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13 **SUPERIOR COURT OF CALIFORNIA**  
14 **FOR THE COUNTY OF SANTA CLARA**

15 JESUS FERREYRA, individually and on behalf  
16 of all other similarly situated employees,

17 Plaintiff,

18 vs.

19 POINT DIGITAL FINANCE, INC., *et al.*

20 Defendants.  
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Case No.: 20CV373776

**JOINT STIPULATION REGARDING CLASS  
ACTION AND PAGA SETTLEMENT AND  
RELEASE**

Filed: November 19, 2020

FAC Filed: February 3, 2021

Trial Date: None Set

This Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement") is made and entered into between the Plaintiff Jesus Ferreyra ("Plaintiff"), on behalf of himself, Class Members, and Aggrieved Employees, and Defendant Point Digital Finance, Inc. ("Point") and Edward Lim (together, "Defendants"). This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

# **1. DEFINITIONS**

The following terms, when used in this Agreement, have the following meanings:

1.1 "Action" means the above stated lawsuit, *Ferreyra v. Point Digital Finance, Inc., et al.*, Santa Clara County Superior Court, Case No. 20CV373776, filed November 19, 2020.

1.2 "Aggrieved Employee(s)" means all non-exempt employees who have worked, or continue to work, for Defendants in California during the PAGA Claim Period.

1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this Joint Stipulation Regarding Class Action and PAGA Settlement and Release.

1.4 "Claim Amount" means an individual Qualified Claimant's and Aggrieved Employee's allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21, 1.25, 5.5, and 5.8.

1.5 "Claims Administrator" means and refers to Simpluris, Inc., the third-party entity that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.

1.6 "Claims Administrator Costs" means the fees and expenses reasonably incurred by the Claims Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class

Members and/or Aggrieved Employees, Class Counsel, and Defendants' Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

1.7 "Class Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin, of the Shimoda Law Corp.

1.8 "Class Member(s)" means all non-exempt employees who have worked, or continue to work, for Point in California during the Class Period.

1.9 "Class Period" means from November 19, 2016 up to either (1) the Preliminary Approval Date, or (2) June 15, 2021, whichever is earlier.

1.10 "Class Representative" means Plaintiff Jesus Ferreyra.

1.11 "Class Representative's Released Claims" means all claims contained in Plaintiff's Complaint and Plaintiff's letter to LWDA, and any additional wage and hour claims that could have been brought based on the facts alleged therein, or arising from, that could have been asserted, or related in any way to the Class Representative's employment with Point, under federal, state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other similar relief or claims. The Class Representative's Released Claims exclude claims for workers' compensation, unemployment insurance benefits, or other claims that cannot be released as a matter of law.

1.12 "Complaint" means the operative Complaint on file in the Action with the Court, which is the First Amended Complaint.

1.13 "Court" means the Superior Court of California, County of Santa Clara.

1.14 "Defendants" means Point Digital Finance, Inc. and Edward Lim.

1.15 "Defendants' Counsel" means SV Employment Law Firm PC.

1.16 "Enhancement Payment" means the amount approved by the Court, not to exceed Seven Thousand Five Hundred Dollars And No Cents (\$7,500.00) to be paid to the Class Representative in recognition of the time and effort expended on behalf of Class Members for the benefit of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a Qualified Claimant.

1.17 "Effective Date" means the date after the appeals period has run following the Final Approval Date, regardless of whether there is an objection or appeal.

1.18 "Final Approval Date" means the date a signed order granting final approval of this Agreement is filed with the Court.

1.19 "Gross Settlement Amount" is the sum of Two Hundred Fifteen Thousand Dollars and No Cents (\$215,000.00).

1.20 "LWDA" means the California Labor and Workforce Development Agency.

1.21 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for distribution to Qualified Claimants, as described in this Agreement, after deduction of Plaintiff's attorneys' fees, litigation costs not to exceed Fifteen Thousand Dollars And No Cents (\$15,000.00), Claims Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representative.

1.22 "Notice of Settlement" means the document substantially in the form attached hereto as Exhibit 1.

1.23 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.24 "PAGA" means Private Attorneys General Act.

1.25 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.26 "PAGA Claim Period" means September 14, 2019 up to either (1) to the Preliminary Approval Date or (2) June 15, 2021, whichever is earlier.

1.27 "Parties" mean Defendants and Plaintiff.

1.28 "Point" means Defendant Point Digital Finance, Inc.

1.29 "Preliminary Approval Date" means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.30 "QSF" means a Qualified Settlement Fund set up by the Claims Administrator for the benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Point has agreed to pay under this Agreement shall remain the property of Point until the payments required under the Agreement are made.

1.31 "Qualified Claimant" means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.32 "Qualified Claimant's Released Claims" means all claims contained in Plaintiff's Complaint and Plaintiff's letter to LWDA, and any additional wage and hour claims that could have been brought based on the facts alleged therein, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

1.33 "Qualifying Workweeks" are weeks worked by Class Members and/or Aggrieved Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members, workweeks shall be defined as the total length of service (in days) as a non-exempt employee in California during the Class Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of service (in days) as a non-exempt employee in California during the PAGA Claim Period divided by seven. The calculation of a Class Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall be construed from Point's records.

1.34 "Released PAGA Claims" means any and all claims that were brought or could have been brought under the Private Attorneys General Act, Labor Code § 2698 et seq., based on the facts or claims

1 alleged in the Complaint or Plaintiff's letter to the LWDA during the PAGA Claim Period. Aggrieved  
2 Employees cannot opt out of this waiver of claims.

