

1 Jason E. Baker (SBN: 197666)
jbaker@keeganbaker.com

2 John J. Weber (SBN: 313824)
jweber@keeganbaker.com

3 **KEEGAN & BAKER, LLP**
4 5820 Oberlin Drive, Suite 205
San Diego, CA 92121
5 Telephone: (858) 558-9402/7
6 Facsimile: (858) 558-9401

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

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

11 Coordination Proceeding
12 Special Title (Rule 3.550)

13 **INFINITY ENERGY WAGE AND**
14 HOUR CASES

15 Infinity Energy, Inc. v. Jeffery

16 Bucio v. Infinity Energy, Inc.

17
18 Aznoe v. Infinity Energy, Inc.

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 5139

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

JOINT STIPULATION OF CLASS
ACTION SETTLEMENT - *Infinity Energy,*
Inc. v. Jeffery and related cross-complaint
only

Originally filed in Superior Court of California
County of Riverside, **NO. MVC1907343**

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court, that the full and final Settlement of this Action shall be effectuated upon and subject to
3 the following terms and conditions in this Joint Stipulation of Class Action Settlement (hereinafter
4 the “**Agreement**,” “**Settlement**,” or “**Settlement Agreement**”). Capitalized terms used in this
5 Agreement shall have the meanings set forth in Article I or as defined elsewhere.

6 This Agreement is made and entered into by and between Cross-complainants LUKAS
7 JEFFERY, JOHN LYMAN, and LOUIS CISNEROS, each on behalf of himself and other similarly
8 situated and aggrieved employees (referred to hereafter for simplicity as “**Plaintiffs**”), on the one
9 hand, and Plaintiff/Cross-Defendant Infinity Energy, Inc. (referred to hereafter for simplicity as
10 “**Infinity**” or the “**Defendant**”), on the other. Plaintiffs and Defendant collectively are referred to
11 in this Agreement as the “**Parties**.”

12 The Parties agree that the Action shall be, and hereby is, settled and resolved by agreement
13 of Defendant to (i) pay the settlement sum of Three Million and 00/100th Dollars (\$3,000,000.00)
14 as provided in Section 3.06(a)-(h) below (“**Gross Settlement Fund**”); (ii) release and waive claims
15 against the formerly employed Settlement Class Members as of the date of Preliminary Approval
16 who do not Opt-Out of this Settlement for unpaid advances given by Defendant to the Settlement
17 Class as provided in Section 5.04 below; (iii) release claims against the Settlement Class Members
18 who do not Opt-Out of this Settlement for post-termination employee non-solicitation restrictions
19 as provided in Section 5.04 below; (iv) and dismissal of all claims against LUKAS JEFFERY with
20 prejudice, as set for in this Agreement, subject to preliminary and final approval of the Court.

21 **ARTICLE I**

22 **DEFINITIONS**

23 Unless otherwise defined herein, the following terms used in this Agreement shall have the
24 meanings ascribed to them as set forth below:

25 a. “**Action**” means the complaint originally filed by Infinity in Riverside County
26 Superior Court on June 12, 2019, entitled *Infinity Energy, Inc. v. Lukas Jeffery, et al*, Case No.
27 MVC1907343 that was subject to a Class Action Cross-complaint filed in said action on June 1,
28 2020 by Lukas Jeffery, both which were coordinated under Judicial Council Coordinated

Proceeding No. 5139 on July 28, 2021 and transferred to San Diego Superior Court, and in which Named Plaintiffs filed a First Amended Class Action Cross-complaint on July 28, 2021, which is currently pending before this Court. For the avoidance of doubt, the Action does not include the coordinated cases of EFRAIN BUCIO Class Action Complaint filed on May 26, 2020 in the Superior Court of California, County of San Diego, Case No. 37-2020-00017124-CU-OE-CTL or THOMAS AZNOE Class Action Complaint filed on August 24, 2020 in the Superior Court of California, County of San Diego, Case No. 37-2020-00029660-CU-OE-CTL.

b. **“Agreement”** means this Joint Stipulation of Class Action Settlement, including Exhibits “A & B” attached hereto.

c. **“Class”** means:

All persons currently and formerly employed by Infinity Energy, Inc. in the State of California conducting door-to-door sales or door-to-door sales lead generation, including managers, whether classified as an employee or independent contractor, between June 12, 2015 and the earlier of the date of preliminary approval of the Settlement or May 1, 2022 (the **“Class Period”**).

For the avoidance of doubt, the Class does not include time periods in which members of the Class were employed by third party dealers or in positions with Infinity other than as defined in the Class.

d. **“Class Counsel”** or **“Plaintiffs’ Counsel”** means the attorneys for the Settlement Class, who are:

Jason E. Baker, Esq./ jbaker@keeganbaker.com
 John J. Weber, Esq./ jweber@keeganbaker.com
 KEEGAN & BAKER, LLP
 5820 Oberlin Drive, Suite 205
 San Diego, CA 92121
 Telephone: (858) 558-9402
 Facsimile: (858) 558-9401

e. **“Class List”** means a true and complete list of all members of the Class that Defendant will compile, based on its business records, and provide to the Settlement Administrator within fifteen (15) days after the Court grants preliminary approval of the Settlement. The Class List shall be formatted in Microsoft Office Excel and shall include each Class Member’s (1) full name, (2) last known mailing address, (3) last known telephone number, (4) social security number,

(5) badge number, (6) personal email address if known, (7) beginning and ending dates of employment in each applicable position in the Class during the Class Period, (8) number of California projects sold by each Class Member that reached installation during the Class Period; (9) unpaid advance applicable to each Class Member terminated during the Class Period; and (10) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement. Defendant shall provide Class Counsel with the Class List concurrently with the Settlement Administrator, but eliminating the first five digits of the social security numbers for the Class. The Class List shall be verified by Defendant as accurate under penalty of perjury when submitted.

f. **“Class Member(s)”** mean(s) all members of the Class.

g. **“Class Period”** is defined in subsection c., above.

h. **“Court”** means the San Diego County Superior Court in which the Action is pending.

i. **“Defendant”** or **“Infinity”** means Defendant Infinity Energy, Inc.

j. **“Defendant’s Counsel”** or **“Defense Counsel”** means:

David Daniels, Esq.
ELGUINDY, MEYER & KOEGEL, APC
 2990 Lava Ridge Court, Suite 205
 Roseville, CA 95661
 Telephone: (916) 778-3310
 Facsimile: (916) 330-4433

k. **“Effective Date”** of this Settlement shall be the later of the time when: (i) if an appeal from the Judgment is filed, the date of final affirmance of the Judgment on an appeal of the Judgment or the date of final dismissal of any appeal from the Judgment; (ii) if one or more objections are submitted and not withdrawn and no notices of appeal are filed, the sixty-first (61st) day after the Court enters final approval of the Settlement and the Judgment approving this Agreement or the other expiration of time for filing of an appeal of the Final Order; and (iii) if no objections are made (or objections are made but withdrawn), the Court’s entry of the Court’s Final Approval Order and Judgment.

///

1 l. **“Enhancement Award”** means a monetary amount of no more than Twenty
2 Thousand Dollars (\$20,000), subject to Court approval, for each Named Plaintiff.

3 m. **“Final Approval Hearing”** means the hearing at which the Court enters a judgment
4 or other order approving the Settlement and terminating the Action.

5 n. **“Final Order Approving Settlement of Class Action”** or **“Final Order”** means
6 the final formal court order or judgment signed by the Court at or after the Final Approval Hearing
7 in accordance with the terms herein approving this Agreement.

8 o. **“Gross Settlement Fund”** means the settlement sum of Three Million Dollars
9 (\$3,000,000) to be paid by Defendant under the terms and conditions of this Agreement. The
10 Gross Settlement Fund is non-reversionary and no portion will return to Defendant.

11 p. **“Individual Settlement Payments”** or **“Verified Settlement Class Member**
12 **Payments”** means the amounts of money from the Net Settlement Amount that shall be paid to the
13 Verified Settlement Class Members. Individual Settlement Payments will be each Verified
14 Settlement Class Member’s share of the Net Settlement Amount (which share shall be determined
15 by the calculations provided in this Agreement).

16 q. **“LWDA”** means the California Labor and Workforce Development Agency.

17 r. **“Named Plaintiffs”** or **“Plaintiffs”** means LUKAS JEFFERY, JOHN LYMAN, and
18 LOUIS CISNEROS.

19 s. **“Net Settlement Amount”** means the Gross Settlement Fund less all of the
20 following: (a) costs of settlement administration performed by the Settlement Administrator; (b)
21 Enhancement Award to each Named Plaintiff; (c) PAGA Penalties; (d) an award of attorneys’ fees
22 to Class Counsel; and (e) Court approved costs of Class Counsel.

23 t. **“Non-Verified Class Member(s)”** means those Class Members who submit to the
24 Settlement Administrator a valid and timely Opt-Out Request pursuant to Section 3.04(b) below.

25 u. **“Notice Packet”** or **“Class Notice”** means the Notice of Class Action Settlement
26 and Final Approval Hearing substantially in the form attached hereto as Exhibit “A” (the
27 **“Notice”**), to be available in English and Spanish.

28 ///

1 v. **“Operative Complaint”** means the First Amended Complaint pending in this
2 Action.

3 w. **“Opt-Out Request”** means a written request to be excluded from the Class pursuant
4 to Section 3.04(b) below.

5 x. **“PAGA”** means the Private Attorneys General Act of 2004, California Labor Code
6 §2698 *et seq.*

7 y. **“PAGA Penalties”** two percent (2%) of the Gross Settlement Fund allocated to
8 statutory penalties under PAGA, seventy-five percent (75%) of which will be paid to the LWDA
9 and twenty-five percent (25%) which will be disbursed to the PAGA Represented Employees on a
10 pro-rata basis. PAGA Represented Employees will receive payment from the employee portion of
11 the PAGA Penalties regardless of their decision to participate in the class action if the PAGA
12 Penalties are approved by the Court.

13 z. **“PAGA Period”** means June 12, 2018 through the date of Preliminary Approval.

14 aa. **“PAGA Represented Employees”** means “All persons currently and formerly
15 employed by Infinity Energy, Inc. in the State of California conducting door-to-door sales or door-
16 to-door sales lead generation, including managers, whether classified as an employee or
17 independent contractor, during the PAGA Period.”

18 bb. **“Preliminary Approval Date”** or **“Preliminary Approval”** means the date on
19 which the Court preliminarily approves the Settlement embodied in this Agreement, including,
20 without limitation, the Class Notice which is attached hereto as Exhibit “A.”

