

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into between and among Plaintiff Edward Makaron (“Plaintiff”), on behalf of himself and all Class Members as defined herein, on the one hand, and Enagic USA, Inc. (“Defendant”), on the other. Plaintiff and Defendant are referred to collectively in this Settlement Agreement as the “Parties.”

1. RECITALS

1.1. On July 8, 2015, Plaintiff filed a Complaint in the United States District Court for the Central District of California against Defendant, Case No. 2:15-cv-05145-DDP-E (“the Action”), alleging negligent and willful violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.*

1.2. On August 21, 2015, Defendant filed a Motion to Dismiss Plaintiff’s Complaint. Plaintiff filed a First Amended Complaint on March 20, 2016.

1.3. On April 4, 2016, Defendant filed a Motion to Dismiss Plaintiff’s First Amended Complaint. Plaintiff filed his Opposition on April 18, 2016. Defendant filed its Reply on April 29, 2016. On May 10, 2016, the Court denied Defendant’s Motion to Dismiss.

1.4. Following the denial of Defendant’s Motion to Dismiss, the Parties actively litigated the Action. Among other things, the Parties have propounded and responded to extensive written discovery, exchanged voluminous documents, taken and defended several depositions, served third party discovery, engaged in multiple rounds of motion practice on that discovery, and engaged in extensive motion practice, including two rounds of class certification briefing. On March 13, 2018, the Court granted Plaintiff’s Motion for Class Certification.

1.5. On December 13, 2018, the Parties attended an all-day mediation before the Honorable Jay Gandhi, a former United States Magistrate Judge. Prior to the mediation and following class certification, Plaintiff engaged in further third party discovery which resulted in

obtaining the number of calls made to Plaintiff and Class Members during the relevant time period and the phone numbers of those Class Members. The Parties also participated in direct discussions about a possible resolution of this litigation, including numerous in-person discussions and telephonic conferences. At the end of the mediation, the Honorable Jay Gandhi issued a mediator's proposal, which was ultimately accepted by both Parties after several weeks of further discussions and exchange of information.

1.6. Based on the investigation and negotiations described above, and taking into account the burdens, uncertainty, and risks inherent in this litigation, Plaintiff has concluded that further prosecution of the Action could be protracted, unduly burdensome, and expensive, and that it is desirable, fair, and beneficial to the Class that the Action now be fully and finally compromised, settled, and terminated in the manner and upon the terms and conditions set forth in this Settlement Agreement.

1.7. Defendant denies all material allegations in the Action. Defendant disputes making calls to the cellular telephone numbers of Plaintiff and the Class. Defendant specifically disputes that it made calls to the cellular telephone numbers of Plaintiff or any Class Members using an automatic telephone dialing system or an artificial or prerecorded voice without the requisite consent, that the calling systems used to contact Plaintiff and the Class constitute automatic telephone dialing systems under the TCPA, and that Plaintiff and the Class are entitled to any form of relief from Defendant. Defendant further disputes and denies that the claims in the Action are appropriate for adjudication for relief on a class basis. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, and without admitting any liability or wrongdoing whatsoever, Defendant agrees to the terms of this Settlement Agreement in order to resolve the Released Claims.

2. DEFINITIONS

As used herein, the following terms have the meanings set forth below.

2.1. “Action” means the civil action styled *Edward Makaron, on behalf of himself and all others similarly situated v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-DDP-E in the United States District Court for the Central District of California.

2.2. “Approved Claim” means a Claim the Settlement Administrator finds was timely submitted by a Class Member and that complies with the requirements for a valid claim under this Settlement Agreement.

2.3. “Attorneys’ Fees and Expenses” means such funds as may be awarded to Class Counsel by the Court to compensate them for their time, effort, and expenses incurred in the Action.

2.4. “Claim” means a written request for Settlement Relief submitted by a member of the Class to the Settlement Administrator, using a Claim Form in a substantially similar format to Exhibit B (Mail Notice) or Exhibit D-1 (Claim Form) or available in electronic format on the Settlement Website in a form substantially similar to Exhibit D (Electronic Claim Form), both of which are attached to this Settlement Agreement.

2.5. “Claimant” means any Class Member who submits an Approved Claim pursuant to this Settlement Agreement. Each Class Member may submit one claim.

2.6. “Claim Form” means the documents substantially similar in format to Exhibit B (Mail Notice), Exhibit D-1 (Claim Form), or Exhibit D (Electronic Claim Form) to this Settlement Agreement. Among other things, the Claim Form shall require the following information to be provided by any potential member of the Class who submits a Claim: (1) full name; (2) current

address; (3) cellular telephone number to which he or she claims a call was received from Defendant; (4) a current contact telephone number; and (5) a signed, sworn verification certifying under penalty of perjury that (i) he or she received a call from Enagic USA, Inc. on the phone number provided on the Claim Form; (ii) he or she was the subscriber or user of the cellular telephone number at the time the call was received; (iii) he or she did not consent to receive such calls; and (iv) the information provided on the Claim Form is true and accurate.

2.7. “Class” means the class of persons certified by the Court in its March 13, 2018 Order defined as “All persons within the United States who received a telephone call from Defendant or one of its Distributors, on said Class Member’s telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice, between July 8, 2011 and March 13, 2018.”

2.8. “Class Counsel” means the Law Offices of Todd Friedman, P.C.

2.9. “Class Member” means any person, including the Plaintiff, who falls within the definition of the Class and who has not submitted a valid Request for Exclusion.

2.10. “Class Notice” means the program of notice described in Section 6 of this Settlement Agreement to be provided to the Class.

2.10.1. “E-Mail Notice” means the notice that is e-mailed by the Settlement Administrator to the known Class, in a form substantially similar to Exhibit A to this Settlement Agreement and/or as modified by the Parties and approved by the Court.

2.10.2. “Mail Notice” means the notice that is mailed by the Settlement Administrator to the known Class, in a form substantially similar to Exhibit B to this Settlement Agreement and/or as modified by the Parties and approved by the Court.

2.10.3. “Website Notice” means the long-form notice made available to the Class on the Settlement Website, in a form substantially similar to Exhibit C to this Settlement Agreement and/or as modified by the Parties and approved by the Court, and which shall include a link to an electronic claim form substantially similar to Exhibit D (“Electronic Claim Form”) and a printable claim form similar to Exhibit D-1 (Claim Form).

2.11. “Class Period” shall commence on July 8, 2011, and shall continue through March 13, 2018.

2.12. “Class Recovery” means the amount of twelve dollars (\$12.00) per Approved Claim that each Class Member is entitled to receive pursuant to the terms of this Settlement Agreement.

2.13. “Court” means the United States District Court for the Central District of California.

2.14. “Days” means calendar days, except that, when computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time prescribed or allowed by this Settlement Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

2.15. Deadlines. As used herein, the Parties agree to the following deadlines, subject to Court approval:

2.15.1. “Notice Deadline” means the last day for the Settlement Administrator to send Mail Notice to the Class. Mail Notice shall be sent not more than forty five (45) Days after

the Court's Preliminary Approval Order. This does not include additional Mail Notice by the Settlement Administrator in case of undeliverable mail as described below in Section 6.1.5.

2.15.2. "Fee Motion Deadline" means the last day for Plaintiff to file a motion for an award of Attorneys' Fees and Expenses, and an Incentive Award to the Plaintiff from the Settlement Account. The Fee and Incentive Motion shall be filed not later than twenty-eight (28) Days before the Objection Deadline.

2.15.3. "Objection Deadline" means the date identified in the Preliminary Approval Order and Class Notice by which a Class Member must serve written objections, if any, to the Settlement in accordance with Section 11 of this Settlement Agreement to be able to object to the Settlement. The Objection Deadline shall be not later than ninety (90) Days after the Notice Deadline.

2.15.4. "Opt-Out Deadline" means the date identified in the Preliminary Approval Order and Class Notice by which a Request for Exclusion must be filed in writing with the Settlement Administrator in accordance with Section 11 of this Settlement Agreement in order for a potential member of the Class to be excluded from the Settlement. The Opt-Out Deadline shall be no later than ninety (90) Days after the Notice Deadline.

2.15.5. "Claim Deadline" means the last date by which a Claim submitted to the Settlement Administrator by a Class Member must be postmarked or submitted electronically, which will be ninety (90) Days after the Notice Deadline. All Claims postmarked or submitted electronically at the Settlement Website on or before the Claim Deadline shall be timely, and all Claims postmarked or submitted electronically at the Settlement Website after the Claim Deadline shall be untimely and barred from entitlement to any Settlement Relief.

2.15.6. “Final Approval Motion Deadline” means the date by which Class Counsel shall file the motion seeking final approval of the Settlement. The Final Approval Motion Deadline shall be no later than one hundred and five (105) Days after the Notice Deadline.

2.16. “Defense Counsel” means the law firm of Buchalter APC.

2.17. “Final,” with respect to the Final Approval Order, the Judgment, and any award of Attorneys’ Fees and Expenses, means that the time for appeal or writ review has expired or, if an appeal or petition for review is taken and dismissed or the Settlement (or award of Attorneys’ Fees and Expenses) is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Approval Order and/or Judgment is set aside, modified, or overturned by the Court or on appeal, and is not fully reinstated on further appeal, the Final Approval Order and/or Judgment shall not become Final.

2.18. “Final Approval” means the entry of the Judgment after the Final Approval Hearing.

2.19. “Final Approval Order” means the Order Granting Final Approval of Class Action Settlement and Dismissing Class Plaintiff’s Claims, to be entered by the Court pursuant to the Settlement and in the form attached as Exhibit G.

2.20. “Final Approval Hearing” means the hearing held by the Court to determine whether the terms of this Settlement Agreement are fair, reasonable, and adequate for the Class as a whole, and whether the Final Approval Order and the Judgment should be entered. The Parties shall seek to have the Final Approval Hearing on a date not earlier than one hundred and fifty (150) Days after the Notice Deadline.

2.21. “Final Settlement Date” means the earliest date on which both the Final Approval Order and the Judgment are Final (as defined in Section 2.17). If no appeal has been taken from

the Final Approval Order or the Judgment, the Final Settlement Date means the day after the last date on which either the Final Approval Order or the Judgment could be appealed. If any appeal has been taken from the Final Approval Order or from the Judgment, the Final Settlement Date means the date on which all appeals of either the Final Approval Order or the Judgment, including petitions for rehearing, petitions for rehearing en banc, and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Final Approval Order and the Judgment.

2.22. “Incentive Award” means Court-approved compensation of up to \$7,500.00 for Plaintiff for his time and effort undertaken in the Action.

2.23. “Judgment” means the judgment to be entered by the Court pursuant to Final Approval Order in the form attached as Exhibit H.

2.24. “Notice and Administrative Costs” means all reasonable and authorized costs and expenses of disseminating and publishing the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and expenses associated with assisting the Class, establishing the Settlement Website, providing Notice, establishing a toll-free settlement hotline, processing claims, escrowing funds, and issuing and mailing Settlement Relief.

2.25. “Opt-Out Form” is a form that must be filled out by a Class Member, in order to opt out of the Settlement, as set forth below, and in the form attached as Exhibit E.

2.26. “Preliminary Approval Application” means Plaintiff’s motion for the Court to approve the Settlement preliminarily and to enter the Preliminary Approval Order, including all exhibits and documents attached thereto, which Plaintiff agrees to file on or before May 29, 2019.

2.27. “Preliminary Approval Order” means an order in the form attached as Exhibit F and providing for, among other things, preliminary approval of the Settlement as fair, reasonable, and adequate; preliminary certification of the Class for settlement purposes only; dissemination of the Class Notice to the Class; and a finding that the proposed Class Notice is reasonably calculated to apprise the Class of the pendency of the Action, the material terms of the proposed Settlement, and the Class’s options and rights with respect thereto.

2.28. “Release” or “Releases” means the releases of all Released Claims by the Releasing Persons against the Released Persons, as provided for in Section 10 of the Settlement Agreement.

2.29. “Released Claims” means the claims released as provided for in Section 10 of the Settlement Agreement.

2.30. “Released Persons” means Enagic USA, Inc. and each and all of its past, present, and future, direct or indirect, parents, subsidiaries, affiliates, agents, successors, predecessors, owners, members, or any financial institutions, corporations, trusts and their trustees, or other entities that may hold or have held any interest (including, without limitation, any security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any interest in the operation or ownership of Defendant, and all of the aforementioned’s respective past, present, and future, officers, directors, members, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint venturers, vendors, assigns, or related entities, and each of their respective executors, successors, assigns, and legal representatives.

2.31. “Releasing Persons” means Plaintiff, all Class Members, and anyone claiming through them, including but not limited to heirs, administrators, successors, and assigns.

2.32. “Request for Exclusion” means a written request from a member of the Class seeking to exclude him or herself from the Settlement and that complies with all requirements in Section 11 of this Settlement Agreement.

