Also,
25 pursuant to §1197.1, any employer who violates § 2802 is also subject to a civil penalty of \$100 for
26 each aggrieved employee per pay period for each intentional initial violation and \$250 for each
27 subsequent violation, either intentional or unintentional, plus the unlawfully withheld expenses.

28 //

D. Infinity Failed to Pay Minimum Wages and Overtime Compensation in Violation of Labor Code §§ 204, 210, 218.6, 226.2, 510, 558, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and 1199.

103. Labor Code § 204 states, in relevant part “(a) All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month...(b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”

104. Labor Code § 1197 states “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

105. Labor Code § 1198 states “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

106. Labor Code § 510 states “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

107. Labor Code § 226.2 states, in relevant part “(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.”

1 108. Employees paid on a commission basis are similarly entitled to separation
2 compensation for rest periods. (See, *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th
3 98, 110-13).

4 109. While Plaintiffs were employed by Infinity, it failed to timely pay Plaintiffs, and
5 other aggrieved employees, in accordance with the provisions of Labor Code § 204, frequently
6 paying earned wages significantly later than the proscribed time period.

7 110. Also, while employed by Infinity, Plaintiffs, and other aggrieved employees,
8 regularly worked, and were regularly required to work more than eight hours per day and/or forty
9 hours a week, without receiving overtime compensation. Plaintiffs also allege that they, and other
10 aggrieved employees, were required to attend uncompensated meetings and training, both in person
11 and online. Plaintiffs further allege that Advisors are paid on a commission basis, yet, Infinity failed
12 to separately pay Advisors, including Plaintiffs and other aggrieved employees, for training and
13 other non-productive time worked, including any time spent on rest breaks. All of the foregoing
14 caused Plaintiffs and other aggrieved employees to be compensated at a rate that is less than the
15 applicable minimum wage and/or overtime rate in violation of California Law.

16 111. Labor Code § 1194 provides that “(a) Notwithstanding any agreement to work for a
17 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
18 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
19 of the full amount of this minimum wage or overtime compensation, including interest thereon,
20 reasonable attorney's fees, and costs of suit.”

21 112. Labor Code § 1194.2(a) provides, in relevant part: “In any action under
22 Section...1194...to recover wages because of the payment of a wage less than the minimum wage
23 fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated
24 damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this
25 subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay
26 overtime compensation. A suit may be filed for liquidated damages at any time before the expiration
27 of the statute of limitations on an action for wages from which the liquidated damages arise.”

28 //

1 113. Labor Code § 1194.5 provides “In any case in which a person employing an
2 employee has willfully violated any of the laws, regulations, or orders governing the wages, hours
3 of work, or working conditions of such employee, the division may seek, in a court of competent
4 jurisdiction, and the court may grant, an injunction against any further violations of any such laws,
5 regulations, or orders by such person.”

6 114. Labor Code § 1197.1 provides that “(a) Any employer or other person acting either
7 individually or as an officer, agent, or employee of another person, who pays or causes to be paid
8 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an
9 order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages
10 payable to the employee, and any applicable penalties imposed pursuant to Section 203.” See also
11 IWC Wage Order No. 7-2001, item 4.

12 115. Labor Code § 210 provides, in relevant part: “(a) In addition to, and entirely
13 independent and apart from, any other penalty provided in this article, every person who fails to
14 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5,
15 and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
16 dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any
17 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
18 plus 25 percent of the amount unlawfully withheld.”

19 116. Labor Code § 218.6 provides “In any action brought for the nonpayment of wages,
20 the court shall award interest on all due and unpaid wages at the rate of interest specified in
21 subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages
22 were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

23 117. Labor Code § 218.5 provides, in relevant part “(a) In any action brought for the
24 nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court
25 shall award reasonable attorney's fees and costs to the prevailing party if any party to the action
26 requests attorney's fees and costs upon the initiation of the action.”