21 cc. **“Settlement Class”** consists of all Verified Settlement Class Members.

22 dd. **“Settlement Administration Costs”** means all costs incurred by the Settlement
23 Administrator in administration of the Settlement as set forth in this Agreement.

24 ee. **“Settlement Administrator”** means Simpluris, Inc., which was mutually selected
25 by the Parties for the administration of the Settlement.

26 ff. **“Total Workweeks”** means the total aggregate number of Workweeks of all
27 Settlement Class Members during the Class Period.

28 ///

1 gg. “**Verified Settlement Class Members**” means all Class Members who do not
2 timely Opt-Out or request exclusion from the Class as provided in Section 3.04(b).

3 hh. “**Workweek**” means a week during the Class Period commencing on Sunday and
4 ending on the following Saturday in which a Class Member verifiably worked for Defendant one or
5 more days and excludes time periods of paid and unpaid leave, where calculable by Defendant.

6 **ARTICLE II**

7 **FACTUAL BASIS FOR SETTLEMENT**

8 a. On or about June 12, 2019, Infinity filed a complaint in Riverside County Superior
9 Court, entitled *Infinity Energy, Inc. v. Lukas Jeffery, et al*, Case No. MVC1907343 which was
10 subject to a Class Action Cross-complaint filed in said action on June 1, 2020 by Lukas Jeffery,
11 both which were coordinated under Judicial Council Coordinated Proceeding No. 5139 on July 28,
12 2021 and transferred to San Diego Superior Court, and in which Named Plaintiffs filed a First
13 Amended Class Action Cross-complaint on July 28, 2021, which is currently pending before this
14 Court.

15 b. During the pendency of the Action, the Parties engaged in extensive formal and
16 informal discovery, exchanging thousands of pages of documents, the propounding of 72 wage
17 authorizations from Class Members (and related wage audits). The Parties also exchanged
18 voluminous detailed data about the wage, hours and working conditions of the Class under the
19 mediation privilege.

20 c. On January 19, 2022, the Parties engaged in full-day formal mediation session with
21 David Rotman, Esq., a preeminent wage and hour class action mediator out of San Francisco. The
22 settlement discussions were conducted at arm’s-length. The Settlement is the result of an informed
23 and detailed analysis of the risks facing both Parties in litigating this case, including but not limited
24 to, careful consideration of the legal and factual obstacles to Plaintiffs’ prospects of obtaining class
25 certification and on the merits, and Defendant’s defenses, as well as Defendant’s potential exposure
26 and the additional costs of litigating the Action. The Parties also considered the effect the other
27 coordinated and pending class actions would have on the Defendant and the Action.

28 ///

d. Named Plaintiffs and Class Counsel have each conducted a thorough investigation into the facts of this class action case, including an extensive review of relevant documents, and have diligently pursued an investigation of Class Members' claims against Defendant. Based on their respective own independent investigation and evaluation, Named Plaintiffs and Class Counsel are each of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, the risk of classwide arbitration waivers, the defenses asserted by Defendant, and numerous potential appellate issues.

e. It is the desire of the Parties to fully, finally, and forever settle, compromise and discharge any and all known and unknown claims that were raised, or could have been raised during the Class Period based upon the facts alleged in this Action, including those to be alleged in the Operative Complaint. In order to achieve a full and complete release of Defendant, this Settlement Agreement is intended to include in its effect all claims of any nature that were raised in the Action, or could have been raised based upon the facts alleged in this Action on behalf of Class Members.

f. The Parties hereby stipulate to certification of the Class with respect to all causes of action alleged in the Operative Complaint in this Action for settlement purposes only, requiring further approval of the Court.

g. In settlement of this Action, Defendant shall pay the Gross Settlement Fund as provided in this Agreement.

ARTICLE III.

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT

The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

Section 3.01 Motion for Class Certification and Preliminary Approval

Promptly upon execution of this Agreement, the Parties shall submit this Agreement to the Court and request preliminary approval and determination by the Court as to its fairness, adequacy,

1 and reasonableness. Class Counsel will prepare and file the motion for preliminary approval of
2 settlement and cause this Agreement to be filed with the LWDA before or at the same time this
3 Agreement is submitted to the Court.

4 In seeking preliminary approval of this Agreement, the Parties shall apply to the Court for
5 the entry of a preliminary order (in the form annexed hereto as Exhibit B) seeking certification of
6 this Action under section 382 of the California Code of Civil Procedure and Rules 3.760 *et seq.* of
7 the California Rules of Court as a class action for purposes of settlement only.

8 **Section 3.02 The Settlement Administrator**

9 The Parties have chosen Simpluris, Inc. to act as the Settlement Administrator, by
10 performing such tasks as are customary and necessary to administer the Settlement including, but
11 not limited to, distributing any notices that must be provided to the Class, posting the FAC, this
12 Agreement and Exhibits hereto on its website, performing address and email updates and
13 verifications as necessary prior to the first mailing, performing a single address follow-up on any
14 returned mail, responding to inquiries about the Notice of Proposed Class Action Settlement,
15 determining the validity of all Opt-Out Requests, calculating the Net Settlement Amount and the
16 Individual Settlement Payments, preparing tax statements and/or reports, providing necessary
17 progress reports, preparing declarations required by the Court, preparing a detailed declaration that
18 sets forth each of Class Members who did not submit valid Opt-Out Requests, and, with notice and
19 consent of the Parties, generating and issuing the Individual Settlement Payment checks and
20 distributing them to Verified Settlement Class Members, and issuing the checks to Class Counsel
21 for attorneys' fees and costs, the Enhancement Awards to the Named Plaintiffs, the PAGA payment
22 to the LWDA, processing and sending uncashed checks, post-disbursement reporting to the Parties
23 and the Court and any other actions of the Settlement Administrator as set forth in this Agreement,
24 all pursuant to the terms of this Agreement.

25 The Settlement Administrator shall expressly agree to all of the terms and conditions of this
26 Agreement relating to the administration of the Settlement as a condition of appointment. The
27 Parties each represent that they do not have any financial interest in the Settlement Administrator
28 or otherwise have a relationship with the Settlement Administrator that could create a conflict of

1 interest.

2 Between Preliminary Approval and the Final Order, the Settlement Administrator shall
3 provide Defense Counsel and Class Counsel a weekly report that certifies: (i) the number of Class
4 Members to whom the Settlement Administrator has mailed and emailed the Notice Packet; (ii) the
5 number of Notice Packets that were returned as undeliverable; (iii) the number and identity of
6 Class Members who have submitted valid Opt-Out Requests; (iv) the number and identity of Class
7 Members who have submitted challenges or objections to any information contained in the Notice
8 Packet; and (v) the number and identity of Settlement Class Members who have submitted
9 objections to the Settlement.

10 Additionally, the Settlement Administrator will provide to Defense Counsel and Class
11 Counsel any updated reports regarding the administration of the Settlement Agreement upon
12 reasonable request.

13 The Settlement Administrator shall maintain throughout the administration of the
14 Settlement all of the Opt-Out Requests that it receives. At the conclusion of the administration of
15 the Settlement, the Settlement Administrator shall retain all Opt-Out Requests for an additional
16 four years. The Settlement Administrator shall identify all persons who submitted Opt-Out
17 Requests to be included by Class Counsel in the Final Order.

18 All costs of administering the Settlement shall be paid to the Settlement Administrator from
19 the Gross Settlement Fund upon Final Approval. The Settlement Administrator has agreed to
20 administer the parties' settlement for an estimated cost of Fifteen Thousand Dollars (\$15,000).

21 The Settlement Administrator shall be required to acknowledge that in its role as Settlement
22 Administrator it owes fiduciary obligations to the Named Plaintiffs and Class Members and will be
23 required to attest that it will make payments consistent with the terms of this Agreement, including
24 the allocation instructions set forth in this Agreement, except as modified by the Court. The
25 obligations of the Settlement Administrator are released upon (1) all funds being disbursed by the
26 Settlement Administrator pursuant to this Agreement and/or order(s) of the Court; (2) any post-
27 disbursement reporting to the Court; (3) any post-disbursement tax reporting; and (4) otherwise
28 complying with this Agreement.

Section 3.03 Notice to the Settlement Class

Notice of the Settlement, dated as of the date of mailing or email submission, shall be provided to the Class Members, and the Class Members may submit objections to the Settlement and/or requests for exclusion from the Class by using the following procedures:

Within fifteen (15) days after the Court preliminarily approves the Settlement, Defense Counsel will provide the Class List to the Settlement Administrator and the modified Class List to Class Counsel. Within seven (7) days after receipt of the Class List, the Settlement Administrator shall update the addresses using the United States Postal Service's NCOALink system and mail the Notice Packet (with the information populated from the Class List) by first-class United States mail to each Class Member and email an access link to the Notice Packet to each Class Member with a known or readily obtainable email address. Any mailed Notice returned to the Settlement Administrator as non-delivered on or before the Dispute Deadline Date shall be re-mailed once to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, and shall then perform one re-mailing, if another mailing address is identified by the Settlement Administrator. The Settlement Administrator shall also make the Settlement Agreement and Notice available on its website in both English and Spanish. The Settlement Administrator shall notify Class Counsel and Defense Counsel weekly if any Notice Packets are returned as undeliverable and no forwarding address is available or determinable. Settlement Class Members who receive a re-mailed or emailed Notice within ten (10) days of the Dispute Deadline Date and Objection/Exclusion Deadline Date, as set forth in Sections 3.04(a) and (b) below, shall have their Dispute Deadline Date and Objection/Exclusion Deadline Date extended ten (10) days from the original Dispute Deadline Date and Objection/Exclusion Deadline Date.

No later than twenty-one (21) days prior to the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a declaration attesting to completion of the notice process, including any attempts to obtain valid mailing and email addresses for Class Members and re-sending any returned Notice Packets, as well as the number of Opt-Out Requests that the Settlement Administrator received and the dates that the Settlement

1 Administrator received those Opt-Out Requests.

2 Except as otherwise modified by the Court, compliance with the procedures described in
3 this Section shall constitute due and sufficient notice to Class Members of this proposed Settlement
4 and the Final Approval Hearing and shall satisfy the requirements of due process. Nothing else
5 shall be required of, or done by, the Parties, Class Counsel, Defense Counsel, or the Settlement
6 Administrator to provide notice of the proposed Settlement and the Final Approval Hearing.

7 **Section 3.04 Responses to Notice**

8 **a. No Claim Forms**

9 Settlement Class Members are not required to submit claim forms to receive their share of
10 the Net Settlement Amount.