2.33. “Settlement” means the settlement set forth in this Settlement Agreement.

2.34. “Settlement Account” means the non-interest bearing account to be set up by the Settlement Administrator for purposes of this Settlement Agreement to receive the Notice and Administrative Costs, the Settlement Relief, and any Attorneys’ Fees and Expenses and Incentive Award awarded by the Court, which together represent the limit and total extent of Defendant’s monetary obligations under this Settlement Agreement.

2.35. “Settlement Administrator” means Postlethwaite & Netterville (P&N).

2.36. “Settlement Agreement” means this Settlement Agreement and Release, including all exhibits hereto.

2.37. “Settlement Relief” means the payment to be made to each Class Member who submits an Approved Claim.

2.38. “Settlement Website” means the Internet site created and operated by the Settlement Administrator pursuant to Section 6.4 of this Settlement Agreement.

2.39. “Settling Parties” means, collectively, Defendant, Plaintiff, and all Releasing Persons.

2.40. “Telephone Number List” means the list of unique cellular telephone numbers Class Counsel obtained through discovery in this case that may have received telephone calls that are the subject of the Action. Class Counsel shall provide a copy of the Telephone Number List to the Settlement Administrator for purposes of the claims review and approval process set forth in Section 7 of this Settlement Agreement.

3. CLASS DEFINITION AND CONDITIONS AND OBLIGATIONS RELATING TO THE EFFECTIVENESS OF THE SETTLEMENT

3.1. The “Class” shall be as follows:

All persons within the United States who received a telephone call from Defendant or one of its Distributors, on said Class Member’s telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice, between July 8, 2011 and March 13, 2018.

3.1.1. Plaintiff has received information from third party subpoenas regarding the approximate number of potential members of the Class. From this data, the Parties estimate that the number of potential Class Members is approximately 1,800,000.

3.1.2. Excluded from the Class are (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate or control person of Defendant, and the officers, directors, employees, agents, or independent distributors of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); (5) any member of the Class who has timely opted out of the Settlement; and (6) Class Counsel, their employees, and their immediate family.

3.2. This Settlement Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. In the event that the Settlement is not finally approved, including if Defendant elects to void the Settlement pursuant to Section 16, below, Defendant shall be refunded any money that has not yet been expended.

3.3. Condition No. 1: District Court Approval. The Settlement must be approved by the Court in accordance with the following steps:

3.3.1. Preliminary Approval. After good-faith consultation with Defense Counsel, Class Counsel promptly will move the Court for entry of the Preliminary Approval Order. The Preliminary Approval Application shall include Class Notice, in forms substantially similar to

Exhibits A, C, and D. The Parties shall, in good faith, take reasonable steps to secure expeditious entry by the Court of the Preliminary Approval Order.

3.3.2. CAFA Notice. Within ten days after the filing of the motion for preliminary approval, Defendant shall notify the appropriate state and federal officials of the proposed settlement in accordance with 28 U.S.C. § 1715. In connection with final approval proceedings, Defendant shall file a declaration establishing that CAFA notice was timely provided.

3.3.3. Entry of Preliminary Approval Order. The Court shall enter a Preliminary Approval Order in a form substantively similar to the Order attached hereto as Exhibit F.

3.3.4. Issuance of Class Notice. Pursuant to the Preliminary Approval Order to be entered by the Court, the Settlement Administrator shall cause the Class Notice to be issued in accordance with Section 6 below.

3.3.5. Final Approval Hearing. In connection with the motion for Preliminary Approval, Plaintiff shall request that the Court schedule and conduct a hearing after dissemination of Class Notice, at which time it will consider whether the Settlement is fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure. Specifically, Plaintiff, after good faith consultation with Defense Counsel, shall request that, on or after the Final Approval Hearing, but no earlier than 150 days after CAFA notice was provided, the Court: (i) enter the Final Approval Order and the Judgment; and (ii) determine the Attorneys' Fees and Expenses that should be awarded to Class Counsel as contemplated in the Settlement Agreement; and (iii) determine the Incentive Award that should be awarded as contemplated by the Settlement Agreement. The Parties will reasonably cooperate with one another in seeking entry of the Final Approval Order and of the Judgment.

3.4. Condition No. 2: Finality of Judgment. The Court shall enter the Final Approval Order and the Judgment in a forms substantively similar to those attached as Exhibits G and H, respectively. The Final Approval Order and the Judgment must become Final in accordance with Section 2.17 above, and shall, among other things:

(a) Find that (1) the Court has personal jurisdiction over the Settling Parties and all Class Members; (2) the Court has subject matter jurisdiction over the claims asserted in this Action; and (3) venue is proper;

(b) Finally approve the Settlement Agreement pursuant to Rule 23 of the Federal Rules of Civil Procedure as fair, reasonable, and adequate;

(c) Finally certify the Class for settlement purposes only;

(d) Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

(e) Find that Defendant has complied with its notice obligations under the Class Action Fairness Act, 28 U.S.C. § 1715, in connection with the Settlement;

(f) Enter Judgment in favor of all Class Members in the Action;

(g) Make the Releases in Section 10 of the Settlement Agreement effective as of the date of Final Approval;

(h) Permanently bar Plaintiff and all Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction asserting any of the Released Claims;

(i) Authorize the Parties to implement the terms of the Settlement Agreement;

(j) Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, and the Judgment, and for any other necessary purpose; and

(k) Issue related orders to effectuate the Final Approval of the Settlement Agreement and its implementation.

4. SETTLEMENT CONSIDERATION, BENEFITS, AND OTHER RELIEF

4.1. In consideration for the Releases set forth in Section 10, Defendant will provide the following benefits.

4.1.1. Defendant agrees to pay Twelve Dollars (\$12.00) to each Class Member who submits an Approved Claim (as determined by the Settlement Administrator pursuant to and consistent with this Settlement Agreement);

4.1.2. Defendant agrees to the injunctive relief set forth in Section 4.4 below;

4.1.3. Defendant agrees not to oppose Class Counsel's motion for Attorneys' Fees in a requested amount of up to One Million Three Hundred Thousand Dollars (\$1,300,000.00);

4.1.4. Defendant agrees not to oppose Class Counsel's motion for costs of suit in a requested amount of up to Sixty Thousand Dollars (\$60,000.00);

4.1.5. Defendant will agree not to oppose an incentive award for Plaintiff Edward Makaron in an amount of up to Seven Thousand Five Hundred Dollars (\$7,500.00);

4.1.6. Defendant agrees to pay the Settlement Administrator's Notice and Administrative Costs in an amount not to exceed Three Hundred Eighty Five Thousand Dollars (\$385,000.00) exclusive of postage costs;

4.2. Within thirty-five (35) Days following entry of the Preliminary Approval Order, Defendant will transfer Four Hundred Thousand Nine Hundred Eighty-Five Dollars and Forty One Cents (\$400,985.41) of the anticipated Notice and Administrative Costs to the Settlement Administrator (via wire instructions provided by the Settlement Administrator to Defendant) for Notice and Administrative Costs. The Settlement Administrator shall maintain the Notice and Administrative Costs in the Settlement Account. The Settlement Administrator shall invoice Defendant for additional Notice and Administrative Costs on an as-needed basis. Absent extraordinary and unforeseen circumstances, the amount paid to the Settlement Administrator shall not exceed Three Hundred Eighty Five Thousand Dollars (\$385,000.00), not including postage costs. Defendant shall only be required to pay additional expenses above and beyond this amount if there is good cause for the incurrence of such expense. Any amounts paid by Defendant towards the Notice and Administrative Costs that are not incurred by the Settlement Administrator shall be returned to Defendant.

4.3. Within thirty-five (35) days following the Final Settlement Date, the Defendant will transfer the amounts awarded by the Court in Attorneys' Fees and Costs (i.e. up to \$1,300,000.00 for Attorneys' Fees and up to \$60,000.00 for costs), for an Incentive Award (up to \$7,500.00), and twelve dollars (\$12.00) for each Class Member who submits an Approved Claim to the Settlement Administrator for the Settlement Administrator to deposit in the Settlement Account and distribute pursuant to this Settlement Agreement.

4.3.1. After receiving approval from counsel to the Parties, the Settlement Administrator shall mail to each Class Member who submitted an Approved Claim a check in the amount of Twelve Dollars (\$12.00). No interest shall be included as an element of, or be payable or paid on, any claimed amount.

4.3.2. Class Members shall be advised that the checks must be negotiated within one hundred and eighty (180) days. On the 30th and 90th Day following mailing of all Settlement Payments, the Settlement Administrator may mail Class Members, or e-mail to Class Members with a valid e-mail address, a reminder to cash the check. After the 180-day period for check cashing has run, the Settlement Administrator shall stop payment on all outstanding checks. If any residual amounts are left uncashed, such residual amounts shall be distributed in equal amounts to cy pres recipient Electronic Privacy Information Center (EPIC).

4.3.3. If for any reason the Final Approval Order and/or the Judgment does not become Final within the meaning of Section 2.17, all money in the Settlement Account shall be returned to Defendant within seven (7) Days after the occurrence of the condition or event that prevents the Final Approval Order and/or the Judgment from becoming Final.

4.4. Injunctive Relief: Defendant agrees to Rule 23(b)(2) injunctive relief as set forth herein.

4.4.1. *Revised Distributor Agreement; Policies and Procedures*: Defendant agrees to revise the policies and procedures (which are incorporated into Defendant's distributor agreements with its independent distributors) to contain clear and unambiguous language prohibiting Defendant's independent distributors from using an Automated Telephone Dialing System ("ATDS"), as defined under the Telephone Consumer Protection Act 47 U.S.C. § 227(a)(1), in connection with selling Defendant's products or services, or to recruit new Distributors for Defendant. The revised policies and procedures contemplated by this section will specify that the use of an ATDS in connection with the sale of Defendant's products shall constitute a material breach of the distributor agreement, a violation of Defendant's policies and procedures, and shall subject the independent distributor to immediate discipline, including termination of the

distributor agreement with Defendant. The revised language contemplated by this Section will be prominently featured in boldface capitalized letters in its own designated section of Defendant's policies and procedures. Class Counsel shall have the right to review and advise on the form and content of the language to be included in the revised policies and procedures pursuant to this Section.

4.4.2. *Training and Enforcement:* Defendant agrees to implement compliance training and enforcement protocols with its independent distributors, advising such distributors of the Telephone Consumer Protection Act and how to avoid violating the statute. Defendant will further implement compliance oversight measures to strictly enforce any breaches of the distributor agreement provisions and violations of the policy and procedures set forth in Section 4.4.1 above. Class Counsel will have the right to review and advise on any compliance procedures and training materials prepared in connection with the compliance training protocols contemplated by this Section.

4.4.3. *Auditing, Monitoring, and Reporting:* For a period of two (2) years following Final Approval, Defendant agrees to compliance oversight auditing by Class Counsel. As part of the compliance monitoring, Defendant agrees to prepare a Status Report to be sent to Class Counsel on a bi-annual basis. The Status Report will contain information regarding the compliance training provided by Defendant to its Distributors, as well as copies of Defendant's revised policies and procedures contemplated in Section 4.4.1 above and copies of any written or electronic training materials prepared pursuant to Section 4.4.2 above. The Status Reports contemplated under this Section also will disclose (a) whether Defendant received any TCPA complaints from consumers since the prior Status Report was provided and, if so, whether such complaint was resolved; (b) whether any Distributor(s) was/were disciplined for violating the

TCPA prohibitions in Defendant's policies and procedures (in breach of the Distributor Agreement). For privacy reasons, Defendant shall not be required to disclose the identities or identifying information of any consumer or Distributor referenced in any Status Report pursuant to Section 4.4.3(a) or (b).

4.4.4. The Parties estimate the value of the injunctive relief contemplated under this Settlement Agreement to be approximately Six Million Dollars (\$6,000,000.00).

4.4.5. Any dispute concerning the interpretation, implementation, monitoring, and compliance with the injunctive relief set forth herein shall be resolved as follows:

4.4.5.1. Notification in Writing: Any Party's dispute concerning the interpretation, implementation, reporting, and compliance with the injunctive relief provisions herein shall be brought in writing to the attention of the other Party.

4.4.5.2. Meet and Confer: Unless otherwise agreed to by the Parties, with respect to any particular dispute concerning the interpretation, implementation, monitoring, and compliance with the injunctive relief provisions herein, the Parties agree to meet and confer in good faith, within ten (10) business days after a dispute is raised in writing by one of the Parties to discuss and try to resolve such dispute.