27 118. Labor Code § 1199 provides that “Every employer or other person acting either
28 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and

1 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
2 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
3 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
4 commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by
5 an order of the commission. (c) Violates or refuses or neglects to comply with any provision of this
6 chapter or any order or ruling of the commission.”

7 119. Labor Code § 558 provides, in relevant part “(a) Any employer or other person
8 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or
9 any provision regulating hours and days of work in any order of the Industrial Welfare Commission
10 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
11 underpaid employee for each pay period for which the employee was underpaid in addition to an
12 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
13 dollars (\$100) for each underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered
15 pursuant to this section shall be paid to the affected employee.”

16 E. **Infinity failed to Pay Wages Owed Upon Termination in Violation of Labor**
17 **code §§ 201, 202, 203 & 210**

18 120. Labor Code § 201 states, in relevant part (a) If an employer discharges an employee,
19 the wages earned and unpaid at the time of discharge are due and payable immediately.”

20 121. Labor Code § 202 states, in relevant part “(a) If an employee not having a written
21 contract for a definite period quits his or her employment, his or her wages shall become due and
22 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
23 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
24 of quitting.”

25 122. While Plaintiffs were employed by Infinity, Infinity willfully failed to timely pay
26 Plaintiffs and all other similarly situated aggrieved employees for all earned commissions due to
27 them upon termination of their employment with Infinity, in violation of this section. Also,
28 misclassified aggrieved employees were required to pay 100% of all payroll taxes, as a result of

1 Infinity misclassifying them as independent contractors during their employment. Plaintiffs and
2 other aggrieved employees have therefore been deprived of all earned wages and commissions, in
3 violation of this section.

4 123. Labor Code § 203 provides that “(a) If an employer willfully fails to pay, without
5 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
6 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
7 a penalty from the due date thereof at the same rate until paid or until an action therefor is
8 commenced; but the wages shall not continue for more than 30 days. An employee who secretes or
9 absents himself or herself to avoid payment to him or her, or who refuses to receive the payment
10 when fully tendered to him or her, including any penalty then accrued under this section, is not
11 entitled to any benefit under this section for the time during which he or she so avoids payment.”

12 124. Labor Code § 210 provides, in relevant part “(a) In addition to, and entirely
13 independent and apart from, any other penalty provided in this article, every person who fails to
14 pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5,
15 and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
16 dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any
17 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
18 plus 25 percent of the amount unlawfully withheld.”

19 125. Labor Code § 218.5 provides, in relevant part “(a) In any action brought for the
20 nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court
21 shall award reasonable attorney's fees and costs to the prevailing party if any party to the action
22 requests attorney's fees and costs upon the initiation of the action.”

23 126. Labor Code § 218.6 provides “In any action brought for the nonpayment of wages,
24 the court shall award interest on all due and unpaid wages at the rate of interest specified in
25 subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages
26 were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

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28 //

1 **F. Infinity Failed to Timely Furnish Legally Compliant Wage statements in**
2 **Violation of Labor Code §§ 226, 226.2, 226.3, and IWC Wage Order No. 7-2001.**

3 127. Labor Code § 226(a) states, in relevant part:

4 “Every employer shall, semimonthly or at the time of each payment of wages,
5 furnish each of his or her employees, either as a detachable part of the check, draft,
6 or voucher paying the employee’s wages, or separately when wages are paid by
7 personal check or cash, an accurate itemized statement in writing showing (1) gross
8 wages earned, (2) total hours worked by the employee...(3) the number of piece-
9 rate units earned and any applicable piece rate if the employee is paid on a piece-
10 rate basis, (4) all deductions, provided that all deductions made on written orders of
11 the employee may be aggregated and shown as one item, (5) net wages earned...(7)
12 the name of the employee and only the last four digits of his or her social security
13 number...(9) all applicable hourly rates in effect during the pay period and the
14 corresponding number of hours worked at each hourly rate by the employee...The
15 deductions made from payment of wages shall be recorded in ink or other indelible
16 form, properly dated, showing the month, day, and year, and a copy of the statement
17 and the record of the deductions shall be kept on file by the employer for at least
18 three years at the place of employment or at a central location within the State of
19 California. For purposes of this subdivision, “copy” includes a duplicate of the
20 itemized statement provided to an employee or a computer-generated record that
21 accurately shows all of the information required by this subdivision.”