11 Any Class Member who disagrees with the data used to calculate his or her claim as
12 reflected in the Notice shall be allowed to indicate and explain such disagreement in writing. Such
13 written dispute must be sent (via email or mail) to the Settlement Administrator no later than 5:00
14 p.m. PST thirty (30) days after the date of the Notice (the “**Dispute Deadline Date**”), unless
15 extended pursuant to the terms of this Agreement, and include written support for such
16 disagreement. The Settlement Administrator shall identify and provide contact information to Class
17 Counsel and Defense Counsel for the Class Member raising such dispute and provide the basis for
18 such dispute. The Settlement Administrator shall attempt to resolve the disagreement with the
19 Verified Class Member using the records provided by Defendant and the Class Member, in
20 consultation with Class Counsel and Defense Counsel within ten (10) days, with the burden of
21 proof on such Class Member by a preponderance of evidence. Absent evidence rebutting
22 Defendant’s records, Defendant’s records will be presumed determinative. Any disputes not
23 otherwise resolved by the Settlement Administrator and Class Counsel and Defense Counsel
24 concerning administration of the Settlement may be resolved by the Court or such Class Member
25 may elect to exclude themselves from the Settlement as set forth in Section 3.04(b) below. The
26 date of the postmark on the return envelope or receipt by the dedicated email address for the
27 Settlement Administrator shall be the exclusive means used to determine whether a Class Member
28 has “timely” disputed the calculation or application of the formula for determining Individual

1 Settlement Payments. Class Members who do not timely dispute the data used to calculate his or
2 her claim as reflected on the Notice with sufficient corroboration will be deemed to have agreed to
3 the data and method of calculation.

4 **b. Request for Exclusion from Class**

5 By entering into this Agreement, each Named Plaintiff agrees that he is not requesting and
6 will not be requesting exclusion from the Class.

7 The Notice shall provide that Class Members who wish to exclude themselves from the
8 Class must submit a written Opt-Out Request to the Settlement Administrator (via mail or email to
9 a dedicated email address) requesting exclusion from the Class on or before 5:00 p.m. PST forty-
10 five (45) days from the date of the Notice (the “**Objection/Exclusion Deadline Date**”); *provided,*
11 *however,* any Class Member who timely submits a written dispute pursuant to Section 3.04(a)
12 above, will have their Objection/Exclusion Deadline Date extended for ten (10) days. Such Opt-
13 Out Request must contain the name, address, email address, telephone number, and last four digits
14 of the Social Security number of the person requesting exclusion, must be signed by the Class
15 Member requesting exclusion, must be returned to the Settlement Administrator at a specified
16 address or email address and must be postmarked, or received at a specified email address on or
17 before the Objection/Exclusion Deadline Date (unless extended by this Agreement). The postmark
18 on the return mailing envelope, or receipt at the dedicated email address shall be the exclusive
19 means used to determine whether an Opt-Out Request has been timely submitted. A Class Member
20 may not choose to accept or Opt-Out only from a portion of the Settlement. Any Class Member
21 who Opts-Out of the Class will not be entitled to any recovery from this Settlement; will not be
22 bound by the Settlement or any release of claims by Defendant in the Action; will not have any
23 right to object, appeal, or comment on the Settlement; and will not receive any release of claims or
24 other benefits under this Settlement. Class Members who fail to submit a valid and timely Opt-Out
25 Request on or before 5:00 p.m. PST on the Objection/Exclusion Deadline Date shall be bound by
26 all terms of the Settlement and any Final Order entered in this Class Action if the Settlement is
27 approved by the Court, including a full and final release of all claims set forth in the Action.
28 Verified Settlement Class Members who do not negotiate their Individual Settlement Payments will

1 still be bound by the Settlement. No later than five (5) days after the Objection/Exclusion Deadline
2 Date, the Settlement Administrator shall provide Defense Counsel and Class Counsel with a
3 complete list of all Class Members who have timely and properly requested exclusion from the
4 Class.

5 **c. Objections to Settlement**

6 The Notice shall provide that Verified Class Members who wish to object to the Settlement
7 must submit a written objection to the Settlement Administrator also served on Class Counsel and
8 Defense Counsel on or before 5:00 p.m. PST on the Objection/Exclusion Deadline Date. All
9 objections must be in writing and include the Verified Class Member's name, address, email
10 address, telephone number, and last four digits of his or her Social Security number and must state
11 the factual and legal basis on which the objections are asserted and whether the Verified Class
12 Member intends to appear at the Final Approval Hearing. The Parties will be permitted to respond
13 in writing to such objections before the Final Approval Hearing or within the time period set by the
14 Court. Absent good cause as determined by the Court, Verified Class Members who fail to make
15 objections in the manner specified above shall be deemed to have waived any objections and shall
16 be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.
17 Class Members who submit a valid and timely Opt-Out Request may not object to the Settlement.
18 The Court, in its discretion, may allow oral comments at the Final Approval Hearing.

19 **d. No Solicitation of Settlement Objections or Exclusions**

20 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
21 time shall any of the Parties or their counsel, directly or indirectly, seek to solicit or otherwise
22 encourage Class Members to submit oral or written objections to the Settlement or Opt-Out
23 Requests, appeal from the Court's Final Order or seek to vacate or set aside the Final Order.
24 Further, at no time shall any of the Parties or their counsel discourage any Class Members from
25 participating in the Settlement.

26 **e. Parties' Right to Void Agreement; Proportionality Increase**

27 (i) If more than five percent (5%) of the Class Members submit timely and valid Opt-Out
28 Requests as described in Section 3.04(b) above and thus become Non-Verified Class Members,

Defendant will have the right, but not the obligation, to revoke and void this Agreement at its discretion. Defendant must exercise this right to revoke this Agreement within ten (10) days of being informed by the Settlement Administrator that more than five percent (5%) of the Class Members Opted-Out of this Agreement. If Defendant exercises this right to void the Agreement, then the Parties will have no further obligations under the Agreement.

(ii) Defendant represented and warranted that the Class includes 773 door-to-door salespersons (including misclassified independent contractors) with 24,514 Total Workweeks during the Class Period and 593 door-to-door lead generators with 7,910 Total Workweeks during the Class Period. If, when providing the Class List to the Settlement Administrator, the Class List indicates that either the number of persons in the Class or the Total Workweeks in the Class exceeds either total above by more than five percent (5%), Plaintiffs may either revoke this Agreement following the same procedure in 3.04(e)(i) above or require Infinity to pay a proportionate increase on a *pro-rata* basis of the Gross Settlement Fund based on the total increase greater than the 5% allowance. For example, if the number of Total Workweeks increases by 6% the Gross Settlement Fund will increase by 1%.

Section 3.05 Final Approval Hearing

A Final Approval Hearing shall be held before the Court on the date set forth in the Order for Preliminary Approval. At the Final Approval Hearing, the Court shall (1) review this Agreement and determine whether the Court should give it final approval, (2) set the amounts of the Enhancement Awards, PAGA Penalties and Class Counsel award of attorneys' fees and reimbursement of costs, and (3) consider any timely objections made pursuant to Section 3.04(c) above and all responses by the Parties to such objections. At the Final Approval Hearing, the Parties shall ask the Court to give final approval to this Settlement and Agreement and shall submit to the Court a proposed Final Order, which the Parties shall jointly agree upon in advance.

After entry of the Final Order, the Court shall have continuing jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection with this Agreement, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the

1 settlement embodied in this Agreement, and all orders and judgments entered in connection with
2 this Agreement.

3 **a. Waiver of Right to Appeal**

4 Provided that the Final Order is consistent with the terms and conditions of this Agreement,
5 Named Plaintiffs, Defendant, as well as any Verified Settlement Class Members who did not timely
6 object to the Settlement and appear at the Final Approval Hearing, hereby waive any and all rights
7 to appeal from the Final Order, including all rights to any post-judgment proceeding and appellate
8 proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any
9 extraordinary writ, and the Final Order therefore will become final and non-appealable at the time
10 it is entered. This waiver does not include any waiver of the right to oppose any appeal, appellate
11 proceedings, or post-judgment proceedings.

12 **b. Vacating, Reversal, or Material Modification on Appeal or Review**

13 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
14 or application, the reviewing court vacates, reverses, or modifies the Final Order such that there is a
15 material modification to the Settlement and Agreement, and that court's decision is not completely
16 reversed and the Final Order is not fully affirmed on review by a higher court, then Named
17 Plaintiffs and Defendant will each have the right to void the Settlement and Agreement, which the
18 Parties must do by giving written notice to the other Parties, the reviewing court, and the Court not
19 later than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially
20 modifying the Final Order becomes final. A vacation, reversal, or modification of the Court's
21 award of an Enhancement or Class Counsel's fees or costs will not constitute a vacation, reversal,
22 or material modification of the Final Order within the meaning of this paragraph, provided that
23 Defendants' obligation to make payments remains limited as set forth in this Agreement.

24 **c. Rendering the Settlement Null and Void**

25 In the event: (i) Plaintiffs or Defendant elect to void this Agreement, for a basis provided
26 in this Agreement; (ii) the Court does not enter any order specified in this Agreement; (iii) the
27 Court does not finally approve the Settlement as provided in this Agreement; (iv) the Court does
28 not enter a Final Order as provided in this Agreement which becomes final as a result of the

1 occurrence of the Effective Date; or (v) the Settlement does not become final for any other reason,
2 this Settlement Agreement shall be null and void and any order or judgment entered by the Court in
3 furtherance of this Settlement shall be treated as void, the Parties shall be returned to their
4 respective positions at the time of the execution of this Settlement Agreement, and any funds paid
5 under this Settlement shall be returned and the Parties shall proceed in all respects as if this
6 Settlement Agreement had not been executed, except that any fees already incurred by the
7 Settlement Administrator shall be split between the Parties.

8 **d. Administration of the Settlement with Appeal Pending**

9 In the event an appeal is filed from the Court's Final Order, or any other appellate review is
10 sought prior to the Effective Date, administration of the Settlement shall be stayed pending final
11 resolution of the appeal or other appellate review.

12 **Section 3.06 Settlement Payment Procedures**

13 **a. Gross Settlement Fund**

14 The Gross Settlement Fund includes the following: (a) the Individual Settlement Payments
15 to the Verified Class Members; (b) the fees awarded to Class Counsel; (c) reimbursement of actual
16 documented costs incurred by Class Counsel; (d) the Enhancement Award to each Named Plaintiff;
17 (e) Settlement Administration expenses; and (f) the PAGA Penalties. In addition to the Gross
18 Settlement Fund, Infinity shall pay the employer portion of payroll taxes owed on the
19 compensation portion of the Net Settlement Amount, as calculated by the Settlement
20 Administrator.