4.4.5.3. Submission to Mediator: Failing a resolution by the Parties or upon a failure to timely meet and confer, any Party may agree to submit the dispute to JAMS for random assignment to a panel mediator. The Parties may then submit the dispute to the selected mediator within thirty (30) days of meeting and conferring, who shall have the authority to assist the Parties in resolving the dispute but who shall not have the authority to direct any Party to take or refrain from any action or to render decisions. The mediation shall be held and completed within forty-five (45) calendar days of submission unless the

assigned mediator's calendar will not allow for such scheduling. In such instance, the mediation shall be scheduled as soon as practicable.

4.4.5.4 Submission to Court: Failing resolution of a dispute with the mediator, any Party may, within thirty (30) days of the unsuccessful mediation, submit the issue to the District Court for decision. Any court order issuing as a result of such a submission may be subject to appeal in accordance with applicable law.

4.4.5.5 Attorney's Fees and Costs: The prevailing party shall be entitled to reasonable attorneys' fees and costs incurred during dispute resolution, including pursuant to California Code of Civil Procedure § 1021.5.

5. RETENTION OF SETTLEMENT ADMINISTRATOR AND COSTS

5.1. The Parties agree to jointly propose, and Plaintiff agrees to retain, Postlethwaite & Netterville (P&N) as the Settlement Administrator. The Settlement Administrator shall be responsible for all matters relating to the administration of this Settlement, as set forth herein. Those responsibilities include, but are not limited to, locating Class Member names and addresses via a reverse lookup or skip trace, giving notice, obtaining new addresses for returned mail, setting up and maintaining the Settlement Website and toll-free telephone number, fielding inquiries about the Settlement, processing claims, acting as a liaison between Class Members and the Parties regarding claims information, approving and rejecting claims, directing the mailing of settlement payments to Class Members, and any other tasks reasonably required to effectuate the foregoing. The Settlement Administrator will provide bi-weekly updates on the claims status to counsel for both Parties.

5.2. All Notice and Administrative Costs will be paid by Defendant.

5.3. The Settlement Administrator shall administer the Settlement in a cost-effective and timely manner. Without limiting any of its other obligations as stated herein, the Settlement Administrator shall be responsible for name and address lookup, E-Mail Notice, Mail Notice, Publication Notice, Website Notice, the Settlement Website, administration of Settlement Relief, and providing all other related support, reporting, and administration as further stated in this Settlement Agreement.

5.4. W9 Forms. The Settlement Administrator shall complete and provide to Defendant any W9 forms necessary for Defendant to implement this Settlement.

6. NOTICE TO THE CLASS

6.1. E-Mail Notice and Mail Notice: Subject to the requirements of the Preliminary Approval Order, the Settlement Administrator shall provide Notice to those persons who are known to be potential members of the Class based on Defendant's and third party subpoena records. The Settlement Administrator will perform a reverse telephone lookup to obtain any E-Mail addresses and mailing addresses associated with the telephone numbers on the Telephone Number List. The E-Mail address information obtained through a reverse phone number lookup will be used to facilitate E-Mail Notice to the Class Members. The mailing address information obtained through a reverse phone number lookup will be used to facilitate Mail Notice to the Class Members for whom no E-Mail address information is available or for whom the E-Mail Notice bounced back or was undeliverable.

6.1.1. The E-Mail Notice and Mail Notice shall be sent not less than forty-five (45) Days after the Court's Preliminary Approval Order.

6.1.2. The E-Mail Notice and Mail Notice of Class Action, Proposed Settlement, Final Approval Hearing, Right to Appear, Instructions and Class Action Claim Form shall detail

how those Class members so desiring may opt out or object to the Settlement, and how members of the Class may make a claim for Settlement Relief as described in Section 7.1 below.

6.1.3. The E-Mail Notice shall include Instructions to access the Settlement Website, contain instructions for the Class Action Electronic Claim Form and include a toll-free telephone number from which a Claim Form may be requested, in a form substantially similar to Exhibit A to this Settlement Agreement or as ultimately approved by the Court.

6.1.4. The E-Mail Notice and Mail Notice shall include Instructions to access the Settlement Website, contain instructions for the Class Action Electronic Claim Form and include a toll-free telephone number from which a Claim Form may be requested. The E-Mail Notice shall be in a form substantially similar to Exhibit A to this Settlement Agreement or as ultimately approved by the Court. The Mail Notice shall be in a form substantially similar to Exhibit B to this Settlement Agreement or as ultimately approved by the Court (provided that the font size, folding, and other printing elements or presentation of the Mail Notice may be adjusted to accommodate a booklet format and for efficient envelope and postage considerations). The Mail Notice shall be in the form of a postcard, with prepaid return postage. The Settlement Administrator shall run the mailing addresses for the Mail Notice through the National Change of Address database (“NCOA”) before mailing.

6.1.5. After the Mail Notice is sent by the Settlement Administrator, for any Mail Notices returned as undeliverable, the Settlement Administrator may search for better or updated addresses for such returned Notices, and should such efforts indicate a possible alternate address, the Settlement Administrator may post the returned Mail Notice to the alternative address; provided, however, that if a determination is made in good faith by the Settlement Administrator that it is not possible to further update any particular Class Member’s address(es) in sufficient time

to repost the Class Notice(s) at least twenty (20) Days before the scheduled Final Approval Hearing, then the Settlement Administrator need make no further efforts to provide further Mail Notice to such person(s).

6.1.6. Not less than twenty-one (21) Days before the Claim Deadline, the Settlement Administrator may re-send the E-Mail Notice.

6.2. Publication Notice: Subject to the requirements of the Preliminary Approval Order, the Settlement Administrator shall also provide Notice by publication via Internet banner ads, generating at least 24.5 million impressions, across display and social media, targeted to 18+ year old individuals in the United States who own a cell phone, as well as a PR Newswire Nationwide press release.

6.2.1. The Publication Notice shall be made not less than forty-five (45) Days after the Court's Preliminary Approval Order, and shall hyperlink to the Settlement Website.

6.3. Settlement Website: No later than the posting of the E-Mail Notice, the Settlement Administrator shall establish a secure Settlement Website which shall contain the Website Notice, in a form substantially similar to Exhibit C, copies of the Settlement Agreement and Exhibits, the E-Mail Notice, and the Mail Notice. The Settlement Website shall also contain Instructions, a Class Action Claim Online Form, a printable Claim Form substantially similar to Exhibit D-1, and a sample Request for Exclusion Form (per Court's Order).

6.3.1. The Settlement Website shall remain open and accessible for not less than thirty-five (35) Days after the last day to cash any check drawn on the Settlement Account. Class Members shall also have the option of completing their Claim Form online within the Settlement Website, utilizing an e-signature format.

6.4 Toll-Free Settlement Hotline. The Settlement Administrator will establish and maintain an automated toll-free telephone line (which shall not have live operators) for persons in the Class to call with and/or to leave questions or messages to request Claim Forms and regarding Settlement-related inquiries, to answer the questions of persons who call with or otherwise communicate such inquiries to Class Counsel (except that the Settlement Administrator shall not give, and shall not be expected to give, legal advice).

7. CLAIM FILING, REVIEW, AND APPROVAL PROCESS

7.1. Claim Filing Process. Class Members shall be permitted to make a Claim in one of two ways:

- (a) By completing an online Claim Form within the Settlement Website utilizing an e-signature format.
- (b) By mailing (either through posting with the United States Postal Service or through a private mail carrier, such as UPS or Federal Express, provided that proof of the mail date is reflected on the label of the mailing) a written Claim Form providing the required information, to the Settlement Administrator, on a date no later than the Claim Deadline. A written Claim Form (Exhibit D-1) will also be available on the Settlement Website for Class Members to download or print out and mail to the Settlement Administrator pursuant to this Section.

7.2. Any Class Member who does not properly submit a completed Claim Form as provided in Section 7.1 on or before the Claim Deadline shall be deemed to have waived any claim to Settlement Relief and any such Claim Form will be rejected.

7.3. Claim Review Process. As soon as practicable, the Settlement Administrator shall confirm that each Claim Form submitted is in the form required, that each Claim Form was submitted in a timely fashion, and that the person submitting the Claim is a member of the Class.

7.4. Claim Forms that do not meet the requirements set forth in this Settlement Agreement and in the Claim Form instructions shall be rejected. In addition, where a good faith

basis exists, the Settlement Administrator shall reject a Claim Form for, among other reasons, the following:

- 7.4.1. Failure to fully complete and/or sign the Claim Form;
- 7.4.2. The Claim Form is illegible;
- 7.4.3. The person submitting the Claim Form is not a Class Member;
- 7.4.4. The cellular telephone number provided in the Claim Form does not match any number on the Telephone Number List;
- 7.4.5. The Claim Form is fraudulent;
- 7.4.6. The Claim Form is duplicative of another Claim Form;
- 7.4.7. The person submitting the Claim Form requests that payment be made to a person or entity other than the Class Member for whom the Claim Form is submitted;
- 7.4.8. Failure to submit the Claim Form by the Claim Deadline; and/or
- 7.4.9. The Claim Form otherwise does not meet the requirements of this Settlement Agreement.

7.5. The Settlement Administrator shall attempt to notify each person who submitted a rejected Claim Form that his or her Claim Form was rejected and the reasons for the deficiency. Any person who is notified that his or her Claim Form was rejected based on Section 7.4.4 above shall be notified that they can submit documentation confirming the receipt of a telephone call from Defendant or one of its Distributors such that the person submitting the Claim is a member of the Class. Any person whose Claim Form is rejected shall have the opportunity to submit a new Claim Form by the Claim Deadline to attempt to correct the deficiency and provide the information necessary to determine whether the person is a member of the Class and has a valid Claim.

7.6. Notification. Within fourteen (14) Days after the Claims Deadline, the Settlement Administrator shall provide Class Counsel and Defendant with a list of all Class Members who filed a Claim, whether the Claim was rejected or accepted, and if rejected, the reason it was rejected. The Parties will use their best efforts to amicably resolve any dispute about the processing of any Claim. The Court will resolve any Claim disputes that cannot be resolved amicably.

7.7. The Settlement Administrator shall have sixty (60) Days after the Final Settlement Date within which to process the Claims and remit the appropriate Settlement Relief amounts by check to Claimants from the Settlement Account.

7.8. Information Available to Class Counsel and Defendant. Class Counsel, Defendant, and/or Defense Counsel shall have the right to communicate directly with the Settlement Administrator regarding the administration of this Settlement, provided that each notifies the other within a reasonable time of all such interactions.

8. COVENANTS

The Parties covenant and agree as follows:

8.1. Covenant Not to Sue. Plaintiff and the Class Members covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on any of the Released Claims against any of the Released Persons; and (ii) that the foregoing covenant and this Settlement Agreement shall be a complete defense to any of the Released Claims against any of the Released Persons. However, this Settlement Agreement is not intended to and does not prohibit a Class Member from responding to inquiries from federal, state or local agencies and/or law enforcement or responding to a lawful subpoena to testify, even if the inquiries or subpoena relate to the Released Claims.

8.2. Cooperation. The Parties agree to cooperate reasonably and in good faith with the goal of obtaining entry of the Final Approval Order and the Judgment as quickly as is reasonably practicable and expeditiously reaching agreement on the matters requiring mutual agreement as set forth in this Settlement Agreement, including, but not limited to, the expeditious agreement to the terms of all class notice documents and settlement administration protocols, and the preparation and execution of all other reasonable documents necessary to achieve Final Approval of the Settlement by the Court.

9. REPRESENTATIONS AND WARRANTIES

9.1. Plaintiff's Representations and Warranties.

9.1.1. Plaintiff represents and warrants that he is the sole and exclusive owner of all of his own Released Claims and that he has not assigned or otherwise transferred any interest in any of his Released Claims against any of the Released Persons, and further covenants that he will not assign or otherwise transfer any interest in any of his Released Claims.

9.1.2. Plaintiff represents and warrants that he has no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

9.2. **The Settling Parties' Representations and Warranties.** The Settling Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations among their counsel, that in executing the Settlement Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Settlement Agreement by representations, statements, or omissions pertaining to any of the

foregoing matters by any Party or by any person representing any Party to the Settlement Agreement. Each of the Settling Parties assumes the risk of mistake as to facts or law.

10. RELEASES

10.1. Released Claims of Class. Upon Final Approval, each member of the Class, including the Plaintiff, shall, by operation of the Judgment, be deemed to have fully, conclusively, irrevocably, forever and finally released, relinquished, and discharged the Released Persons from any and all claims, arising out of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., during the Class Period (“Released Claims”).

10.2. Without in any way limiting their scope, the Released Claims cover by example and without limitation, any and all claims for attorneys’ fees, costs, expert fees, or consultant fees, interest, or litigation fees, or any other fees, costs, and/or disbursements incurred by Class Counsel, Plaintiff, or any Class Members in connection with or related in any manner to this Settlement, the administration of this Settlement, and/or the Released Claims, except to the extent otherwise specified in the Settlement Agreement.