22 128. The wage statements provided by Infinity to Plaintiffs, and other aggrieved
23 employees, fail to comply with the requirements of §§ 226(a) and 226.2 by failing to provide all
24 the information required by this section.

25 129. Labor Code § 226.3 provides “Any employer who violates subdivision (a) of Section
26 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
27 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
28 each violation in a subsequent citation, for which the employer fails to provide the employee a wage

1 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil
2 penalties provided for in this section are in addition to any other penalty provided by law.”

3 **G. Infinity Knowingly Required Employees to Execute Unlawful Contractual**
4 **Provisions in violation of Labor Code § 432.5**

5 130. Labor Code § 432.5 states “No employer, or agent, manager, superintendent, or
6 officer thereof, shall require any employee or applicant for employment to agree, in writing, to any
7 term or condition which is known by such employer, or agent, manager, superintendent, or officer
8 thereof to be prohibited by law.”

9 131. Upon information and belief, while Plaintiffs were employed by Infinity, it required
10 Plaintiffs, and other aggrieved employees, to execute one or more written agreements indicating
11 they were independent contractors, when it was known to Infinity, its agents, managers, and officers
12 that Plaintiffs and other similarly situated aggrieved employees were not independent contractors,
13 that willful misclassification is prohibited under Labor Code § 226.8, and that Infinity’ failure to
14 withhold and pay payroll taxes, including but not limited to state income tax contributions, state
15 unemployment insurance contributions, and contributions to the state disability fund is prohibited
16 pursuant to Unemployment Insurance Code §§ 976, 986, 987, 1110, and 13020.

17 132. Labor Code § 432.5 does not specify a specific remedy for a violation.
18 However, for Labor Code violations for which no civil penalty is specified, a civil penalty of
19 \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
20 subsequent violation. (Labor Code § 2699(f)(2)).

21 **H. Infinity Failed to Provide Written Commission Agreements in Violation of**
22 **Labor Code § 2751**

23 133. Labor Code § 2751 states, in relevant part “(a) Whenever an employer enters into a
24 contract of employment with an employee for services to be rendered within this state and the
25 contemplated method of payment of the employee involves commissions, the contract shall be in
26 writing and shall set forth the method by which the commissions shall be computed and paid. (b)
27 The employer shall give a signed copy of the contract to every employee who is a party thereto and
28 shall obtain a signed receipt for the contract from each employee. In the case of a contract that

1 expires and where the parties nevertheless continue to work under the terms of the expired contract,
2 the contract terms are presumed to remain in full force and effect until the contract is superseded or
3 employment is terminated by either party.”

4 134. Plaintiffs allege that, while employed by Infinity, Plaintiffs and other aggrieved
5 employees, all of whom were paid on a commission basis, were not provided with a written contract
6 properly outlining the current method by which Infinity calculated and/or paid commissions to
7 Advisors.

8 135. Labor Code § 2751 does not specify a specific remedy for a violation. However, for
9 Labor Code violations for which no civil penalty is specified, a civil penalty of \$100 for each
10 aggrieved employee per pay period for the initial violation and \$200 for each subsequent violation.
11 (Labor Code § 2699(f)(2)).

12 **I. Infinity Unlawfully Deducted Wages in Violation of Labor Code § 221, 225, &**
13 **225.5**

14 136. Labor Code § 221 states:

15 137. “It shall be unlawful for any employer to collect or receive from an employee any
16 part of wages theretofore paid by said employer to said employee.”