21 **b. Attorneys' Fees and Costs**

22 Class Counsel may request that the Court approve, and Defendant will not oppose, an award
23 of up to thirty-three and 33/100ths percent (33.33%) of the Gross Settlement Fund in attorneys'
24 fees and up to Twenty-Five Thousand Dollars (\$25,000) in documented litigation costs ("**Fees and**
25 **Costs Award**"). The Fees and Costs Award will cover: all work performed and all fees and costs
26 incurred to date and all work to be performed and all fees and costs to be incurred in connection
27 with the approval by the Court of this Settlement, the administration of the Settlement, and
28 obtaining final approval of this Settlement and entry of judgment. Class Counsel will be issued an

1 IRS Form 1099 by the Settlement Administrator for the Fees and Costs Award. The Settlement
2 shall not be contingent upon the Court awarding Class Counsel any particular amount for attorneys'
3 fees and costs.

4 **c. Enhancement Awards**

5 Class Counsel may request that the Court approve an Enhancement Award to each Named
6 Plaintiff in an amount not to exceed Twenty Thousand Dollars (\$20,000) for each Named Plaintiff
7 for his time and effort spent pursuing the Action. Each Named Plaintiff will also be entitled to
8 receive an Individual Settlement Payment pursuant to this Agreement in addition to this
9 Enhancement Award. The Settlement shall not be contingent upon the Court awarding Named
10 Plaintiffs any particular amount for the Enhancement Award. Class Counsel and Named Plaintiffs
11 shall have no right or ability to nullify the Settlement in the event that the Court awards an amount
12 less than the Enhancement Award described in this Agreement.

13 Because it is the intent of the Parties that the Enhancement Award represents payment to
14 the Named Plaintiffs for their services to the Class Members, and not wages, the Settlement
15 Administrator will not withhold any taxes from the Enhancement Award. The Enhancement
16 Award will be reported on a Form 1099 to the Named Plaintiffs.

17 **d. Administration Costs**

18 The Settlement Administration costs shall be paid out of the Gross Settlement Fund and
19 shall not constitute payment to any Verified Settlement Class Members. The amount of the
20 Settlement Administration costs shall be disclosed to the Court, Class Counsel, and Defense
21 Counsel prior to the Final Approval Hearing. If the Settlement Administration costs are less than
22 the maximum amount allocated to those costs, any outstanding amount shall be added to the Net
23 Settlement Amount. All disputes relating to the Settlement Administrator's performance of its
24 duties will be referred to the Court, if necessary, which will have continuing jurisdiction over this
25 Settlement until all payments and obligations contemplated by this Settlement have been fully
26 carried out.

27 ///

28 ///

e. Calculation of Individual Settlement Payments to Verified Settlement Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments and shall be divided between all Verified Settlement Class Members based on a weighted points system with points earned during the Class Period as follows:

<u>Points Category</u>	<u>Points Awarded</u>
Work Weeks in a door-to-door sales or sales lead generation position (whether employee or independent contractor); plus	1 point per
Work Weeks in a door-to-door sales or sales lead generation manager position; plus	2 points per
Completed California installations during the Class Period under your unique badge ID	3 points per

Any time employed selling Infinity products or services for parties other than Defendant, such as third-party dealers, does not qualify for points under this Settlement.

The maximum amount that each Verified Settlement Class Member is entitled to receive from the Net Settlement Amount is determined by multiplying the Net Settlement Amount by a ratio that is determined by dividing a Verified Settlement Class Member's total points earned during the Class Period in California by the total number of points earned by all Verified Settlement Class Members during the Class Period in California as expressed in the following formula:

$$\text{Individual Settlement Payment} = \text{Net Settlement Amount} \times \frac{\text{Verified Settlement Class Member's Total Points}}{\text{Total Number of Points of Verified Settlement Class Members}}$$

f. PAGA Penalties

The portion of PAGA Penalties payable to the PAGA Represented Employees shall be distributed to the PAGA Represented Employees employed during the PAGA Period on a pro-rata basis. The Settlement Administrator may pay the PAGA Represented Employees their share of the

1 PAGA Penalties with the Individual Settlement Payments, noted separately.

2 **g. Tax Treatment of Individual Settlement Payments**

3 The Parties agree that 25% of each Individual Settlement Payment will be considered
4 unreimbursed business expenses and 25% will be considered penalties, all of which will be
5 reported to each Settlement Class Member via an IRS Form 1099 by the Settlement Administrator.
6 The Parties agree that the remaining 50% of each Individual Settlement Payment will be considered
7 compensation and also will be reported to each Settlement Class Member and subject to lawful tax
8 withholdings and reported on IRS Form W-2. Any tax obligations arising from the Individual
9 Settlement Payments will be the sole responsibility of each Verified Settlement Class Member
10 receiving such payment(s). Each Verified Settlement Class Member is responsible to pay his or her
11 portion of the taxes due on any payment he or she receives under this Settlement. Defendant
12 remains responsible for paying its portion of any taxes due on the payments set forth in this
13 Agreement and any employer payroll taxes owed (if any) by Defendant shall be paid by Defendant
14 separately from the Gross Settlement Fund. Defendant shall provide all information necessary for
15 the Settlement Administrator to calculate necessary payroll taxes including its official name, 8 digit
16 state unemployment insurance tax ID number, and other information requested by the Settlement
Administrator, no later than seven (7) calendar days of the Effective Date.

17 **h. Funding Deadline**

18 No later than ten (10) business days after the Effective Date, Defendant shall pay the Gross
19 Settlement Fund and all applicable employer-side payroll taxes into a Qualified Settlement Fund
20 ("QSF") to be established by the Settlement Administrator. If, for whatever reason and however it
21 may occur, this Agreement is canceled, rescinded, terminated, voided, or nullified or the Settlement
22 is barred by operation of law, or invalidated, or ordered not to be carried out by a court of
23 competent jurisdiction, Defendant shall cease to have any obligation to pay any portion of the
24 Gross Settlement Fund to anyone under the terms of this Agreement.

25 **i. Payments from the Gross Settlement Fund**

26 Within fifteen (15) days of the Effective Date, the Settlement Administrator shall pay the
27 Court approved: (a) the Individual Settlement Payments to the Verified Settlement Class Members;
28 (b) the fees awarded to Class Counsel; (c) costs incurred by Class Counsel; (d) the Enhancement

1 Award to each Named Plaintiff; (e) Settlement Administration expenses; and (f) the PAGA
2 Penalties.

3 The Settlement Administrator shall establish an option for Verified Settlement Class
4 Members to receive Individual Settlement Payments via ACH, direct deposit, or digital payment as
5 the preferred form of payment. However, payments from the Gross Settlement Fund may also be
6 made by check. All payments made by check shall be good for one hundred twenty (120) days.
7 The Settlement Administrator shall mail a postcard reminder to all Verified Class Members who
8 have not cashed their Individual Settlement Checks by the 75th day after the date listed on the check
9 and provide a report to Class Counsel and Defense Counsel of the names, contact information and
10 check amounts of all such uncashed checks.

11 **j. Uncashed Checks**

12 To the extent that an Individual Settlement Payment check is uncashed 130 days after the
13 date listed on the check, the uncashed funds shall be distributed to the Controller of the State of
14 California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et*
15 *seq.* for the benefit of those Verified Settlement Class Members who did not cash their checks until
16 such time that they claim their property. The Parties agree that this disposition results in no “unpaid
17 residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be
18 paid out to Verified Settlement Class Members, whether or not they all cash their Individual
19 Settlement Payment checks. Therefore, Defendant will not be required to pay any interest on such
20 amounts. The Parties agree no unclaimed funds will result from the Settlement.

21 **k. No Claims Resulting from Payments**

22 No person shall have any claim of any kind whatsoever against any of the Parties, Defense
23 Counsel, Class Counsel, any Class Member, or the Settlement Administrator, based on the
24 distribution of Individual Settlement Payments made in accordance with this Agreement.

25 **l. No Effect on Employee Benefit Plans**

26 The payment to any Class Member as provided for in this Agreement (including, without
27 limitation, any Individual Settlement Payment and any Enhancement Award paid to Named
28 Plaintiffs) and the releases given by Verified Settlement Class Members, is not and shall not be

1 deemed to constitute an addition to, a modification of, a deduction of or a change in any previously
2 credited hours of service, compensation and/or wages under any collective bargaining agreement,
3 employee benefit plan, employment policy, or stock option plan of or sponsored by Defendant or
4 any of their present or former parent corporations or affiliates or any jointly trustee benefit plans.

5 **m. Notice of the Order and Judgment Granting Final Approval**

6 The Parties shall request that pursuant to California Rule of Court 3.771(b), the Court
7 approve that Notice of Entry of Judgment and the Final Order will be posted by the Settlement
8 Administrator on its website within three (3) days of Entry of the Final Order and that Notice of
9 Entry of the Final Order need not be additionally mailed to the Settlement Class.

10 **ARTICLE IV**

11 **LIMITATIONS ON USE OF THIS SETTLEMENT**

12 **Section 4.01: No Admission**

13 Defendant vigorously disputes the allegations in the Action. This Agreement is entered into
14 solely for the purpose of compromising claims that are highly disputed by the Parties. Nothing in
15 this Agreement is intended to be or will be construed as an admission of liability or wrongdoing by
16 Defendant.

17 **Section 4.02: Non-Evidentiary Use**

18 Whether or not the Effective Date occurs, neither this Agreement nor any of its terms will
19 be: (a) construed as, offered as, admitted as, received as, or deemed to be evidence for any purpose
20 adverse to Defendant or any other of the Released Parties (defined below), including, but not
21 limited to, evidence of a presumption, concession, indication, or admission by the Defendant or
22 Released Parties (defined below) of any liability, fault, wrongdoing, omission, concession, or
23 damage; (b) disclosed, referred to, or offered in evidence against the Defendant or Released Parties
24 (defined below) in any further proceeding in the Action, or any other civil, criminal, or
25 administrative action or proceeding except for the purposes of effectuating the Settlement pursuant
26 to this Agreement or for Defendant to establish that a Class Member has resolved any of his/her
27 claims released through this Agreement; (c) but may be used as evidence in any subsequent action
28 for breach or enforcement of this Agreement.

ARTICLE V

RELEASES

Section 5.01: Class Release By Class Members.