10.3. In connection with the Releases in paragraph 10.1, and without expanding their scope in any way, Plaintiff shall agree to a General Release of all claims, known or unknown, and be deemed, as of the date of Final Approval, to have waived any and all provisions, rights, benefits conferred by Section 1542 of the California Civil Code, and any statute, rule and legal doctrine similar, comparable, or equivalent to California Civil Code Section 1542, which provides that:

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

The unnamed Class Members shall not be subject to a General Release. To the extent that anyone might argue that these principles of law are applicable – notwithstanding that the Settling Parties

have chosen California law to govern this Settlement Agreement – Plaintiff hereby agrees that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles are hereby knowingly and voluntarily waived, relinquished, and released. The Plaintiff recognizes that, even if he may later discover facts in addition to or different from those which they now know or believe to be true, he fully, finally, and forever settles and releases any and all claims covered by these Releases upon entry of the Judgment. The Settling Parties acknowledge that the foregoing Releases were bargained for and are a material element of the Settlement Agreement.

10.4. This Settlement Agreement and the Releases herein do not affect the rights of Class Members who timely and properly submit a Request for Exclusion from the Settlement in accordance with the requirements in Section 11 of this Settlement Agreement.

10.5. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, enforcement of the Releases contained in the Settlement Agreement. The Court shall retain jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

10.6. Upon entry of the Final Approval Order and the Judgment: (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (ii) the Released Persons shall not be subject to liability or expense for any of the Released Claims to any Class Member(s) except as set forth in this Settlement Agreement; and (iii) Class Members who have not opted out shall be permanently barred from filing, commencing, prosecuting,

intervening in, or participating in (as class members or otherwise) any action in any jurisdiction based on any of the Released Claims.

10.7. Nothing in this Settlement Agreement shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein. The Releases set forth herein are not intended to include the release of any rights or duties of the Settling Parties arising out of the Settlement Agreement, including the express warranties and covenants contained herein.

11. OPT-OUT RIGHTS

11.1. Any member of the Class who wishes to opt out of the Settlement must complete and mail to the Settlement Administrator a Request for Exclusion that is postmarked no later than the Opt-Out Deadline. The Request for Exclusion must: (a) identify the name and address of the member of the Class requesting exclusion; (b) provide the phone number at which that member of the Class believes he or she was called by Defendant or one of Defendant's independent distributors during the Class Period; (c) be personally signed by the member of the Class requesting exclusion; and (d) contain a statement that reasonably indicates a desire to be excluded from the Settlement. Mass or class opt-outs shall not be allowed. A sample Request for Exclusion form shall be made available for downloading on the Settlement Website.

11.2. Any potential member of the Class who properly opts out of the Settlement shall: (a) not be bound by any orders or judgments relating to the Settlement; (b) not be entitled to relief under, or be affected by, the Settlement Agreement; (c) not gain any rights by virtue of the Settlement Agreement; and (d) not be entitled to object to any aspect of the Settlement.

11.3. The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests for Exclusion within seven (7) Days after the Opt-Out Deadline.

11.4. Except for those potential members of the Class who timely and properly file a Request for Exclusion in accordance with Section 11, all other potential members of the Class will be deemed to be Class Members for all purposes under the Settlement Agreement, and upon Final Approval, will be bound by its terms, regardless of whether they receive any monetary relief or any other relief.

12. OBJECTIONS

12.1. Overview. Any potential member of the Class who does not successfully request exclusion from the Settlement will be a Class Member and may object to the Settlement. To object, the Class Member must comply with the procedures and deadlines in this Settlement Agreement.

12.2. Process. Any Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be mailed to the Clerk of Court, no later than the Objection Deadline.

12.2.1. The requirements to assert a valid written objection shall be set forth in the Class Notice and on the Settlement Website, and, to be valid, the written objection must include: (a) the name, address, and telephone number of the Class Member objecting and, if different, the cellular telephone number at which the Class Member was called by Defendant or one of Defendant's independent distributors during the Class Period; (b) if represented by counsel, the name, address, and telephone number of the Class Member's counsel; (c) the basis for the objection; and (d) a statement whether the objecting Class Member intends to appear at the Final Approval Hearing, either with or without counsel.

12.2.2. Any Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the

Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

12.3. Appearance. Subject to approval of the Court, any Class Member who mails a written objection in accordance with Section 12.2 and the Class Notice may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member mails to the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice Of Intention To Appear”).

12.3.1. The Notice of Intention to Appear must include the Class Member’s full name, address, and telephone number, as well as copies of any papers, exhibits, or other evidence that the objecting Class Member will present to the Court in connection with the Final Approval Hearing.

12.3.2. Any Class Member who does not mail a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Settlement Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing or raise any objections.

13. SETTLEMENT APPROVAL

13.1. Plaintiff shall apply to the Court for entry of the proposed Preliminary Approval Order and setting of a Final Approval Hearing. Plaintiff agrees to provide Defendant a minimum of three (3) business days’ notice before the filing date so Defendant has sufficient time to notify the appropriate state and federal officials of the proposed settlement in accordance with 28 U.S.C. § 1715.

13.2. Not later than seven (7) Days before the Final Approval Motion Deadline, the Settlement Administrator will provide Class Counsel with a declaration that the Class Notice has

been disseminated in accordance with the Preliminary Approval Order and identifying the number of Requests for Exclusion to the Settlement, along with the number of claims received to date.

14. CERTIFICATION OF NATIONWIDE CLASS FOR SETTLEMENT PURPOSES

14.1. Plaintiff shall move for Final Approval of the Settlement and entry of the Final Approval Order and Judgment.

14.2. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Parties, or of the propriety of certifying a class in the Action; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be a waiver of any defense or Defendant's right to seek to enforce any arbitration provision in other cases or against Class Members who opt out of the Settlement. The Released Parties may file this Settlement Agreement and/or the Judgment in any action or proceeding that may be brought against them, or in this Court at the Released Party's option, in order to bar the claim, support a defense, or support a counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14.3. In the event that the Settlement is not approved as presented, or Defendant terminates the Settlement as permitted herein, the Settling Parties agree that neither the terms of this Settlement Agreement nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders or public statements, may be used as evidence for any purpose whatsoever. In addition, neither the fact of, nor any documents

relating to, Defendant's termination of the Settlement, any failure of the Court to approve the Settlement or any objections or interventions may be used as evidence for any purpose whatsoever.

15. ATTORNEYS' FEES, EXPENSES, AND PLAINTIFF INCENTIVE AWARD

15.1. Class Counsel may apply to the Court for an award of reasonable Attorneys' Fees and Expenses, as documented in Class Counsel's records. Class Counsel may seek payment of attorneys' fees up to one million three hundred thousand dollars (\$1,300,000.00) and expenses up to sixty thousand dollars (\$60,000.00). Defendant agrees not to oppose Class Counsel's requests for Attorneys' Fees and Expenses up to one million three hundred thousand dollars (\$1,300,000.00) and sixty thousand dollars (\$60,000.00), respectively. This Settlement Agreement is not dependent upon the Court's approving Class Counsel's requests for such payments or awarding the particular amount sought by Class Counsel under this Section. In the event the Court declines Class Counsel's requests or awards less than the amount sought, this Settlement Agreement shall continue to be effective and enforceable by the Parties. No interest will accrue on any Attorneys' Fees and Expenses awarded by the Court to Class Counsel. The Settlement Administrator shall pay the amount of Attorneys' Fees and Expenses awarded by the Court from the Settlement Account to the account(s) of Class Counsel via wire instructions provided by Class Counsel to the Settlement Administrator within seven (7) Days after the Final Settlement Date, provided that Class Counsel provide the Settlement Administrator with a properly completed IRS Form W-9 reasonably in advance of the due date of such payment.

15.2. Class Counsel may also apply to the Court for an Incentive Award for Plaintiff in an amount not to exceed seven thousand five hundred dollars (\$7,500.00). Court approval of any Incentive Award will not be a condition of the Settlement. The Settlement Administrator shall deliver to Class Counsel a check from the Settlement Account made payable to the Plaintiff awarded an Incentive Award within seven (7) Days after the Final Settlement Date, provided that

Plaintiff provides the Settlement Administrator with a properly completed IRS Form W-9 reasonably in advance of the due date of such payment.

15.3. This Settlement Agreement is not dependent upon the Court's approving Class Counsel's requests for such payment or awarding the particular amount sought by Class Counsel under Sections 15.1 through 15.2. In the event the Court declines Class Counsel's request or awards less than the amount sought, this Settlement Agreement shall continue to be effective and enforceable by the Parties.

16. TERMINATION AND EFFECT THEREOF

16.1. This Settlement Agreement shall be terminable by Defendant if any of the conditions of Section 3 are not fully satisfied.

16.2. If this Settlement Agreement is terminated as provided herein, either automatically or by Defendant, the Settlement shall be null and void from its inception and the Settling Parties will be restored to their respective positions in the Action as of the day prior to the date of the Preliminary Approval Order. In such event, the terms and provisions of this Settlement Agreement will have no further force and effect with respect to the Settling Parties and will not be used in the Action, or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Settlement Agreement will be treated as vacated, nunc pro tunc.

17. MISCELLANEOUS PROVISIONS

17.1. There will be no offset to any amounts received by any Plaintiff or Class Member under this Settlement to account for any payments to Plaintiff or Class Members under any other settlement between Defendant and any governmental or private entity.

17.2. The Parties acknowledge that it is their intent to consummate this Settlement Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and

implement all terms and conditions of this Settlement Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Defendant shall not, however, be obligated to join in any motion for preliminary or final approval, or to support the applications for Attorneys' Fees and Expenses or Incentive Awards.

17.3. The Settling Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Action. The Settlement compromises claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the consideration provided to the Class Members and the other terms of the Settlement were negotiated in good faith and at arm's length by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. The amounts paid are to compromise the Claimants' claims for damages and the amounts paid represent the Claimants' compensation for such alleged damages.

17.4. Neither this Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claims, or of any wrongdoing or liability of Defendant; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault, omission, wrongdoing, or liability of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendant may file this Settlement Agreement, the Final Approval Order, and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including, without limitation, those based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense or counterclaim.

17.5. All agreements made and orders entered during the course of the Action relating to the confidentiality of information will survive this Settlement Agreement.

17.6. All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

17.7. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of Plaintiff and Defendant or their respective successors-in-interest. Any material changes must be approved by the Court.

17.8. This Settlement Agreement and the Exhibits attached hereto constitute the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized herein. Except as otherwise provided herein, the Settling Parties will bear their own respective costs.

17.9. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of counterparts will be submitted to the Court.

17.10. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

17.11. The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Settling Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

17.12. None of the Settling Parties, or their respective counsel, will be deemed the drafter of this Settlement Agreement or its Exhibits for purposes of construing the provisions thereof. The

language in all parts of this Settlement Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any Settling Party as the drafter thereof.

17.13. The Settlement Agreement shall be governed by the laws of the State of California, except to the extent that the law of the United States governs any matters set forth herein, in which case such federal law shall govern.

17.14. The following principles of interpretation apply to the Settlement Agreement: (a) the plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be; (b) references to a person are also to the person's successors-in-interest; and (c) whenever the words "include," "includes," or "including" are used in the Settlement Agreement, they shall not be limiting, but rather shall be deemed to be followed by the words "without limitation."

17.15. The Settlement Agreement shall not be subject to collateral attack by any Class Member or any recipient of the notices of the Class after the Final Approval Order and Judgment are entered.

18. NOTICES

18.1. All notices (other than the Class Notice) required by the Settlement Agreement shall be made in writing and communicated by email and mail to the following addresses:

18.2. All notices to Class Counsel shall be sent to Class Counsel, c/o:

Todd M. Friedman
Adrian R. Bacon
Thomas E. Wheeler
Law Offices of Todd M. Friedman, P.C.
21550 Oxnard St., Ste. 780
Woodland Hills, CA 91367
tfriedman@toddfllaw.com
abacon@toddfllaw.com
twheeler@toddfllaw.com

Counsel for Plaintiff and Class

18.3. All notices to Defense Counsel shall be sent to Defense Counsel, c/o:

Mark T. Cramer
Lawrence B. Steinberg
Buchalter APC
1000 Wilshire Boulevard, Ste. 1500
Los Angeles, CA 90017-2457
mcramer@buchalter.com
lsteinberg@buchalter.com

Counsel for Defendant

18.4. The notice recipients and addresses designated above may be changed by written agreement of Plaintiff and Defendant.

18.5. Upon request, the Parties agree to promptly provide each other with copies of objections, Requests for Exclusion, or other similar documents received from Class Members in response to the Class Notice.

IN WITNESS WHEREOF, the Settling Parties have executed and caused this Settlement on the dates set forth below.

On Behalf of Defendant Enagic USA, Inc.