17 138. As stated above, Plaintiffs allege that Infinity has a policy, practice, guideline and/or
18 procedure by which Infinity unlawfully withheld or deducted from earned commissions in violation
19 of Labor Code § 221.

20 139. Labor Code § 225 provides: The violation of any provision of Sections 221, 222,
21 222.5, or 223 is a misdemeanor.”

22 140. Labor Code § 225.5 provides, in relevant part “In addition to, and entirely
23 independent and apart from, any other penalty provided in this article, every person who unlawfully
24 withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be
25 subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for
26 each failure to pay each employee. (b) For each subsequent violation, or any willful or intentional
27 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
28 amount unlawfully withheld.”

1 applicable IWC Orders, as set forth above;

2 C. That the Court award to Plaintiffs and each member of the INFINITY Classes,
3 pursuant to § 2802, all necessary expenditures or losses incurred by them, including all reasonable
4 costs, attorneys' fees and interest accruing from the date of expenditure or loss;

5 D. That the Court award to Plaintiffs and each member of the INFINITY Classes, all
6 earned, unpaid wages, including minimum wage, overtime, premium pay, expense reimbursement
7 and earned, but unpaid commissions; and liquidated damages in the same amount as the unpaid
8 wage pursuant to Labor Code § 1194.2;

9 E. That the Court award to Plaintiffs and each member of the INFINITY Classes,
10 statutory penalties;

11 F. That the Court award to Plaintiffs and each member of the INFINITY Classes,
12 pursuant to § 226(e), the greater of all actual damages or \$50.00 for the initial pay period in which
13 a violation occurs and \$100.00 for each violation in a subsequent pay period, not exceeding an
14 aggregate penalty of \$4,000.00, as well as attorney fees, costs of suit, and injunctive relief in the
15 form of an order enjoining Defendants from further violations of the law;

16 G. That the Court award to Plaintiffs and each member of the INFINITY Classes,
17 pursuant to §226.3, the greater of all actual damages or \$250.00 per employee per violation of
18 §226(a);

19 H. That the Court award to Plaintiffs and each member of the INFINITY Classes,
20 pursuant to Bus. & Prof. Code §§ 17200 et seq., the full restitution of all monies wrongfully
21 acquired by Defendants by their unlawful and unfair conduct, so as to restore all monies to Plaintiffs
22 and the INFINITY Class Members that were acquired and obtained by means of such unlawful and
23 unfair conduct;

24 I. That the Court declare that Plaintiff Lukas Jeffery and each member of the
25 INFINITY Misclassified Sub-Class were misclassified as independent contractors;

26 J. That the Court declare that the employment contract provisions set out above are
27 unlawful and void as to Plaintiffs and each member of the INFINITY Classes and that Defendants
28 be permanently enjoined from enforcing such provisions;

1 K. That the Court order equitable or injunctive relief requiring Defendants to take
2 corrective actions and provide notice regarding violations of California's Labor Code;

3 L. That Defendants further be enjoined to cease and desist from unlawful activities;

4 M. That the Court award interest pursuant to Labor Code § 218.6.

5 N. That the Court award Plaintiffs and the Class attorneys' fees and costs of suit
6 pursuant to Labor Code §§ 218.5, 1194, 2802, 2698 et seq., and C.C.P. §1021.5; and

7 O. That Plaintiffs recover, for themselves and all aggrieved employees, penalties under
8 PAGA, including for willful misclassification and to recover all earned and unpaid minimum wage,
9 overtime, expenses, including all liquidated damages, reasonable costs, penalties, attorneys' fees
10 and interest accruing from the date such wages and expenses were earned and due; and

11 P. Such other and further relief as the Court may deem appropriate.

12
13 **KEEGAN & BAKER, LLP**

14 Dated: July 28, 2021

By: /s/ John J. Weber
Jason E. Baker, Esq.
John J. Weber, Esq.
Attorneys for LUKAS JEFFERY, JOHN LYMAN,
LOUIS CISNEROS, each individually and on behalf
of the Class and all similarly situated aggrieved
employees