Any Verified Settlement Class Member, including each Named Plaintiff, shall be bound by this Agreement and shall be deemed to have fully and finally released all claims that were set forth, or could have been set forth based on the facts alleged, in the Operative Complaint.

Upon the Court's Final Order of this Settlement, and except as to such rights or claims as may be created by this Agreement, the Verified Settlement Class Members fully and finally release and discharge Defendant and Defendant's past, present, and future parent companies, subsidiaries, successors, divisions, related or affiliated companies, shareholders, owners, officers, directors, employees, agents, attorneys, successors and assigns, and each of them (collectively, the "**Released Parties**"), from any and all claims, demands, liabilities, causes of action of whatever kind or nature, debts, obligations, wages, penalties (including penalties under the California Labor Code's Private Attorneys General Act of 2004, as amended in August 2004, California Labor Code sections 2698, 2699.3, and 2699.5), damages, interest, expenses, attorneys' fees, costs, restitution and equitable relief, reasonably arising out of the same set of operative facts alleged in the Operative Complaint, or which could have been alleged or asserted based on the facts alleged in the Operative Complaint, including any and all claims for: (i) "independent contractor" misclassification; (ii) failure to pay training time and/or for meetings; (iii) failure to pay overtime; (iv) failure to provide meal and rest breaks; (v) failure to reimburse business expenses; (vi) failure to pay all commissions due; (vii) any and all claims for the failure to pay wages; (viii) any and all claims for failure to provide accurate or complete itemized wage statements; (ix) any and all claims for failure to timely pay final wages; (x) any and all claims based on advances; (xi) failure to provide a written contract outlining the current method of calculating and/or paying commissions and/or a signed copy thereof; (xii) failure to properly maintain accurate employment records; (xiii) failure to maintain a copy of all documents signed by sales representatives and/or to provide a copy of such documents upon request; (xiv) violation of Business and Professions Code § 17200; and (xv) recovery of penalties under the California Labor Code Private Attorneys General Act of

2004 (collectively, the “**Released Claims**”). The Released Claims include claims meeting the above definition under any and all applicable California or federal laws, statutes, regulations, and Wage Orders. For the avoidance of doubt, the releases given by Plaintiffs and the Class are intended for the sole benefit of Defendant and the Released Parties and shall not be construed as conferring any rights to any third party dealers.

It is agreed that because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice will advise all Class Members of the binding nature of the releases.

Section 5.02: General Release by Named Plaintiffs.

Upon the Court’s Final Order of this Settlement, and except as to such rights or claims as may be created by this Agreement, each Named Plaintiff agrees to fully release and forever discharge the Released Parties from any and all actions, causes of action, claims, charges, complaints, liabilities, obligations, promises, agreements, controversies, damages, actions, suits, rights, demands, liens, costs, losses, debts, penalties, fines, wages, liquidated damages, restitutionary amounts, attorneys’ fees and costs, interest, punitive damages and expenses (including, without limitation, back wages, penalties, liquidated damages, and attorneys’ fees and costs actually incurred) or liabilities of whatever kind or nature, whether known or unknown, which Plaintiffs have ever had, or hereafter may claim to have, arising on or before the date that they sign this Settlement Agreement.

Section 5.03: Named Plaintiffs’ 1542 Waiver

Each Named Plaintiff expressly waives any right or claim of right to assert hereafter that any claim, demand, obligation, and/or cause of action, existing at the time of the execution of this Agreement, has, through ignorance, oversight, or error, been omitted from the terms of this Agreement. Each Named Plaintiff agrees there is a risk that each and every injury he may have suffered by reason of the Released Parties’ relationship with him might not now be known, and there is further risk that said injuries, whether known or unknown at the date of this Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained by him. Nevertheless, each Named Plaintiff desires to forever and fully release and

1 discharge the Released Parties, and each of them, and understands that by the execution of this
2 Agreement no further claims for any such injuries that existed at the time of the execution of this
3 Agreement may ever be asserted by him. Each Named Plaintiff expressly waives and relinquishes
4 all rights and benefits afforded by section 1542 of the Civil Code of the State of California and
5 does so understanding and acknowledging the significance of such specific waiver of section 1542.
6 Specifically, each Named Plaintiff waives his rights under Section 1542 of the Civil Code, which
7 states:

8 **A general release does not extend to claims that the creditor or releasing party**
9 **does not know or suspect to exist in his or her favor at the time of executing the**
10 **release and that, if known by him or her, would have materially affected his or**
11 **her settlement with the debtor or released party.**

12 **Section 5.04: Release by Defendant for the Named Plaintiffs and Verified Settlement**

13 **Class Members**

14 Upon Final Approval of the Settlement, Defendant fully release and forever discharges the
15 Named Plaintiffs and the Verified Settlement Class Members from any and all actions, causes of
16 action, claims, charges, complaints, liabilities, obligations, promises, agreements, controversies,
17 damages, actions, suits, rights, demands, liens, costs, losses, debts, penalties, fines, wages,
18 liquidated damages, restitutionary amounts, attorneys' fees and costs, interest, punitive damages
19 and expenses or liabilities of whatever kind or nature which Defendant have ever had, or hereafter
20 may claim to have, arising out of or related to the repayment of advances following termination of
21 employment and for violating any employee post-termination non-solicitation clauses and, for the
22 Named Plaintiffs, from any and all actions, causes of action, claims, charges, complaints, liabilities,
23 obligations, promises, agreements, controversies, damages, actions, suits, rights, demands, liens,
24 costs, losses, debts, penalties, fines, wages, liquidated damages, restitutionary amounts, attorneys'
25 fees and costs, interest, punitive damages and expenses or liabilities of whatever kind or nature,
26 whether known or unknown, which Defendant have ever had, or hereafter may claim to have,
27 arising on or before the date that they sign this Agreement, arising out of the Action or their
28 employment with Defendant.

///

1 **Section 5.05: Defendant's Limited 1542 Waiver of Named Plaintiffs**

2 Defendant agrees there is a risk that each and every injury it may have suffered by reason of
3 the Named Plaintiffs' relationship with him might not now be known, and there is further risk that
4 said injuries, whether known or unknown at the date of this Agreement, might possibly become
5 progressively worse, and that as a result thereof further damages may be sustained by such
6 Defendant. Nevertheless, Defendant desires to forever and fully release and discharge each Named
7 Plaintiff, and each of them, and understands that by the execution of this Agreement no further
8 claims for any such injuries that existed at the time of the execution of this Agreement may ever be
9 asserted by them. Defendant expressly waives and relinquishes all rights and benefits afforded by
10 section 1542 of the Civil Code of the State of California and does so understanding and
11 acknowledging the significance of such specific waiver of section 1542. Specifically, Defendant
12 waives its rights under Section 1542 of the Civil Code, which states:

13 **A general release does not extend to claims that the creditor or releasing party**
14 **does not know or suspect to exist in his or her favor at the time of executing the**
15 **release and that, if known by him or her, would have materially affected his or**
16 **her settlement with the debtor or released party.**

16 Defendant makes this waiver with full knowledge of its rights and with the specific intent to
17 release all known and unknown claims arising on or before the Effective Date of this Agreement,
18 and therefore specifically waive the provisions of any statute in any state of the United States
19 which prevents release of unknown claims.

20 **Section 5.06: Inapplicability of California Labor Code Section 206.5**

21 The Verified Settlement Class Members, including, without limitation, the Named
22 Plaintiffs, shall be deemed to have acknowledged and agreed that their claims for wages and/or
23 penalties and/or any other recovery solely in connection with this Action are disputed, and that the
24 payments to them set forth in this Agreement constitute payment of all sums allegedly due to them
25 solely from the claims alleged in the Action. The Verified Settlement Class Members, including,
26 without limitation, the Named Plaintiffs, shall be deemed to have acknowledged and agreed that
27 California Labor Code section 206.5 does not apply to any such payments.

Section 5.08: Attorneys' Fees or Costs

12 ARTICLE VI

14 **Section 6.01: Amendments, Modification or Rescission**

22 || **Section 6.02: Assignment**

JOINT STIPULATION RE: SETTLEMENT

1 Parties and their respective successors and assigns.

2 **Section 6.03: Entire Agreement**

3 This Agreement, including, without limitation, the Exhibit referred to herein, which form an
4 integral part hereof, contains the entire understanding of the Parties hereto with respect to the
5 subject matter contained herein. There are no restrictions, promises, representations, warranties,
6 covenants, or undertakings governing the subject matter of this Agreement other than those
7 expressly set forth or referred to herein. Upon its full execution, this Agreement supersedes all
8 prior agreements and understandings among the Parties hereto with respect to the Settlement,
9 including, without limitation, correspondence between Class Counsel and Defense Counsel, the
10 Memorandum of Settlement and drafts of prior agreements or proposals.

11 **Section 6.04: Waiver of Compliance**

12 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
13 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the
14 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
15 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
16 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
17 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

18 **Section 6.05: Counterparts and Fax/PDF Signatures**

19 This Agreement, and any amendments hereto, may be executed in any number of
20 counterparts and any Party and/or their respective counsel hereto may execute any such
21 counterpart, each of which when executed and delivered shall be deemed to be an original and all
22 of which counterparts taken together shall constitute one instrument. A fax, electronic, DocuSign
23 or PDF signature on this Agreement shall be as valid as an original signature.

24 **Section 6.06: Meet and Confer Regarding Disputes**

25 If any dispute arises among the Parties or their respective counsel regarding the
26 implementation or interpretation of this Agreement, Class Counsel, and Defense Counsel shall
27 meet and confer in an attempt to resolve such dispute prior to submitting it to the Court.

28 ///

1 **Section 6.07: Administration Costs**

2 The Parties agree to cooperate in the Settlement administration process and to make all
3 reasonable efforts to control and minimize the costs and expenses incurred in administration of the
4 Settlement.

5 **Section 6.8: Circular 230 Disclaimer**

6 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
7 “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER
8 THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES
9 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
10 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
11 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
12 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
13 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
14 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R. PART 10,
15 AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
16 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
17 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
18 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
19 THE RECOMMENDATION OF ANY OTHER PARTY, OR ANY ATTORNEY OR
20 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON
21 ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
22 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON
23 THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY
24 OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
25 CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
26 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
27 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX
28 TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY
TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

20 **Section 6.9: Privacy of Documents and Information**

21 The Named Plaintiffs and their counsel agree that none of the documents and information
22 provided to them by Defendant shall be used for any purpose other than prosecution of this Action.