Dated: 5/20/2019

By: 

Name: KOICHIRO HIGA

Title: PRESIDENT

On Behalf of Plaintiff and the Class:

Dated: _____

By: _____

Edward Makaron

Approved as to form:

For Plaintiff:

Todd M. Friedman
Adrian R. Bacon
Thomas E. Wheeler
Law Offices of Todd M. Friedman, P.C.
21550 Oxnard St., Ste. 780
Woodland Hills, CA 91367
tfriedman@toddfllaw.com
abacon@toddfllaw.com
twheeler@toddfllaw.com

For Defendant:



Mark T. Cramer
Lawrence B. Steinberg
Buchalter APC
1000 Wilshire Boulevard, Ste. 1500
Los Angeles, CA 90017-2457
mcramer@buchalter.com
lsteinberg@buchalter.com

On Behalf of Defendant Enagic USA, Inc.

Dated: _____

By: _____

Name: _____

Title: _____

On Behalf of Plaintiff and the Class:

Dated: 5/9/19 _____

By:  _____

Edward Makaron

Approved as to form:

For Plaintiff:

 _____

Todd M. Friedman
Adrian R. Bacon
Thomas E. Wheeler
Law Offices of Todd M. Friedman, P.C.
21550 Oxnard St., Ste. 780
Woodland Hills, CA 91367
tfriedman@toddfllaw.com
abacon@toddfllaw.com
twheeler@toddfllaw.com

For Defendant:

Mark T. Cramer
Lawrence B. Steinberg
Buchalter APC
1000 Wilshire Boulevard, Ste. 1500
Los Angeles, CA 90017-2457
mcramer@buchalter.com
lsteinberg@buchalter.com

EXHIBIT A

Claim ID: {Claim ID}

COURT-ORDERED LEGAL NOTICE

Dear Class Member,

You have received this email because you may be a Class Member and eligible for a payment from a settlement in the *Edward Makaron v. Enagic USA, Inc.* class action lawsuit.

To be eligible for benefits in this matter, you must file a claim by {Claim Deadline} using the unique claim ID above. Claim Forms are available by visiting www.settlementwebsite.com or by calling 1-XXX-XXX-XXXX. More information can be found in the full summary notice below or on the case website at www.settlementwebsite.com.

If you received a call from Enagic USA, Inc. or its Distributors you may be entitled to benefits under a class action settlement.

Makaron v. Enagic USA, Inc., No. 2:15-cv-05145-DDP-E
United States District Court for the Central District of California

This Notice May Affect Your Legal Rights. Please Read It Carefully.
A federal court authorized this notice. This is not a solicitation from a lawyer.

You may be affected by a class action lawsuit claiming that Enagic USA, Inc. and its Distributors illegally called cellular telephones using an automatic telephone dialing system without consent. The lawsuit, *Edward Makaron v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-DDP-E, is pending in the U.S. District Court for the Central District of California. The Court decided this lawsuit should be on behalf of a "Class," or group of people that could include you. A Settlement has been reached and you may be entitled to money.

Am I included? You may be in the Settlement as a "Class Member" if you received one or more calls to your cell phone from Defendant or its Distributors between July 8, 2011 and March 13, 2018, and you did not consent to receive such calls. If you received this notice, records obtained in discovery suggest that you may be a Class Member.

What is the case about? This case claims that Enagic USA, Inc. ("Defendant") violated the Telephone Consumer Protection Act by calling cell phones using an automatic telephone dialing system without consent and/or with an artificial or prerecorded voice ("Calls"). Defendant denies it did anything wrong. The Court has not ruled on the merits of the claims. Defendant has agreed to pay twelve dollars (\$12.00) to each Class Member who submits a valid and timely claim, pay Class Counsel's attorneys' fees of up to \$1,300,000, pay Class Counsel's actual costs up to \$60,000, pay a service award to the Class Representative of \$7,500, and pay costs and expenses of settlement administration. Defendant has also agreed to an injunction regarding it and its Distributors calling practices and compliance with the Telephone Consumer Protection Act.

What are my rights & options? Class Members have four options:

- (1) **Submit a Claim:** Submit a Claim to the Settlement Administrator to receive twelve dollars (\$12.00). Claim Forms must be submitted no later than **{Claim Deadline}** and are available on the case website at www.settlementwebsite.com. If the Settlement is approved, you will not have the right to sue separately for damages of \$500 per call, or \$1,500 per calls made willfully.
- (2) **Object to the Settlement:** Remain a Class Member but object to the Settlement. Instructions for objecting are available at www.settlementwebsite.com. Objections and supporting documents must be mailed to the Court by **{Objection Deadline}**. You may choose to pay for and be represented by a lawyer who may send the objection for you.
- (3) **Exclude yourself:** Exclude yourself from the Settlement by mailing a request to the Settlement Administrator (not the Court). You must state in writing your name, address, the cell number at which you believe you were called by Defendant or one of its Distributors, and that you want to be excluded from this Settlement. Exclusions must be signed and postmarked no later than **{Exclusion Deadline}**.
- (4) **Do Nothing:** If you do nothing, you will remain part of the Settlement Class and will release your claims against the Released Parties, but you will not receive any money from this Settlement.

Who represents me? The Court has appointed the Law Offices of Todd M. Friedman, P.C. to represent you and other Class Members as Class Counsel. You do not have to pay Class Counsel or anyone else to participate. You may hire your own lawyer to represent you at your own expense. Edward Makaron is a Class member, and the Court has appointed him to serve as the “Class Representative.”

Has the Court approved the Settlement? The Court will hold a hearing to decide whether to approve the Settlement. This Fairness Hearing will be held at **{Fairness Hearing Time}** on **{Fairness Hearing Date}**, at the United States District Court for the Central District of California, United States Courthouse, 350 W. 1st Street, 6th Floor, Courtroom 9C, Los Angeles, CA 90012. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and whether to award attorneys’ fees, expenses, and an incentive award to the Class Representative as described above, and in what amounts. The hearing may be changed without additional written notice, so you should check the Settlement Website for updates. It is not necessary for you to appear at this hearing, but you may attend at your own expense.

Want more information? This is a summary notice only; additional details of the Settlement can be found at www.settlementwebsite.com or by calling **1-XXX-XXX-XXXX**.

EXHIBIT B

COURT-ORDERED LEGAL NOTICE

Makaron v. Enagic USA, Inc
Case No. 2:15-cv-05145-DDP -E (C.D. Cal.)

THE COURT AUTHORIZED THIS SUMMARY NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

A settlement has been proposed in this lawsuit pending in the U.S. District Court for the Central District of California ("Court").

This case claims that Enagic USA, Inc. ("Defendant") violated the Telephone Consumer Protection Act by calling cell phones using an automatic telephone dialing system without consent and/or with an artificial or prerecorded voice ("Calls"). Defendant denies it did anything wrong.

Am I included? You may be in the Settlement as a "Class Member" if you received one or more calls to your cell phone from Defendant or its Distributors between July 8, 2011 and March 13, 2018, and you did not consent to receive such calls. If you received this notice, records obtained in discovery suggest that you may be a Class Member.

SETTLEMENT ADMINISTRATOR
P.O. xxxxxx
CITY, STATE ZIP

PRESORTED
FIRST-CLASS
MAIL

U.S. POSTAGE
PAID

[CLAIM ID IN DIGITS]
[CLAIM ID IN BARCODE]
Postal Service: Do Not Mark or Cover Barcode

[FIRST NAME] [LAST NAME]
[ADDRESS]
[CITY] [STATE] [ZIP]



Makaron v. Enagic USA, Inc., Case No. 2:15-cv-05145-DDP -E (C.D. Cal.)

THIS SUMMARY NOTICE PROVIDES LIMITED INFORMATION ABOUT THE SETTLEMENT.

Summary of the Settlement: Defendant has agreed to pay twelve dollars (\$12.00) to each Class Member who submits a valid and timely claim, pay Class Counsel's attorneys' fees of up to \$1,300,000, pay Class Counsel's actual costs up to \$60,000, pay a service award to the Class Representative of \$7,500, and pay costs and expenses of settlement administration. Defendant has also agreed to an injunction regarding its and its Distributors calling practices and compliance with the Telephone Consumer Protection Act.

Can I Get Money from the Settlement? Yes, each Class Member who submits a valid and timely Settlement Claim will receive a cash award of twelve dollars (\$12.00).

How Do I Make A Settlement Claim? To make a claim **1)** fill out, sign, and mail this claim form back; **2)** submit a claim online at www.settlementwebsite.com; **OR 3)** print and complete the form from the Settlement website and mail to the address below. Claim forms must be submitted online or, if by mail, postmarked on or before **{claims deadline}**.

Do I Have a Lawyer? Yes. The Court has appointed the Law Offices of Todd M. Friedman, P.C. as counsel for the Class. The lawyers will be paid by Defendant as part of the Settlement. You may hire your own lawyer to represent you at your own expense.

What Should I Do? Class Members have four options: **(1) Submit a Claim** to the Settlement Administrator to receive twelve dollars (\$12.00). If the Settlement is approved, you will not have the right to sue separately for damages of \$500 per call, or \$1,500 per calls made willfully. **(2) Remain a Class Member but object to the Settlement.** Instructions for objecting are available at www.settlementwebsite.com. Objections and supporting documents must be mailed to the Court postmarked by **{objection date}**. You may choose to pay for and be represented by a lawyer who may send the objection for you. **(3) Exclude yourself** from the Settlement by mailing a request to the Settlement Administrator (not the Court). You must state in writing your name, address, the cell number at which you believe you received a call from Defendant, and that you want to be excluded from this Settlement. Exclusions must be signed and postmarked no later than **{exclusion date}**. **(4) Do Nothing:** If you do nothing, you will remain part of the Settlement Class and will release your claims against the Released Parties, but you will not receive any money from this Settlement.

Scheduled Hearing: The judge scheduled a hearing for **{date}**, at **{time}**, at the United States District Court for the Central District of California, United States Courthouse, 350 W. 1st Street, 6th Floor, Courtroom 9C, Los Angeles, CA 90012, regarding whether to give final approval to the Settlement, including the amounts of any attorneys' fees, costs, and class representative award. The hearing may be changed without notice. It is not necessary for you to appear at this hearing, but you may attend at your own expense.

For more information: Visit: www.settlementagreement.com; Call: 1-XXX-XXX-XXXX; or write to: ENAGIC TCPA SETTLEMENT c/o Postlethwaite & Netterville, P.O. Box XXXXX, [City, State ZIP]

Makaron v. Enagic USA, Inc., Case No. 2:15-cv-05145-DDP -E (C.D. Cal.)

SETTLEMENT CLAIM FORM

You must complete, sign and submit a claim form postmarked by {Claim Deadline}. All claims are subject to verification. You may also submit your claim online at www.settlementwebsite.com.

To participate in the Settlement, you must have received one or more calls to your cell phone from Enagic USA, Inc. or its Distributors between July 8, 2011 and March 13, 2018 made through the use of any automatic telephone dialing system or an artificial or prerecorded voice.

Full Name

Primary Address

City, State Zip

Current Email Address

Contact Phone Number

[to be inserted by Settlement Administrator]

Cell Phone Number to Which You Received a Call

By signing and submitting this Claim Form, I certify under penalty of perjury that: (i) I received a call from Enagic USA, Inc. or its Distributors on the above cell phone number; (ii) I was the subscriber or user of the cell phone number; and (iii) I did not consent to receive such calls.

Date: _____

Signature: _____

This process takes time; please be patient.

[CLAIM ID IN DIGITS]
[CLAIM ID IN BARCODE]
Postal Service: Do Not Mark or Cover Barcode

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



BUSINESS REPLY MAIL
FIRST CLASS PERMIT NO. 1448 BATON ROUGE, LA.