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

KEEGAN & BAKER, LLP

Dated: July 28, 2021

By: /s/ John J. Weber
Jason E. Baker, Esq.
John J. Weber, Esq.
Attorneys for LUKAS JEFFERY, JOHN LYMAN,
LOUIS CISNEROS, each individually and on behalf
of the Class and all similarly situated aggrieved
employees

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Superior Court of California,
County of San Diego

07/28/2021 at 01:37:00 PM
Clerk of the Superior Court
By Candace Schaeffer, Deputy Clerk

Attorneys for Plaintiffs LUKAS JEFFERY, JOHN LYMAN, and LOUIS CISNEROS, each individually and on behalf of the Class and all similarly situated aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Coordination Proceeding
Special Title (Rule 3.550)

**JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 5139**

**INFINITY ENERGY WAGE AND
HOUR CASES**

PROOF OF SERVICE

Infinity Energy, Inc. v. Jeffrey

Superior Court Of California County Of
Riverside
NO. MVC1907343

Bucio v. Infinity Energy, Inc.

Superior Court Of California County Of San
Diego
NO. 37-2020-00017124

Aznoe v. Infinity Energy, Inc.

Superior Court Of California County Of San
Diego
NO. 37-2020-00029660

I declare that I am over the age of 18 years and not a party to this action. I am employed in the county of San Diego. My business address is 5820 Oberlin Drive, Suite 205, San Diego, California 92121.

On **July 28, 2021**, I served the following document(s): **First Amended Class Action Cross-Complaint in Case No. MVC1907343** on interested parties in this action as follows:

Chair, Judicial Council of California
Attn: Appellate Court Services
(Civil Case Coordination)
455 Golden Gate Avenue, 5th Floor
San Francisco, CA 94102-3688

Chair of the Judicial Council

Judge Kevin Enright of the Superior Court of California, Central Courthouse Dept. 904 County of San Diego P.O. Box 122724 San Diego, CA 92112-2724	Coordination Motion Judge
Honorable Keri G. Katz San Diego Superior Court, Dept. 74 P.O. Box 122724 San Diego, CA 92112-2724	Coordination Trial Judge
David L. Price, Esq. Benjamin D. Koegel, Esq. ELGUINDY, MEYER & KOEGEL, APC 2990 Lava Ridge Court, Suite 205 Roseville, CA 95661 T: 916-778-3310 F: 916-330-4433 dprice@emklawyers.com bkoegel@emklawyers.com	Attorneys for Plaintiff and Cross-Defendant INFINITY ENERGY, INC., a California Corporation
Jessica L. Campbell, Esq. AEGIS LAW FIRM PC 9811 Irvine Center Drive, #100 Irvine, CA 92618 T: 949-379-6250 jcampbell@aegislawfirm.com	Counsel for Plaintiff Thomas Aznoe, individually and on behalf of all other similarly situated
Norman B. Blumenthal, Esq. BLUMENTAL NORDREHAUG BHOWMIK DE BLOUW 2255 Calle Clara La Jolla, CA 92037 T: 858-551-1223 F: 858-551-1232 norm@bamlawca.com	Counsel for Plaintiff Efrain Bucio, an individual, on behalf of himself, and on behalf of all persons similarly situated

☒ **BY U.S. MAIL:** I am personally and readily familiar with the business practices of Keegan & Baker, LLP for collection and processing of correspondence for mailing. I placed the envelope for collection and mailing following our ordinary business practices. On the same day that correspondence is place for collection and mailing it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☐ **BY ELECTRONIC TRANSMISSION:** I caused the above referenced document(s) to be transmitted to the parties via electronic mail to the e-mail addresses listed above. Said e-mail transmission was reported completed without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: July 28, 2021

/s/ Yadira Samaniego
 Yadira Samaniego