23 **Section 6.10: Exhibit and Headings**

24 The terms of this Agreement include the terms set forth in any attached Exhibit, which are
25 incorporated by this reference as though fully set forth in this Agreement. Any Exhibit to this
26 Agreement is an integral part of the Settlement. The descriptive headings of any paragraphs or
27 sections of this Agreement are inserted for convenience of reference only and do not constitute a
28 part of this Agreement.

1 **Section 6.11: Interim Stay of Proceedings**

2 The Parties agree that all orders and deadlines in the litigation are stayed except such
3 proceedings necessary to implement and complete the Settlement. In the event the Settlement is
4 not approved by the Court, the Parties shall return to the current status of the litigation.

5 **Section 6.12: Authorization to Enter Into Settlement Agreement**

6 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
7 whom they represent to negotiate this Agreement and to take all appropriate action required or
8 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to
9 execute any other documents required to effectuate the terms of this Agreement. The Parties and
10 their counsel will cooperate with each other and use their best efforts to effect the implementation
11 of the Settlement. The person signing this Agreement on behalf of Defendant represents and
12 warrants that he/she is authorized to sign this Agreement on behalf of Defendant.

13 **Section 6.13: Cooperation and Drafting**

14 Each of the parties has cooperated in the drafting and preparation of this Agreement.
15 Hence, in any construction made to this Agreement, the same shall not be construed against any of
16 the Parties.

17 **Section 6.14: Invalidity of Any Provision**

18 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
19 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
20 as to define all provisions of this Agreement valid and enforceable.

21 **Section 6.15: Defense**

22 To the extent permitted by law, this Agreement may be pleaded as a full and complete
23 defense to, and may be used as the basis for an injunction against, any action, suit, or other
24 proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in

25 **Section 6.16: Enforcement**

26 The Parties agree this Agreement shall be enforceable by the Court and the Court shall
27 retain exclusive and continuing jurisdiction of this Action over all Parties and Class Members to
28 interpret and enforce the terms, conditions, and obligations of the Settlement.

The Named Plaintiffs, Verified Class Members, and Defendant hereby submit to the personal and exclusive jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiffs and Defendant as of the date(s) set forth below:

KEEGAN & BAKER, LLP

Dated: 3/18/2022

DocuSigned by:
Jason Baker
DE7B2D4E96AD4FE
By: Jason E. Baker, Esq.
Class Counsel

Dated: 3/18/2022

DocuSigned by:
Lukas Jeffrey
BE85794ACD734B2...
By: LUKAS JEFFREY, Named Plaintiff

Dated: 3/21/2022

DocuSigned by:
John Lyman
BE6E9CB43A28418
By: JOHN LYMAN, Named Plaintiff

Dated: 3/22/2022

DocuSigned by:
Louis Cisneros
9F271E5D4A154C9...
By: LOUIS CISNEROS, Named Plaintiff

ELGUINDY, MEYER & KOEGEL, APC

Dated: 3/18/2022

DocuSigned by:
David Daniels
FB45965B353D451...
By: David Daniels, Esq.
Defendants' Counsel

INFINITY ENERGY, INC.

Dated: 3/21/2022

DocuSigned by:
Corey Gilbert
69B2981E3C3F404...
By: Name: Corey Gilbert
Title: Title

EXHIBIT A

Jeffery v. Infinity Energy, Inc.
 c/o Simpluris, Inc.
 P.O. Box 26170
 Santa Ana, CA 92799
 (888) 369-3780

<<First Name>> <<Surname>>
 <<Address1>>
 <<Address2>>
 <<City>>, <<State>> <<Zip>>

**Court-Ordered Class Action Notice
 Not An Advertisement**

You could receive money and your rights could be affected by this Class Action Settlement. If the name and address listed to the left, or any information attributable to you in this Notice, is incorrect, please provide the correct information to the Settlement Administrator at 888-369-3780 or infinitysettlement@simpluris.com.

**NOTICE OF CLASS ACTION SETTLEMENT AND FINAL
 APPROVAL HEARING**

Jeffery et al. v. Infinity Energy, Inc.

Originally filed in Superior Court of California County of Riverside, No. MVC1907343
 Pending in Judicial Council Coordination Proc. 5139 – Superior Court of California County San Diego,
 Department 74

Date of Notice: DATE

ESTE AVISO ESTÁ DISPONIBLE EN ESPAÑOL LLAMANDO AL 888-369-3780

The Honorable Keri G. Katz, Judge of the California Superior Court authorized this Notice. This is not a solicitation from a lawyer. You are not being sued. However, your legal rights are affected by the information contained in this Notice.

If you are currently or were formerly employed by Infinity Energy, Inc. in the State of California conducting door-to-door sales or door-to-door sales lead generation, including managers, whether classified as an employee or independent contractor, between June 12, 2015 and May 1, 2022 (the “Class Period”), this class action settlement (“Settlement”) affects your rights and you could receive money from the Settlement (an “Individual Settlement Payment”).

- A Settlement has been reached in the above referenced class action lawsuit (“Lawsuit”) against Infinity Energy, Inc. (“Defendant” or “Infinity”) that affects your rights. In summary, the Lawsuit alleges that members of the Class suffered from unlawful employment practices and were deprived of certain rights under the California Labor Code.
- The Court has given preliminary approval to the Settlement. However, the Settlement will not be final, and no Individual Settlement Payments will be made unless and until the Court gives final approval to the Settlement.

**YOUR LEGAL RIGHTS AND
 OPTIONS IN THIS SETTLEMENT**

DO NOTHING AND RECEIVE YOUR MONETARY SHARE OF THE SETTLEMENT	If you do nothing, you will automatically receive your Individual Settlement Payment and will release certain claims against Infinity.
REQUEST TO BE EXCLUDED FROM THE SETTLEMENT	If you submit a request to be excluded from the Settlement no later than 45 days from the date of this Notice , you will receive no Individual Settlement Payment or benefits of the Settlement but will retain any rights you may have to file against Infinity.
OBJECT TO THE TERMS OF THE SETTLEMENT	If you do not want to be excluded from the Settlement but wish to object to the terms of the Settlement, you can submit a written Objection no later than 45 days from the date of this Notice .

EXHIBIT A

Questions? Read on or visit the Settlement Administration Website at <https://www.simpluris.com>

SUMMARY INFORMATION

1. Why did I receive this Notice?

A Settlement has been reached in the Lawsuit that affects your legal rights. Infinity's records show that you are a member of the Class and may be eligible to receive an Individual Settlement Payment.

2. What is this Lawsuit about?

This Lawsuit alleges Infinity's employment practices violated California law through: (i) "independent contractor" misclassification; (ii) failure to pay training time and/or for meetings; (iii) failure to pay overtime; (iv) failure to provide meal and rest breaks; (v) failure to reimburse business expenses; (vi) failure to pay all commissions due; (vii) any and all claims for the failure to pay wages; (viii) any and all claims for failure to provide accurate or complete itemized wage statements; (ix) any and all claims for failure to timely pay final wages; (x) any and all claims based on advances; (xi) failure to provide a written contract outlining the current method of calculating and/or paying commissions and/or a signed copy thereof; (xii) failure to properly maintain accurate employment records; (xiii) failure to maintain a copy of all documents signed by sales representatives and/or to provide a copy of such documents upon request; (xiv) violation of Business and Professions Code § 17200; and (xv) recovery of penalties under the California Labor Code Private Attorneys General Act of 2004. The specific allegations of the Lawsuit are contained in the First Amended Complaint.

3. Has the Court decided who is right?

No. The Court has only given preliminary approval to the Settlement and decided that you should get a copy of this Notice. You can review the Settlement and determine whether you want to participate in it, object to it, or exclude yourself (i.e., "Opt-Out") from the Settlement.

4. What is a class action lawsuit and who is involved?

In a class action lawsuit, one or more people called Class Representatives assert claims on behalf of themselves and other similarly situated persons, called "the Class." The Class Representatives in this case are Lukas Jeffery, John Lyman and Louis Cisneros. This case was originally venued in Riverside County Superior Court, as Case No. MVC1907343, and was coordinated under Judicial Council Coordinated Proceeding No. 5139 on July 28, 2021 and transferred to San Diego Superior Court Department 74, before the Honorable Keri G. Katz.

5. Am I a Class Member?

Yes. You have received this Notice because Infinity's records indicate that you are a member of the Class for some portion of the Class Period. For the avoidance of doubt, the Class does not include time periods in which members of the Class were employed by third party dealers or in positions with Infinity other than as defined in the Class.

6. Why is this Lawsuit being settled?

After exchanging relevant information and documents, evaluating witness testimony, and engaging in settlement negotiations with the assistance of a neutral third-party mediator, the Class Representatives and Infinity have agreed to settle the claims against Infinity and each other. The Settlement represents a compromise of disputed claims and is not an admission that Infinity violated the law. The Class Representatives and their attorneys believe the Settlement is in the Class's best interest.

7. What does this Settlement provide?

Infinity has agreed to pay **\$3,000,000** to settle the claims in this Lawsuit, to release certain claims against Class Members and provide the settlement benefits summarized in this Notice.

8. Who represents the Class Members in the Lawsuit?

EXHIBIT A

In class actions, Class Members are represented by Court-appointed lawyers (“Class Counsel”). In this case, you are represented by:

Jason E. Baker, Esq. jbaker@keeganbaker.com
 John J. Weber, Esq. - jweber@keeganbaker.com
 KEEGAN & BAKER, LLP
 5820 Oberlin Drive, Suite 205
 San Diego, CA 92121
 Telephone: (858) 558-9402

Class Counsel are experienced in handling similar cases, and the Court has determined that Class Counsel are qualified to represent all Class Members. Nonetheless, you may hire your own lawyer at your own expense if you wish.

9. Who is the Settlement Administrator?

The Settlement Administrator is a neutral third party appointed by the Court to send this Notice, process and issue Individual Settlement Payments, and otherwise administer the Settlement. You may contact the Settlement Administrator at:

JEFFERY v. INFINITY ENERGY CLASS ACTION SETTLEMENT

c/o Simpluris, Inc.

P.O. Box 26170

Santa Ana, CA 92799

Phone: (800) 779-2104

Dedicated Email Address for this Settlement infinitysettlement@simpluris.com

MONETARY AND NON-MONETARY TERMS OF THE SETTLEMENT
10. What has Infinity agreed to do?

Infinity has agreed to pay **\$3,000,000** to settle the claims in this Lawsuit (the “Gross Settlement Fund”). Additionally, for all Class Members whose employment ended on or before May 1, 2022 and who do not request to be excluded from the Settlement, Infinity has agreed to waive and release unpaid wage advances and not to seek enforcement of any post-termination employee non-solicitation clauses.