Enagic TCPA Settlement
C/O Postlethwaite & Netterville
P.O. Box xxxxxx
City, State Zip



EXHIBIT C

Makaron v. Enagic USA, Inc., No. 2:15-cv-05145-DDP-E
United States District Court for the Central District of California

If you received a call from Enagic USA, Inc. or its Distributors between July 8, 2011 and March 13, 2018 using an automatic telephone dialing system or an artificial or prerecorded voice, you may be entitled to benefits under a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A consumer (“Class Representative”) brought a lawsuit alleging that Enagic USA, Inc. (“Defendant”) violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, by (a) using an automatic telephone dialing system to call cell phones (“Automatic Calls”) without proper consent, or (b) using an artificial or prerecorded voice (“Prerecorded Calls”).
- A settlement has been reached in this case, which affects certain individuals who may have received Automatic Calls or Prerecorded Calls from Defendant or its Distributors between July 8, 2011 and March 13, 2018 (“Class Period”), which they did not consent to receive.
- The settlement, if approved, will provide each eligible person who files valid and timely claims to receive a cash award of \$12.00.
- You are in the “Class” if Defendant or its Distributors called you using an automatic telephone dialing system or with an artificial / prerecorded voice on a cell phone number during the Settlement Class Period, and you did not consent to receive such calls.
- In addition to paying settlement awards to Class Members, Defendant will pay attorneys’ fees and costs to attorneys representing the Class Representative and the Class (“Class Counsel”), any service award to the Class Representative, and the reasonable costs of notice and administration of the settlement.
- **Your legal rights are affected whether you act or don’t act. Read this notice carefully.**

Your Legal Rights and Options in this Settlement		Deadline
Submit a Claim Form	This is the only way to get a payment. You can submit a valid and timely claim form online at www.settlementwebsite.com or by mail to ENAGIC TCPA SETTLEMENT C/O Postlethwaite & Netterville (P&N), [ADDRESS]. If you fail to submit a claim, you will not receive a settlement payment.	{Insert Claims Deadline}
Do Nothing	Get no payment. Give up any rights to sue Defendant or anyone else separately regarding the legal claims in this case.	No Deadline
Exclude Yourself or "Opt Out" of the Settlement	Get no payment. If you exclude yourself, you will not waive any rights you may have against Defendant or anyone else with respect to the legal claims in this case.	{Insert Exclusion Deadline}
Object	Write to the Court about why you believe the Settlement is unfair. Even if you file a valid and timely objection, you can still submit a claim form to receive a payment.	{Insert Objection Deadline}
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement if you file a valid and timely objection.	{Insert Fairness Hearing Date}

These rights and options - **and the deadlines to exercise them** - are explained in this notice. The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made on valid and timely claims if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION..... PAGE 3

1. Why is there a notice?
2. What is this class action lawsuit about?
3. Why is there a settlement?

WHO IS IN THE SETTLEMENT PAGE 3

4. How do I know if I am part of the Settlement?

THE SETTLEMENT BENEFITS - WHAT YOU GET..... PAGE 4

5. What does the Settlement provide?

HOW YOU GET A PAYMENTPAGE 4

6. How and when can I get a payment?
7. What am I giving up to get a payment or stay in the Class?

EXCLUDING YOURSELF FROM THE SETTLEMENT PAGE 5

8. How do I exclude myself from the Settlement?

THE LAWYERS REPRESENTING YOU..... PAGE 5

9. Do I have a lawyer in this case?
10. How will the lawyers and Class Representative be paid?

OBJECTING TO THE SETTLEMENT PAGE 6

11. How do I tell the Court that I do not think the Settlement is fair?

THE COURT'S FAIRNESS HEARING..... PAGE 6

12. When and where will the Court decide whether to approve the Settlement?
13. May I speak at the hearing?

IF YOU DO NOTHING PAGE 7

14. What happens if I do nothing at all?

GETTING MORE INFORMATION..... PAGE 7

15. How do I get more information?

BASIC INFORMATION

1. Why is there a notice?

A court authorized this Notice because you have a right to know about a proposed settlement of this class action lawsuit, and about all of your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement and after any objections or appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows. Because your rights will be affected by this Settlement, it is important that you read this Notice carefully.

If you received a Notice, it is likely because records obtained in discovery indicate you may have received one or more calls during the Class Period from Defendant or one of its Distributors using an automatic telephone dialing system or an artificial or prerecorded voice.

More specifically, the Class is comprised of: “All persons United States who received a telephone call from Defendant or one of its Distributors, on said Class Member’s telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice, between July 8, 2011 and March 13, 2018.”

The Court in charge of the case is the United District Court for the Central District of California, and the case is known as *Makaron, v. Enagic USA Inc.*, No. 2:15-cv-05145-DDP-E (C.D. Cal.). The proposed Settlement would resolve all claims in this case. The person who sued is called the “Plaintiff” or “Class Representative,” and the company sued, Enagic USA, Inc. is referred to herein as “Defendant.”

2. What is this class action lawsuit about?

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. Representative plaintiffs, also known as “Class Representatives,” assert claims on behalf of the entire class.

The Class Representative filed and/or pursued this Action alleging that Defendant violated the TCPA by using an automatic telephone dialing system to call cell phones without the prior express consent of the recipients and/or using an artificial or prerecorded voice.

Defendant denies that it did anything wrong, or that this case is appropriate for treatment as a class action.

3. Why is there a settlement?

The Court did not decide in favor of the Class Representative or Defendant. Both sides agreed to a settlement instead of going to trial. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representative and his attorneys think the Settlement is best for all Class Members.

WHO IS IN THE SETTLEMENT?

4. How do I know if I am part of the Settlement?

The Court has certified a class action. You are in the Class if you are a person who received a telephone call from Defendant or one of its Distributors through the use of any automatic telephone dialing system or an artificial or prerecorded voice, between July 8, 2011 and March 13, 2018, and you did not consent to receive such calls.

Excluded from the Class are individuals who were not users or subscribers of the specific cellular telephone numbers called during the Class Period, are officers or directors of Defendant or of any

Defendant Affiliate, any justice, judge, or magistrate judge of the United States or any State, their spouses, and persons within the third degree of relationship to either of them, or the spouses of such persons, and all persons who validly exclude themselves or opt out of the Class.

If you have questions about whether you are a Class Member, or are still not sure whether you are included, you can call 1-XXX-XXX-XXXX or visit www.settlementwebsite.com for more information.

THE SETTLEMENT BENEFITS - WHAT YOU GET

5. What does the Settlement provide?

Defendant agreed to pay twelve dollars (\$12.00) to each Class Member who submits a valid and timely claim, pay Class Counsel's attorneys' fees of up to \$1,300,000, pay Class Counsel's actual costs up to \$60,000, pay a service award to the Class Representative of \$7,500, and pay costs and expenses of settlement administration. Defendant has also agreed to an injunction regarding its calling practices and compliance with the Telephone Consumer Protection Act.

HOW YOU GET A PAYMENT

6. How and when can I get a payment?

Each Settlement Class Member who submits a valid and timely Claim Form will receive Settlement Relief. Settlement Relief is a cash payment of \$12.00. Claim Forms must be postmarked or submitted electronically no later than **[Claim Deadline]**.

Claims may be submitted electronically via the Settlement Website, www.settlementwebsite.com, or by mail to:

ENAGIC TCPA SETTLEMENT
c/o Postlethwaite & Netterville
[ADDRESS]
[CITY, ST ZIP]

The Court will hold a hearing on **[Fairness Hearing Date]**, 2019, to decide whether to approve the Settlement. If the Settlement is approved, appeals may still follow. Whether the appeals, if any, can be resolved is uncertain, and resolving them can take time, perhaps more than a year. Please be patient.

7. What am I giving up to get a payment or stay in the Class?

If you are a Class Member, unless you exclude yourself, you will be bound by the release of claims in the Settlement. This means that, if the Settlement is approved, you can't sue, continue to sue, or be part of any other lawsuit against Defendant or anyone else having to do with TCPA violations arising out of Automatic Calls or Prerecorded Calls made by Defendant between July 8, 2011 and March 13, 2018, and all of the decisions and judgments by the Court will bind you.

For non-emergency calls to a cell phone number made using an automatic telephone dialing system without the prior express consent of the called party, the TCPA provides for damages of \$500 per violation, or up to \$1,500 for willful violations, plus an injunction limiting future conduct. However, Defendant has denied that it made any illegal calls to anyone, and in any future lawsuit will have a full range of potential defenses, including that they had prior express consent to make the calls. In addition, the TCPA does not provide for attorneys' fees to prevailing individual plaintiffs. This Settlement permits class members the opportunity to obtain a smaller amount of money, risk-free.

If you file a Claim Form for benefits or do nothing at all, you will be unable to file your own lawsuit

regarding the claims described in this Notice, and you will release Defendant from any liability for the Released Claims defined below and in the Settlement.

Remaining in the Settlement Class means that you, as well as anyone claiming through you such as heirs, administrators, successors, and assigns, relinquish and discharge each and all of the Released Persons from each of the Released Claims (as defined below).

Released Claims: Upon Final Approval, each member of the Class, including the Plaintiff, shall, by operation of the Judgment, be deemed to have fully, conclusively, irrevocably, forever and finally released, relinquished, and discharged the Released Persons from any and all claims, arising out of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., during the Class Period.

The Settlement Agreement (available at the website) provides more detail regarding the release and describes the Released Claims with specific descriptions in necessary, accurate legal terminology, so read it carefully. You can talk to the law firms representing the Class listed in Question 9 for free, or you can, at your own expense, talk to your own lawyer if you have any questions about the Released Parties or the Released Claims or what they mean.

The release does not apply to Class Members who timely opt-out of the Settlement.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this Settlement, and you want to keep the right to sue or continue to sue Defendant on your own about the legal issues in this case, then you must take steps to exclude yourself from the Settlement.

8. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Makaron v. Enagic USA, Inc.*, No. 2:15-cv-05145-DDP-E (C.D. Cal.). Be sure to include your full name, address, and the cell phone number(s) at which you were called by Defendant. You must also include a statement that you wish to be excluded from the Settlement and sign the statement. **You must mail your exclusion request postmarked no later than [MONTH DAY, YEAR], to:**

ENAGIC TCPA SETTLEMENT - EXCLUSIONS
c/o Postlethwaite & Netterville
[ADDRESS]
[CITY, ST ZIP]

If you ask to be excluded, you will not get any Settlement Relief, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendant in the future. Although no other person may exclude you from the Settlement Class, nothing prohibits you from obtaining the assistance of another, such as a lawyer or family member, in preparing or submitting any individual exclusion. A sample exclusion form is available online at www.settlementwebsite.com.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

The Court appointed the Law Offices of Todd Friedman, P.C. and Todd Friedman, Thomas Wheeler, and Adrian Bacon to represent you and other Class Members.

All of these lawyers are called Class Counsel. You will not be charged separately for these lawyers' services. If you want to be represented by your own lawyer, you may hire one at your own expense.

Additionally, you may enter an appearance through your own attorney if you so desire, but you do not need to do so.

10. How will the lawyers and Class Representative be paid?

Class Counsel will ask the Court to approve a separate payment of up to \$1,300,000.00 to compensate them for attorneys' fees for investigating the facts, litigating the case, and negotiating the Settlement, plus actual costs up to \$60,000.00. Class Counsel will also request an award of \$7,500.00 for the Class Representative, as compensation for his time and effort. The Court may award less than these amounts. These payments, along with the costs of administering the Settlement, are to be made by Defendant.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

11. How do I tell the Court that I do not think the Settlement is fair?

If you are a Settlement Class Member and do not exclude yourself, you can object to the Settlement, or any part of the Settlement, for example if you do not think the Settlement is fair. You can state reasons why you think the Court should not approve it. The Court will consider your views. To object, you must mail a written statement to the Court saying that you object to the proposed Settlement in *Makaron v. Enagic USA, Inc.*, No. 2:15-cv-05145-DDP-E (C.D. Cal.). Be sure to include your full name, address, current phone number, cellular telephone number you believe Defendant called you on, the reasons you object to the Settlement, and whether you intend to appear at the fairness hearing on your own behalf or through counsel. All objections shall identify any lawyer that represents you as to your objection and provide that lawyer's address and telephone number, but you do not have to have a lawyer. Any documents that you wish for the Court to consider must also be attached to the objection. **Your objection to the Settlement must be mailed no later than [OBJECTION DATE] to the following address:**

Makaron v. Enagic USA, Inc., No. 2:15-cv-05145-DDP-E (C.D. Cal.)
U.S. District Court, Central District of California
United States Courthouse
350 W. 1st Street
Los Angeles, CA 90012

THE FAIRNESS HEARING

12. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing to decide whether to approve the Settlement. This Fairness Hearing will be held at [REDACTED] on [REDACTED], at the United States District Court for the Central District of California, United States Courthouse, 350 W. 1st Street, 6th Floor, Courtroom 9C, Los Angeles, CA 90012. The hearing may be moved to a different date or time without additional written notice, so it is a good idea to check the Settlement Website for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and whether to award attorneys' fees, expenses, and an incentive award to the Class Representative as described above, and in what amounts. If there are objections, the Court will consider them. At or after the hearing, the Court will decide whether to approve the Settlement. We do not know how long it will take the Court to issue its decision. You do not have to come to this hearing, but you may attend at your own expense. However, any Settlement Class Member who fails to object to the Settlement in the manner described in section 11 shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal

or other means.

13. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file a notice with the Court saying that you intend to appear at the Fairness Hearing in *Makaron v. Enagic USA, Inc.*, No. 2:15-cv-05145-DDP-E (C.D. Cal.). Be sure to include your full name, address, and telephone number, as well as copies of any papers, exhibits or other evidence that you intend to present to the Court. Your notice of intention to appear must be filed no later than [date]. Copies of your notice of intent to appear must also be sent to the attorneys for the Plaintiff and Class and to the attorneys for Defendant at the addresses provided above. You cannot speak at the hearing if you exclude yourself from the Settlement or do not file a timely notice of intent to appear.