11. How will the Gross Settlement Fund be allocated?

Subject to final approval of the Court, the Settlement Agreement allocates the Gross Settlement Fund as follows: (a) PAGA Penalties of no more than \$60,000; (b) Settlement Administration costs of approximately \$15,000; (c) Enhancement Awards of no more than \$60,000; (d) cost of litigation of no more than \$25,000; (e) Class Counsel attorneys’ fees of no more than 33.33% of the Gross Settlement Fund, which would leave no less than \$1,840,000 for distribution to Verified Settlement Class Members as the Net Settlement Amount.

12. How are Class Members’ Individual Settlement Payment(s) determined?

Subject to final approval of the Court, the maximum amount that each Verified Settlement Class Member is entitled to receive from the Net Settlement Amount is determined by comparing the Verified Settlement Class Member’s total points earned during the Class Period in California by the total number of points earned by all Verified Settlement Class Members during the Class Period in California. Verified Settlement Class Members earn points during the Class Period as follows:

<u>Points Category</u>	<u>Points Awarded</u>
Work Weeks in a door-to-door sales or sales lead generation position (whether as an employee or independent contractor); plus	1 point per
Work Weeks in a door-to-door sales or	2 points per

EXHIBIT A

sales lead generation manager position; plus	
Completed California Installations during the Class Period under your unique badge ID	3 points per

Any time employed selling Infinity products or services for parties other than Infinity, such as third-party dealers, does not qualify for points under this Settlement.

13. How much is my Individual Settlement Payment?

The precise amount is unknown at this time. According to Infinity's records, you earned the following credits during the Class Period towards calculations under the Settlement:

<u>Points Category</u>	<u>Per Infinity's Records</u>
Work Weeks in a door-to-door sales or sales lead generation position (whether as an employee or independent contractor)	<<Work Weeks>>
Work Weeks in a door-to-door sales or sales lead generation manager position	<<Manager Work Weeks>>
Completed California Installations during the Class Period under your unique badge ID	<<Completed Installations>>

The points will be used to calculate your respective Individual Settlement Payment. The precise amount of your Individual Settlement Payment is not known until the Settlement is given final approval by the Court. If you wish to dispute Infinity's records, you must notify the Settlement Administrator and provide any supporting evidence in writing no later than **30 days from the date of this Notice**.

14. How are currently employed Class Members effected by the Settlement?

California law prohibits Infinity from discharging you or in any other manner retaliating or discriminating against you because you exercised your right to participate in this Settlement.

15. Are any taxes taken out of the payments?

Yes. Fifty percent (50%) of your award will be classified as back wages, twenty-five percent (25%) as expense reimbursement and twenty-five percent (25%) as interest and penalties, subject to lawful tax withholdings.

16. How will I be paid?

The Settlement Administrator has established numerous ways for you to be paid. Unless you elect to receive your Individual Settlement Payment via ACH, direct deposit or digital payment, you will receive your Individual Settlement Payment by check. Checks will be good for one hundred twenty (120) days. Any Individual Settlement Payment check not cashed after one hundred thirty (130) days shall be void and the funds distributed to the Controller of the State of California to be held pursuant to California's Unclaimed Property Law.

17. Why does the California LWDA receive a portion of the Settlement?

One of the claims in the Lawsuit is that Infinity violated the California's Private Attorneys General Act of 2004 ("PAGA"). Under PAGA, private citizens are permitted to recover civil penalties for violations of California's Labor Code, seventy-five percent (75%) given to the California Labor and Workforce Development Agency ("LWDA"), with the remainder paid pro-rata to the PAGA Represented Employees (as defined in the Settlement Agreement).

EXHIBIT A

18. What is an “Enhancement Award”?

In class actions, the Court may provide Class Representatives an “Enhancement Award” in recognition of the time, effort, and risks taken in the litigation of the case on behalf of the Class. In this Lawsuit, Class Counsel will apply to the Court for up to a \$20,000 Enhancement Award for each Class Representative Lukas Jeffery, John Lyman and Louis Cisneros. The Court will ultimately determine the amount of the Enhancement Awards.

19. How much will it cost to administer the Settlement?

Class Counsel will apply to the Court for payment to the Settlement Administrator for its fees and costs in administering the Settlement, which is estimated not to exceed \$15,000. The Court will ultimately determine the amount paid to the Settlement Administrator.

20. How will Class Counsel be paid?

Class Members are not personally liable for any fees and costs. As is routine in class action cases, Class Counsel will request an award of attorneys’ fees and incurred expenses. These fees and expenses have been incurred as Class Counsel pursued the Lawsuit on behalf of the Class without receiving any compensation for their services or reimbursement of their out-of-pocket expenses. Accordingly, Class Counsel will apply to the Court for (i) attorneys’ fees in the amount of up to thirty-three and one-third percent (33 1/3%) of the Gross Settlement Fund; and (ii) incurred expenses, not exceeding \$25,000.

RELEASE OF CLAIMS

21. What claims are being released as part of the Settlement?

Upon final approval of the Settlement by the Court, Class Members who do not request to be excluded will fully release claims, arising during the Class Period, which were alleged or could have been alleged in the Lawsuit based on the facts alleged in support of the class claims against Infinity and other Released Parties in the First Amended Complaint. When claims are “released” it means that a person covered by the release cannot sue Infinity or the other Released Parties for these claims. The releases are binding upon Class Members who do not submit Opt-Out Requests to the Settlement. Additionally, Infinity has agreed to release claims against formerly employed Class Members who do not submit Opt-Out Requests to the Settlement related to the repayment of advances following termination of employment and for violating any employee post-termination non-solicitation clauses. These releases from Infinity only benefit Class Members who do not submit Opt-Out Requests to the Settlement.

The full terms of the releases are set forth in Article V of the Settlement Agreement.

YOUR RIGHTS AND OPTIONS

22. How do I participate in the Settlement?

You do not need to do anything to participate in the Settlement. If you are a Class Member and do not request to be excluded from the Settlement, you will automatically receive an Individual Settlement Payment (see Sections 11 -13 above) and release claims against the Released Parties (see Section 21 above) without any further action on your part.

23. How do I request to be excluded from the Settlement?

If you wish to be excluded from the monetary terms and release provisions of the Settlement, you must mail a written, personally signed statement to the Settlement Administrator at the address or email set forth above (Section 9) that you wish to be excluded from the Settlement (“Opt-Out Request”). The Opt-Out Request must contain your name, mailing address, email address, telephone number and last 4 digits of your Social Security Number or taxpayer identification number. It must also clearly express your intent to be excluded from the Settlement in this Lawsuit and signed by you. **To be effective, your Opt-Out Request must be postmarked or emailed no later than 45 days from the date of this Notice.** You cannot choose to accept or submit an Opt-Out Request to only a portion of the Settlement. If you do not complete and timely mail a valid Opt-Out Request, you will be bound by all terms and conditions of the Settlement, including its release of claims.

EXHIBIT A**24. May I object to the Settlement?**

If you wish to object to the Settlement in writing, you may do so by mailing to the Settlement Administrator at the address or email set forth above (Section 9) with the written factual and legal basis of the objection, with a copy served upon Class Counsel (contact information in Section 8 above) and counsel for Infinity (David Daniels, Esq. ELGUINDY, MEYER & KOEGEL, APC, 2990 Lava Ridge Court, Roseville, California 95661, ddaniels@emklawyers.com). Your written objection must be postmarked or emailed no later than **45 days from the date of this Notice** and must include your name, mailing address, email address, telephone number and last 4 digits of your Social Security number; written factual and legal basis of the objection; and must state whether you intend to appear at the Final Approval Hearing. However, you cannot both object to the Settlement and exclude yourself from (Opt-Out of) the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement and you will not be able to exclude yourself from the Settlement.

THE SETTLEMENT'S FINAL APPROVAL HEARING**25. When will the Court consider whether to grant final approval of the Settlement?**

The Court, the Honorable Keri G. Katz Presiding, will hold a Final Approval Hearing in Department C-74 of the California Superior Court for the County of San Diego, located at 330 W. Broadway, San Diego, California 92101, on **FINAL APPROVAL HEARING**, to decide whether to grant final approval of the Settlement. It is not necessary for you to appear at this hearing. Regardless of whether you submit a written objection, you may appear at the hearing to raise or explain any objection you have to the Settlement.

The hearing may be postponed without further notice to the Class. If the Settlement is not approved, the Lawsuit will continue to be prepared for a class certification hearing, trial, or other judicial resolution. If the Settlement is approved, the Lawsuit will end, and the Gross Settlement Fund will be paid by Infinity and disbursed as set forth in the Settlement Agreement and approved by the Court. However, no money will be paid until after the Settlement is approved and all possibilities of appeal are completed.

FURTHER INFORMATION**26. How do I receive more information?**

This Notice provides a summary of the basic terms of the Settlement. For the Settlement's complete terms and conditions, consult the Settlement Agreement and other documents in the case, which can be accessed (i) via the Register of Actions for the California Superior Court for the County of San Diego (<https://roa.sdcourt.ca.gov/roa/>), (ii) by visiting the clerk of the court located at 330 West Broadway, San Diego, California 92101; (iii) contacting the Settlement Administrator, (iv) on the Settlement Administrator's website at <https://www.simpluris.com/case-information> or (iv) by a request to Class Counsel. In the event of any conflict between the terms of the Settlement Agreement and this Notice, the Settlement Agreement shall control.

PLEASE DO NOT TELEPHONE OR OTHERWISE WRITE THE COURT, THE OFFICE OF THE CLERK, DEFENDANT, OR COUNSEL FOR DEFENDANT FOR INFORMATION REGARDING THIS SETTLEMENT.

**ESTE AVISO ESTÁ DISPONIBLE EN ESPAÑOL LLAMANDO AL
888-369-3780**

EXHIBIT B

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – HALL OF JUSTICE**

Coordination Proceeding
Special Title (Rule 3.550)

**INFINITY ENERGY WAGE AND
HOUR CASES**

INFINITY ENERGY, INC. v. LUKAS
JEFFERY

AND RELATED CROSS-ACTION.

**JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 5139**

**[PROPOSED] ORDER FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*Infinity Energy, Inc. v. Jeffery and related
cross-complaint only*

Originally filed in Superior Court of California
County of Riverside, NO. MVC1907343

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

This matter came on for hearing on [DATE], at [TIME] in Department C-74 of the above-captioned court on Cross-Complainants' Motion for Preliminary Approval of Class Action Settlement, upon the terms and conditions set forth in the Joint Stipulation of Class Action Settlement (the "**Settlement Agreement**" or "**Settlement**") between Cross-Complainants LUKAS JEFFERY, JOHN LYMAN, and LOUIS CISNEROS (referred to for simplicity as "**Plaintiffs**") and Cross-Defendant INFINITY ENERGY, INC. (referred to for simplicity as "**Defendant**").

The Court, having fully reviewed the Motion for Preliminary Approval, the Memorandum of Points and Authorities and Declarations and Exhibits filed in support thereof, the Settlement

EXHIBIT B

1 Agreement, and the Notice Packet, and in recognition of the Court's duty to make a preliminary
2 determination as to the reasonableness of any proposed class action settlement, and if preliminarily
3 determined to be reasonable, to ensure proper notice is provided to the Class Members in
4 accordance with due process requirements, and to set a Final Approval Hearing to consider the
5 proposed Settlement Agreement as to the good faith, fairness, adequacy and reasonableness of any
6 proposed settlement, the Court **HEREBY MAKES THE FOLLOWING DETERMINATIONS**
7 **AND ORDERS:**¹

- 8 1. The Court finds on a preliminary basis that the Settlement Agreement incorporated in full
9 by this reference and made a part of this Order For Preliminary Approval of Class Action
10 Settlement, appears to be within the range of reasonableness of a settlement which could
11 ultimately be given final approval by this Court.
- 12 2. The Court does hereby preliminarily approve the Settlement as being fair, just, reasonable
13 and adequate, and supporting certification of a provisional settlement class pursuant to
14 California Rules of Court, Rule 3.769(d) and Section 382 of the California Code of Civil
15 Procedure in that: (a) the proposed Settlement Class is ascertainable and so numerous that
16 joinder of all members of the Settlement Class is impracticable; (b) common questions of
17 law and fact predominate and there is a well-defined community of interest among
18 members of the proposed Settlement Class, and each of them, with respect to the subject
19 matter-of the litigation; (c) the claims of the Named Plaintiffs are typical of the claims of
20 the members of the proposed Settlement Class; (d) the Named Plaintiffs have and will
21 fairly and adequately protect the interests of the proposed Settlement Class; (e) a class
22 action is superior to other available methods for an efficient adjudication of this
23 controversy in the context of settlement; and (f) Class Counsel is qualified to serve as
24 counsel for the proposed Named Plaintiffs, as Class Representatives and the proposed
25 Settlement Class, and will adequately protect their interests.

26
27
28 ¹ All defined terms contained herein shall have the same meanings as those set forth in the Joint Stipulation of Class
Action Settlement (the "Settlement Agreement") submitted in support of the Motion for Preliminary Approval.

EXHIBIT B

3. It appears to the Court that the Gross Settlement Fund is fair and reasonable to the Settlement Class when balanced against the probable outcome of further litigation relating to maintaining class certification, liability and damages issues, and potential appeals. It further appears that significant investigation, research, and litigation has been conducted such that counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears that the Settlement at this time will avoid substantial costs, delay and risks that would be presented by the further prosecution of the litigation. It further appears that the proposed Settlement has been reached as a result of the intensive, serious and non-collusive negotiations between the Parties.

4. Solely for the purposes of the proposed Settlement, a Settlement Class is hereby provisionally certified pursuant to California Code of Civil Procedure section 382 as follows:

All persons currently and formerly employed by Infinity Energy, Inc. in the State of California conducting door-to-door sales or door-to-door sales lead generation, including managers, whether classified as an employee or independent contractor, between June 12, 2015 and the earlier of the date of preliminary approval of the Settlement or May 1, 2022 (the “**Class Period**”).

5. Solely for the purposes of the proposed Settlement, the Court does hereby preliminarily approve Jason E. Baker, Esq., and John J. Weber, Esq., of KEEGAN & BAKER, LLP as Class Counsel and LUKAS JEFFERY, JOHN LYMAN, and LOUIS CISNEROS as Class Representatives.

6. The Court does hereby approve the appointment of Simpluris, Inc. (the “**Settlement Administrator**”) as the Parties’ Settlement Administrator and preliminarily approves the Settlement Administrator’s fee in an amount estimated at \$15,000.00.

7. The Court approves, as to form, content, and adequacy, the Notice of Class Action Settlement and Final Approval Hearing (the “**Notice Packet**” or “**Notice**”) attached as Exhibit A to the Settlement Agreement and this Order, with such non-material changes, if needed, that may be agreed to by counsel for the Parties to conform to this Order and the Settlement Agreement.

EXHIBIT B

1 8. The Court finds that the Notice Packet constitutes the best notice practicable under the
2 circumstances, is in full compliance with the laws of the State of California and the
3 requirements of due process. The Court further finds that the Notice Packet fully and
4 accurately informs the Class Members of all material elements of the proposed Settlement,
5 of each Class Member's right to participate, request exclusion from, or object to the
6 Settlement. The Court further approves of the process for the mailing and emailing of the
7 Notice Packet to the Class Members, as specifically described in the Settlement
8 Agreement, and finds that the process constitutes an effective method of notifying Class
9 Members of their rights with respect to the proposed Settlement.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

- 10
11 9. The Settlement Administrator shall supervise and administer the notice procedure as more
12 fully set forth below:
- 13 a. Within fifteen (15) days of this Order Granting Preliminary Approval,
14 Defendant shall provide the Settlement Administrator with the Class List and a
15 modified Class List to Class Counsel, as described in the Settlement
16 Agreement.
 - 17 b. Defendant shall consult with the Settlement Administrator prior to the
18 production date to ensure that the format of the Class List will be acceptable to
19 the Settlement Administrator.
 - 20 c. Within seven (7) days of receipt of the Class List, the Settlement Administrator
21 shall run a check of the Class Members' addresses using the United States
22 Postal Service's NCOALink system to update and correct any known or
23 identifiable address changes and mail the Notice Packet by first-class United
24 States mail to each Class Member, and by email to those with known email
25 addresses, following the procedures and timelines provided in the Settlement
26 Agreement.

//

//

EXHIBIT B

- 1 d. There will be a thirty (30) day notice period from the date the Notice Packet is
2 distributed during which Class Members may dispute the information in the
3 Notice Packet (the “Dispute Deadline Date”) as described in the Settlement
4 Agreement.
- 5 e. Any Class Member who wishes to be excluded (Opt-Out) from the Settlement
6 Class and not participate in the proposed Settlement must submit an Opt-Out
7 Request as described in the Notice Packet. The Opt-Out Request must be
8 postmarked and mailed or received at the designated email address for the
9 Settlement Administrator, no later than forty-five (45) days from the date of the
10 Notice Packet (the “Objection/Exclusion Deadline Date”).
- 11 f. Notice Packets returned to the Settlement Administrator as non-delivered
12 before the Dispute Deadline Date or the Objection/Exclusion Deadline shall be
13 resent to the forwarding address, if any, on the returned envelope. Class
14 Members who receive a re-mailed or emailed Notice within ten (10) days of the
15 Dispute Deadline Date or Objection/Exclusion Deadline Date, shall have an
16 additional ten (10) days from the original Dispute Deadline Date and
17 Objection/Exclusion Deadline Date to dispute the information in the Notice
18 Packet or submit an Opt-Out Request.
- 19 g. Upon completion of these steps by the Settlement Administrator as described
20 in the Settlement Agreement, Plaintiffs and Defendant shall be deemed to have
21 satisfied their obligations to provide the Notice Packet to the Class Members.
- 22 h. No later than twenty-one (21) days prior to the Final Approval Hearing, the
23 Settlement Administrator shall provide Class Counsel and Defense Counsel
24 with a declaration attesting to completion of the notice process, including any
25 attempts to obtain valid mailing addresses and email addresses for Class
26 Members and re-sending any returned Notice Packets, as well as the number of
27 Opt-Out Requests that the Settlement Administrator received and the dates that
28 the Settlement Administrator received those Opt-Out Requests.

EXHIBIT B

i. Class Counsel shall provide to the Court, no later than sixteen (16) court days prior to the Final Approval Hearing, a declaration by the Settlement Administrator of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

10. Any Class Member may enter an appearance in the action, at his or her own expense, individually or through counsel of their own choice. If they do not enter an appearance or Opt-Out from the Settlement, they will be represented by Class Counsel.

11. Any Class Member may object to the Settlement by filing a written statement of objection (“**Objection**”) with the Settlement Administrator and serving the same on all Parties, through their respective counsel, no later than forty-five (45) days from the date of the Notice Packet. Any Objection must be signed by the Class Member wishing to object and state: (1) the Class Member’s name; (2) the Class Member’s address; (3) the Class Member’s email address; (4) the Class Member’s telephone number; (5) the last four digits of the Class Member’s Social Security number; (6) the factual and legal basis of the Class Member’s Objection; and (7) whether the Class Member intends to appear at the Final Approval Hearing. Absent good cause as determined by the Court, Class Members who fail to make an Objection in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Class Members who submit a timely, written Objection will also have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court.

12. A hearing on Final Approval (the “**Final Approval Hearing**”) shall be held on _____, 2022 at _____ a.m./p.m. in Department C-74 of the Superior Court of the State of California in and for the County of San Diego, to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved by the Court; whether Judgment should be entered herein and to determine the amount of attorneys’ fees and costs that should be awarded to Class Counsel, the amount of Class

EXHIBIT B

Representatives Enhancement Awards, and penalties payable pursuant to Labor Code Section 2699 (“PAGA”).

13. All briefs, evidence, and materials filed in support of the Final Approval Hearing shall be filed with this Court no later than sixteen (16) court days before the date set for the Final Approval Hearing.

14. The Court reserves the right to adjourn the date of the Final Approval Hearing without further notice to the Class Members and retains jurisdiction to consider all further applications arising out of, or connected with, the proposed Settlement.

15. If for any reason the Court does not execute and file an Order granting Final Approval and Judgment, the Settlement Agreement and the proposed Settlement which is the subject of this Order, and all evidence, briefs and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation as more specifically set forth in the Settlement Agreement.

16. Pending further order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are stayed.

17. Pending final determination of whether the Settlement Agreement should be approved, neither Plaintiffs LUKAS JEFFERY, JOHN LYMAN, and LOUIS CISNEROS, nor the Class Members, either directly, representatively or in any other capacity, shall commence or prosecute against any of the Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims or any claims related thereto, as defined in the Settlement Agreement.

IT IS SO ORDERED.

DATED: _____

Honorable Keri G. Katz
Judge of the Superior Court