IF YOU DO NOTHING

14. What happens if I do nothing at all?

If you do nothing, and are a Class Member, you will not receive a payment after the Court approves the Settlement and any appeals are resolved. In order to receive a payment, you must submit a claim form. Unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or any other person having to do with the legal issues in this case.

GETTING MORE INFORMATION

15. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by calling the Settlement Administrator toll-free at 1-XXX-XXX-XXXX, visiting the website at www.websiteaddress.com, or by writing to:

ENAGIC TCPA SETTLEMENT
c/o Postlethwaite & Netterville
[ADDRESS]
[CITY, ST ZIP]

You can also visit the website at www.websiteaddress.com to find answers to frequently asked questions about the Settlement, a claim form, plus other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

EXHIBIT D

Makaron v. Enagic USA, Inc.

United States District Court for the Central District of California
Case No. 2:15-cv-05145-DDP-E

CLAIM FORM

If you wish to receive a payment from the settlement, please complete this claim form. Any pre-populated information below reflects our records. If any of the pre-populated information is incorrect or not updated, please edit where necessary.

You must complete and submit a claim form by {Claim Deadline} to receive your share. Each class member is entitled to submit a claim form. All claims are subject to verification.

To participate in the Settlement, you must have received one or more calls to your cell phone from Enagic USA, Inc. or its Distributors between July 8, 2011 and March 13, 2018 made through the use of any automatic telephone dialing system or an artificial or prerecorded voice.

[Click here to download a paper claim form which must be mailed by the deadline.](#)

CLAIMANT INFORMATION

Cell Phone Number On Which You Received a Call:	<input type="text" value="(555) 555-5555"/>
Claimant First Name:	<input type="text"/>
Claimant Last Name:	<input type="text"/>
Claimant Street Address 1:	<input type="text"/>
Claimant Street Address 2:	<input type="text"/>
Claimant City:	<input type="text"/>
Claimant State:	<input type="text"/>
Claimant Zip:	<input type="text"/>
Current Email Address:	<input type="text"/>
Contact Phone Number:	<input type="text"/>

CERTIFICATION

- By signing and submitting this Claim Form, I certify under penalty of perjury that: (i) I received a call from Enagic USA, Inc. or its Distributors on the above cell phone number; (ii) I was the subscriber or user of the cell phone number; and (iii) I did not consent to receive such calls.

Certification Name:

Enter your full name here to certify this claim submission

Go Back

Submit Claim

EXHIBIT D-1

Makaron v. Enagic USA, Inc.
c/o Postlethwaite & Netterville
PO Box XXX
Baton Rouge, LA 70821-0481

**Your Claim Form Must Be Submitted
On Or Before {CLAIMS DEADLINE}**

Makaron v. Enagic USA, Inc.
United States District Court for the Central District of California
Case No. 2:15-cv-05145-DDP-E

CLAIM FORM

TO RECEIVE BENEFITS FROM THIS SETTLEMENT, YOU MUST PROVIDE ALL OF THE INFORMATION BELOW AND YOU MUST SIGN THIS CLAIM FORM. *THIS CLAIM FORM SHOULD ONLY BE USED IF A CLAIM IS BEING MAILED IN AND IS NOT BEING FILED ONLINE AT WWW.SETTLEMENTWEBSITE.COM.*

CLAIMANT INFORMATION (PLEASE PRINT)

First Name _____		Middle Name _____	
Last Name _____			Suffix _____
Primary Address (If non-US address, please submit your claim online) _____			
Primary Address Continued _____			
City _____		State _____	Zip Code _____
Current Email Address _____			
Current Phone Number _____ - _____ - _____		Claim ID Number, if available (provided on class notice) _____	

To qualify for payment, your cell phone number must be listed in our records as one of the cell phone numbers that was called by Enagic USA, Inc. or its Distributors. You may list up to three (3) cell phone numbers below. If you believe your current cell phone number was called, please include that number below as well as above. If you wish to submit more than 3 cell phone numbers, please use the online form available at WWW.SETTLEMENTWEBSITE.COM.

Cell Phone Number(s) On Which You Received a Call			
Cell Phone Number 1	_____	-	_____ - _____
Cell Phone Number 2	_____	-	_____ - _____
Cell Phone Number 3	_____	-	_____ - _____

CERTIFICATION:

I understand that to participate in the Settlement, I must have received one or more calls to my cell phone from Enagic USA Inc. or its Distributors between July 8, 2011 and March 13, 2018 made through the use of any automatic telephone dialing system or an artificial or prerecorded voice.

By signing and submitting this Claim Form, I certify under penalty of perjury that: (i) I received a call from Enagic USA, Inc. or its Distributors on the above cell phone number; (ii) I was the subscriber or user of the cell phone number; and (iii) I did not consent to receive such calls.

This Claim Form may be researched or verified by the Settlement Administrator.

Signature: _____

Date: _____

FOR MORE INFORMATION, VISIT WWW.SETTLEMENTWEBSITE.COM or CALL 1-XXX-XXX-XXXX.

EXHIBIT E

#3335

Makaron v. Enagic USA, Inc.

Case No. 2:15-cv-05145-DDP-E (C.D. Cal.)

OPT-OUT FORM

If you wish to exclude yourself (opt out) of the class action settlement in the above-referenced case, you must fill out this form and mail it to the Settlement Administrator so that it is postmarked by the deadline identified below.

If you exclude yourself (opt out), you will not receive a monetary payment or other benefits from the settlement and you cannot object to the settlement. You will, however, maintain the right to sue Enagic USA, Inc. on your own individual claims, at your expense, regarding the claims being released in this settlement and you will not be legally bound by the settlement. For more information on opting out, please see Question #8 of the Long Form Notice, which can be accessed at www.settlementwebsite.com.

You can opt out by mailing a completed copy of this form to the Settlement Administrator at:

ENAGIC TCPA SETTLEMENT - EXCLUSIONS

c/o Postlethwaite & Netterville

[ADDRESS]

[CITY, ST ZIP]

All Opt-Out Forms must be postmarked no later than [Exclusion Deadline].

Forms that are not timely submitted will not be considered.

Opt-Out Verification

By submitting this Opt-Out Form, by mailing it via U.S. mail, I verify my desire to be excluded from the settlement in the case of *Makaron v. Enagic USA, Inc.* Case No.: 2:15-cv-05145-DDP-E (C.D. Cal.). I acknowledge and understand that by opting out of the settlement, I will not receive a monetary payment in the amount of \$12 and that I cannot object to the settlement.

Class Member Name:	_____
Home Street Address:	_____
City, State, and Zip Code:	_____
Account Number (if applicable):	_____
Cell Phone Number(s) at which you were called (for verification purposes only):	_____
Signature:	_____

FOR MORE INFORMATION, VISIT www.settlementwebsite.com OR CALL 1-XXX-XXX-XXXX

LA2341045.6

221908-10002

EXHIBIT F

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

EDWARD MAKARON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

ENAGIC USA, INC.,

Defendant.

NO. 2:15-cv-05145-DDP-E

**[PROPOSED] ORDER, PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT, APPROVING NOTICE
PLAN, AND SCHEDULING FINAL
APPROVAL HEARING**

Upon review and consideration of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, including the Parties' Settlement Agreement and Release (the "Settlement Agreement") and all exhibits thereto, and the arguments of counsel, and having been fully advised in the premises, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. **Settlement Terms.** Unless otherwise defined herein, all capitalized terms in this Order shall have the meanings ascribed to them in the Settlement Agreement.
2. **Jurisdiction.** The Court has jurisdiction over the subject matter of the Action, the Parties, and all members of the Class.
3. **Scope of Settlement.** The Settlement Agreement resolves all Released Claims against Enagic USA, Inc. and each and all of its past, present, and future, direct or indirect, parents, subsidiaries, affiliates, agents, successors, predecessors, owners, members, or any financial institutions, corporations, trusts and their trustees, or other entities that may hold or have held any interest (including, without limitation, any security interest) in any account or any receivables relating to any account, or any receivables or group of receivables, or any interest in the operation or ownership of Defendant, and all of the aforementioned's respective past,

present, and future, officers, directors, members, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint venturers, vendors, assigns, or related entities, and each of their respective executors, successors, assigns, and legal representatives.

4. **Preliminary Approval of Proposed Settlement.** The Court has conducted a preliminary evaluation of the Settlement as set forth in the Settlement Agreement. Based on this preliminary evaluation, the Court finds that: (a) the Settlement is fair, reasonable and adequate, and within the range of possible approval; (b) the Settlement has been negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case with the assistance of an experienced and respected mediator; (c) with respect to the forms of notice of the material terms of the Settlement to persons in the Settlement Class for their consideration (Exs. A, B, C, and D to the Settlement Agreement), that notice provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; and (d) with respect to the proposed notice plan, the notice program constitutes the best notice practicable under the circumstances. Therefore, the Court grants preliminary approval of the Settlement.

5. **Final Approval Hearing.** A hearing regarding final approval of the Settlement will be held at a.m/p.m. on , to determine, among other things, whether to: (i) finally approve the Settlement as fair, reasonable, and adequate; (ii) dismiss the Released Claims in the Action with prejudice pursuant to the terms of the Settlement Agreement; (iii) bind Class Members by the Releases set forth in the Settlement Agreement; (iv) permanently bar Class Members who have not opted out of the Settlement from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction

based on the Released Claims; (v) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Class, and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (vi) approve the plan of distribution of the Settlement Fund; (vii) finally certify the find that Defendant has complied with its notice obligations under the Class Action Fairness Act, 28 U.S.C. § 1715, in connection with the Settlement, and (viii) approve requested Attorneys' Fees and Expenses and the proposed Incentive Awards to Plaintiff.

6. **Settlement Administrator.** Postlethwaite & Netterville (P&N) is hereby appointed as the Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order.

7. **Class Notice.**

a. The Court approves the Class Notice in the Settlement Agreement, including the Mail, Email, and Website Notices attached as Exhibits A, B, C, and D to the Settlement Agreement and the manner of providing Mail, Email, Website, and Publication Notices to Class Members described in Section 6 of the Settlement Agreement. The Court finds that this is the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise the Class Members of the pendency of this Action, the terms of the Settlement Agreement, and their right to object to the Settlement Agreement or exclude themselves from the Class. The Court further finds that the Mail, Email, Website, and Publication Notices are reasonable, constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and meet the requirements of due process. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Notice Plan no later than , 2019 ("Notice Deadline").

b. The Settlement Administrator will file with the Court by no later than , 2019, which is seven (7) days prior to the Final Approval Hearing, proof that notice was provided in accordance with the Settlement Agreement and this Order.

c. Defendant shall comply with the obligation to give notice under the Class Action Fairness Act, 28 U.S.C. § 1715, in connection with the proposed settlement. No later than seven (7) calendar days before the Final Approval Hearing, counsel for Defendant shall file with the Court one or more declarations stating that Defendant has complied with its notice obligations under 28 U.S.C. § 1715.

8. **Exclusion from the Class.** Any member of the Class who wishes to opt out of the Settlement must complete and mail to the Settlement Administrator a Request for Exclusion that is postmarked no later than the Opt-Out Deadline. The Request for Exclusion must: (a) identify the name and address of the member of the Class requesting exclusion; (b) provide the phone number at which that member of the Class believes he or she was called by Defendant or one of Defendant's independent distributors during the Class Period; (c) be personally signed by the member of the Class requesting exclusion; and (d) contain a statement that reasonably indicates a desire to be excluded from the Settlement. Mass or class opt-outs shall not be allowed. A sample Request for Exclusion form shall be made available for downloading on the Settlement Website in the form of Exhibit E.

a. Any potential member of the Class who properly opts out of the Settlement shall: (a) not be bound by any orders or judgments relating to the Settlement; (b) not be entitled to relief under, or be affected by, the Settlement Agreement; (c) not gain any rights by virtue of the Settlement Agreement; and (d) not be entitled to object to any aspect of the

Settlement. The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests for Exclusion within seven (7) Days after the Opt Out Deadline.

b. Except for those potential members of the Class who timely and properly file a Request for Exclusion in accordance with Section 11, all other potential members of the Class will be deemed to be Class Members for all purposes under the Settlement Agreement, and upon Final Approval, will be bound by its terms, regardless of whether they receive any monetary relief or any other relief.

9. **Objections and Appearances.** Any Class Member who has not filed a timely written Request for Exclusion and who complies with the requirements of this Paragraph may object to any aspect of the proposed Settlement either on his or her own or through an attorney hired at his or her expense. Any Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be mailed to the Clerk of Court, no later than the Objection Deadline, at the following addresses:

Makaron v. Enagic USA Inc., No. 2:15-cv-05145 (C.D. Cal.)
U.S. District Court, Central District of California
United States Courthouse
350 W. 1st Street
Los Angeles, CA 90012

a. A valid written objection must include: (a) the name, address, and telephone number of the Class Member objecting and, if different, the cellular telephone number at which the Class Member was called by Defendant or one of Defendant's independent distributors during the Class Period; (b) if represented by counsel, the name, address, and telephone number of the Class Member's counsel; (c) the basis for the objection; and (d) a

statement whether the objecting Class Member intends to appear at the Final Approval Hearing, either with or without counsel;

b. Any Class Member who fails to object to the Settlement in the manner described in the Class Notice and in this Order shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means;

c. Subject to approval of the Court, any Class Member who mails a written objection in accordance with Section 12 of the Settlement Agreement and the Class Notice may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Class Member mails to the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice Of Intention To Appear”). The Notice of Intention to Appear must include the Class Member’s full name, address, and telephone number, as well as copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

10. **Service of Papers.** Defense Counsel and Class Counsel shall serve on each other and on all other parties who have filed notices of appearance, at or before the Final Approval Hearing, any further documents in support of the proposed Settlement, including responses to any papers filed by Class Members. Defense Counsel and Class Counsel shall promptly furnish to each other any and all objections or written requests for exclusion that may come into their

possession and shall file such objections or requests for exclusion with the Court on or before the date of the Final Approval Hearing.

11. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the proposed Settlement is not finally approved by the Court, or does not become Final, pursuant to the terms of the Settlement Agreement; or (ii) the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement for any reason. In such event, and except as provided therein, the proposed Settlement and Settlement Agreement shall become null and void and be of no further force and effect; neither the Settlement Agreement nor the Court's orders, including this Order, shall be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses.

12. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect if the Settlement does not become Final. This Order shall not be offered by any person as evidence in any action or proceeding against any Party hereto in any court, administrative agency, or other tribunal for any purpose whatsoever, other than to enforce or otherwise effectuate the Settlement Agreement (or any agreement or order relating thereto), including the Releases, or this Order. Neither shall this Order be offered by any person or received against any of the Released Persons as evidence or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Released Persons of:

a. the truth of the facts alleged by any person or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or other judicial or administrative proceeding, or the deficiency of any defense that has been or could have been

asserted in the Action or in any litigation, or of any liability, negligence, fault or wrongdoing of any of the Released Persons;

b. any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Released Parties or any other wrongdoing by any of the Released Persons; or

c. any liability, negligence, fault, or wrongdoing in any civil, criminal, or administrative action or proceeding by any of the Released Persons.

13. **Necessary Steps.** The Court authorizes the Parties to take all necessary and appropriate steps to implement the Settlement Agreement.

14. **Schedule of Future Events.** Accordingly, the following are the deadlines by which certain events must occur:

_____, 2019 [45 days after the date of this Order]	Deadline for notice to be provided in accordance with the Settlement Agreement and this Order (Notice Deadline)
_____, 2019 [28 days before the Objection Deadline]	Deadline for filing of Plaintiff's Motion for Attorneys' Fees and Costs and Service Award
_____, 2019 [90 days after the Notice Deadline]	Deadline to mail objections or submit requests for exclusion (Opt-Out and Objection Deadline)
_____, 2019 [90 days after the Notice Deadline]	Deadline for Settlement Class Members to Submit a Claim Form (Claim Deadline)
_____, 2019 [105 days after the Notice deadline]	Deadline to File Motion for Final Approval
_____, 2019 [14 After Claims Deadline]	Deadline for Settlement Administrator to Provide Class Counsel with Proof of Class Notice, Identifying the Number of Requests for Exclusion, and Number of Claims Received

<p>_____, 2019 at ____ .m.</p> <p>[No earlier than 150 days after Notice Deadline]</p>	<p>Final Approval Hearing</p>
--	-------------------------------

DONE and ORDERED in Chambers in Los Angeles, California, this _____ day of _____, 2019.

Hon. Dean D. Pregerson, U.S.D.J.

cc: All Counsel of Record

EXHIBIT G

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

EDWARD MAKARON, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

ENAGIC USA, INC.,

Defendant.

NO. 2:15-cv-05145-DDP-E

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND DISMISSING CLASS
PLAINTIFF'S CLAIMS**

This Court, having held a Final Approval Hearing on _____, having provided notice of that hearing in accordance with the Preliminary Approval Order, and having considered all matters submitted to it in connection with the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Order Granting Final Approval of Class Action Settlement and Dismissing Class Plaintiff's Claims (the "Final Approval Order" or this "Order") and good cause appearing therefore,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Unless otherwise defined, all capitalized terms in this Final Approval Order shall have the same meaning as they do in the Settlement Agreement (Dkt. XXX).

2. The Court has jurisdiction over the subject matter of the Action and over the Parties, including all Class Members with respect to the Class previously certified as follows:

All persons within the United States who received a telephone call from Defendant or one of its Distributors, on said Class Member's telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice, between July 8, 2011 and March 13, 2018.

3. The Court finds that the Settlement Agreement was negotiated at arm's length by experienced counsel who were fully informed of the facts and circumstances of the Action and of

the strengths and weaknesses of their respective positions. Further, settlement occurred only after the parties negotiated over a period of many months and participated in a mediation with an experienced and respected former federal magistrate judge. Counsel for the Parties were therefore well positioned to evaluate the benefits of the Settlement Agreement, taking into account the expense, risk, and uncertainty of protracted litigation with respect to numerous difficult questions of fact and law.

4. The Court makes the following findings and conclusions regarding notice to the Class:

a. The Class Notice was disseminated to persons in the Class in accordance with the terms of the Settlement Agreement and the Class Notice and its dissemination were in compliance with the Court's Preliminary Approval Order;

b. The Class Notice: (i) constituted the best practicable notice under the circumstances to potential Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient individual notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

c. The Court finds that Defendant has complied with its notice obligations under the Class Action Fairness Act, 28 U.S.C. § 1715, in connection with the proposed Settlement.

5. The Court finally approves the Settlement Agreement as fair, reasonable and adequate pursuant to Fed. R. Civ. P. 23(e). The terms and provisions of the Settlement Agreement, including all exhibits thereto, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, each of the Parties and the Class Members.

6. The Court orders an injunction be entered against Defendant as set forth in Section 4.4 of the Settlement Agreement with respect to Defendant's auditing, monitoring, reporting, training, enforcement, and revised distributor agreement and policies and procedures.

7. The Court approves the plan of distribution for the Settlement Relief as set forth in the Settlement Agreement. The Settlement Administrator is ordered to comply with the terms of the Settlement Agreement with respect to distribution of Settlement Relief. Should any unclaimed funds be distributed, the Court hereby approves the Electronic Privacy Information Center as the recipient of the distribution of those unclaimed funds, after accounting for the costs of administering that distribution. This Court finds this organization closely aligned with the Class's interests.

8. By incorporating the Settlement Agreement and its terms herein, this Court determines that this Final Approval Order complies in all respects with Federal Rule of Civil Procedure 65(d)(1).

9. Class Counsel have moved pursuant to Fed. R. Civ. P. 23(h) and 52(a) for an award of attorneys' fees and reimbursement of expenses. Pursuant to Rules 23(h)(3) and 52(a) this Court makes the following findings of fact and conclusions of law:

- a. that the Settlement confers substantial benefits on the Class Members;

- b. that the value conferred on the Class is immediate and readily quantifiable;
- c. that within 60 days after the Final Settlement Date, Class Members who have submitted valid Claim Forms will receive cash payments that represent a significant portion of the damages that would be available to them were they to prevail in an individual action under the TCPA;
- d. that Class Counsel vigorously and effectively pursued the Class Members' claims before this Court in this complex case;
- e. that the Class Settlement was obtained as a direct result of Class Counsel's advocacy;
- f. that the Class Settlement was reached following extensive negotiation between Class Counsel and Counsel for Defendants, and was negotiated in good faith and in the absence of collusion following a mediation with an experienced and respected former United States Magistrate Judge;

10. Accordingly, Class Counsel are hereby awarded \$_____ for attorneys' fees and \$_____ in litigation expenses, which this Court finds to be fair and reasonable, and which amount shall be paid to Class Counsel in accordance with the terms of the Settlement Agreement. Class Counsel shall be responsible for allocating and shall allocate this award of attorneys' fees, costs, and expenses that are awarded amongst Class Counsel.

11. The Class Representative, as identified in the Preliminary Approval Order, is hereby compensated in the amount of \$_____ for his efforts in this case.

12. The terms of the Settlement Agreement and of this Final Approval Order, including all exhibits thereto, shall be forever binding in all pending and future lawsuits

maintained by the Plaintiff and all other Class Members, and anyone claiming through them such as heirs, administrators, successors, and assigns.

13. The Releases, which are set forth in Section 10 of the Settlement Agreement and which are also set forth below, are expressly incorporated herein in all respects and are effective as of the date of this Order; and the Released Persons are fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged by the Releasing Persons from all Released Claims.

a. In connection with the Releases in paragraph 10.1 of the Settlement Agreement, and without expanding their scope in any way, Plaintiff shall be deemed, as of the date of Final Approval, to have waived any and all provisions, rights, benefits conferred by Section 1542 of the California Civil Code, and any statute, rule and legal doctrine similar, comparable, or equivalent to California Civil Code Section 1542, which provides that:

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

The Plaintiff recognizes that even if he may later discover facts in addition to or different from those which they now know or believe to be true, they fully, finally, and forever settle and release any and all claims covered by these Releases upon entry of the Judgment.

b. The Settlement Agreement and the Releases therein do not affect the rights of Class Members who timely and properly submit a Request for Exclusion from the Settlement in accordance with the requirements in Section 11 of the Settlement Agreement.

c. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not

limited to, enforcement of the Releases contained in the Settlement Agreement. The Court shall retain jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

Upon entry of the Final Approval Order and the Judgment: (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions of the Settlement Agreement; (ii) the Released Persons shall not be subject to liability or expense for any of the Released Claims to any Class Member(s) except as set forth in the Settlement Agreement; and (iii) Class Members who have not opted out shall be permanently barred from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction based on the Released Claims.

d. Upon Final Approval, each member of the Class, including the Plaintiff shall, by operation of the Judgment, be deemed to have fully, conclusively, irrevocably, forever and finally released, relinquished, and discharged the Released Persons from all Released Claims.

e. Nothing in the Settlement Agreement shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein. The Releases set forth therein are not intended to include the release of any rights or duties of the Settling Parties arising out of the Settlement Agreement, including the express warranties and covenants contained therein.

14. The Court dismisses all Released Claims, with prejudice, without costs to any Party, except as expressly provided for in the Settlement Agreement.

15. This Order, the Judgment to be entered pursuant to this Order, and the Settlement Agreement (including the Exhibits thereto) may be filed in any action against or by any Released Person to support a defense of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. The parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and extensions, modifications, and expansions of, the Settlement Agreement as are consistent with this Final Order and Judgment and do not (a) limit the rights of the Class Members under the Settlement Agreement or (b) limit or affect the rights of third parties.

17. This Order and the Judgment to be entered pursuant to this Order shall be effective upon entry. In the event that this Order and/or the Judgment to be entered pursuant to this Order are reversed or vacated pursuant to a direct appeal in the Action or the Settlement Agreement is terminated pursuant to its terms, all orders entered and releases delivered in connection herewith shall be null and void.

DONE and ORDERED in Chambers in Los Angeles, California, this _____ day of _____, 2019.

Hon. Dean D. Pregerson, U.S.D.J.

EXHIBIT H

EXHIBIT H

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

EDWARD MAKARON, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

ENAGIC USA, INC.,

Defendant.

NO. 2:15-cv-05145-DDP-E

JUDGMENT

Pursuant to the Court's Order Granting Final Approval of Class Action Settlement and Dismissing Class Plaintiffs' Claims (the "Final Approval Order"), filed contemporaneously with the filing of this Judgment, IT IS ADJUDGED that:

1. Payments shall be made to Class Members who submitted valid claims, in accordance with the terms of the Settlement Agreement.
2. A service award of _____ (\$ _____) shall be paid to Plaintiff, in accordance with the terms of the Settlement Agreement.
3. Class Counsel attorneys' fees in the amount of _____ (\$ _____), and costs in the amount of _____ (\$ _____), shall be paid in accordance with the terms of the Settlement Agreement.
4. The Settlement Administrator, Postlethwaite & Netterville (P&N), shall be paid for its fees and expenses in connection with the administration of the Settlement Agreement, in accordance with the terms of the Settlement Agreement.

5. Except as to any Class Members who have validly and timely requested exclusion, this action is **dismissed with prejudice**, with all parties to bear their own fees and costs except as set forth herein and in the prior orders of the court.

Dated this _____ day of _____, 2019.

Hon. Dean D. Pregerson
United States District Judge