3 1.35 "Released Parties" means Defendants, Point Digital Finance, Inc. and Edward Lim, as well  
4 as Point's past and present officers, shareholders, directors, agents, employees, attorneys, and insurers.  
5 Subject to Court approval based on Edward Lim's application to the Court (which Plaintiff will not  
6 oppose), Edward Lim will be dismissed from the Action without prejudice (with a tolling of all applicable  
7 limitations period) prior to the Final Approval Order. Following final approval of the settlement, Edward  
8 Lim will be dismissed from the Action with prejudice.

9 **2. DESCRIPTION OF THE LITIGATION**

10 2.1 On or about September 14, 2020, Plaintiff sent notice to the LWDA to exhaust  
11 administrative remedies under the PAGA for failure to pay minimum wages, failure to pay overtime,  
12 failure to provide accurate wage statements, failure to pay final wages, violation of Labor Code sections  
13 558 and 558.1, failure to provide meal periods or pay premiums in lieu thereof, failure to provide rest  
14 periods or pay premiums in lieu thereof, failure to provide paid sick time, and failure to maintain accurate  
15 records. The LWDA did not respond to the notice within the statutorily required time frame and, as such,  
16 Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

17 2.2 After exhausting administrative remedies, Plaintiff filed a class and PAGA action  
18 Complaint on November 19, 2020 in the Superior Court of California, County of Santa Clara on behalf of  
19 himself, Class Members and Aggrieved Employees alleging claims for failure to pay minimum wages,  
20 failure to pay overtime, failure to provide accurate wage statements, failure to pay final wages, unfair  
21 competition, failure to provide meal periods, failure to provide rest periods, including those PAGA claims  
22 alleged in the September 14, 2020 notice to the LWDA. On February 3, 2021, Plaintiff filed a First  
23 Amended Complaint to provide additional facts to support his claims.

24 2.3 Through informal discovery, Point and Defendants' Counsel provided Class Counsel  
25 with a randomly selected sample of time and payroll records for Class Members, regular rate calculations  
26 for the sample of Class Members the total number of Class Members, Class Members' dates of  
27 employment, Class Members' average rate of pay, and Point's relevant employee handbooks and policies.  
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1           2.4     On April 16, 2021, the Parties participated in a lengthy mediation with private mediator  
2 Michael J. Loeb, Esq. At the conclusion of the mediation, the Parties accepted the mediator's proposal  
3 and were able to come to a resolution embodied in a Memorandum Of Understanding covering the  
4 essential terms of the settlement, which has been more fully detailed herein. At all times, the Parties'  
5 settlement negotiations have been non-collusive, adversarial, and at arm's length.

6           2.5     Discussions between Plaintiff and Class Counsel, between counsel for the Parties,  
7 document productions, extensive legal analysis, the provision of information by Point to Plaintiff and the  
8 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative  
9 merits of the claims and the defenses to those claims.

10          2.6     In the Action, Plaintiff contends that Defendants violated California law by 1) failing to  
11 pay Class Members for all hours worked; and 2) failing to incorporate or correctly incorporate the value  
12 of nondiscretionary bonuses into Class Members' regular rates of pay for the purpose of calculating double  
13 time wages, meal premiums, and paid sick time Plaintiff has also generally alleged that Point did not  
14 always provide compliant meal and rest breaks. The wage statement, waiting time, unfair competition,  
15 and PAGA claims are derivative.

16          2.7     Defendants have denied each of Plaintiff's claims. Defendants have also denied that this  
17 Action is appropriate for class certification for anything other than settlement purposes. The agreed upon  
18 Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the  
19 underlying claims and the class data supporting these claims. The Parties, with the assistance of the  
20 mediator, also assessed appropriate discounts to the potential liability based on Defendants' factual and  
21 legal contentions and defenses.

22          2.8     The Parties agree that the above-described investigation and evaluation, as well as  
23 discovery and the information exchanged to date, are more than sufficient to assess the merits of the  
24 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class  
25 Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the Action be  
26 settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense,  
27 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the  
28 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.

Plaintiff, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

### 3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class and PAGA action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the Action via this Agreement without any admission of liability whatsoever, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

### 4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

1           4.2     Individuals entitled to recover under this Agreement will include only those individuals  
2 who are identified as being within the scope of this Agreement under Section 4.1. If a Class Member opts  
3 out of the settlement, that Class Member will not be entitled to recover under this Agreement, except if  
4 that Class Member is also an Aggrieved Employee within the PAGA Claim Period and can separately  
5 recover a portion of the PAGA Payment.

6           4.3     Any person who believes that he or she is a Class Member or Aggrieved Employee and  
7 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name  
8 did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data  
9 request to the Claims Administrator. The data request must contain all of the following information: (a)  
10 the full name; (b) any name used by such employee at the time his or her employment with Point; (c) the  
11 years during which such employee was employed with Point; and (d) a return address to which a response  
12 may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or  
13 otherwise submitted to the Claims Administrator such that it is received before the conclusion of the  
14 Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event  
15 more than two business days) transmit the data requests to Defendants' Counsel and request that Point  
16 review their records.

17           4.4     If Point agrees that the person listed in a data request is a Class Member and/or Aggrieved  
18 Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person who  
19 submitted the data request, at the address designated for that purpose in the data request. All provisions  
20 of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements sent in  
21 response to data requests, and any person who submits a data request and is sent a Notice of Settlement in  
22 response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved Employee for  
23 all other purposes.

24           4.5     If Point disagrees that the person listed in a data request is a Class Member and/or  
25 Aggrieved Employee, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute  
26 in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request  
27 dispute. Point's records shall control unless the individual submitting the data request provides persuasive  
28 evidence to doubt the accuracy of those records. Each data request dispute that Defendants' Counsel and

Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendants' Counsel and Class Counsel submit the dispute to the Claims Administrator. The decision by the Claims Administrator shall be final and there shall be no right of appeal.

**5. TERMS OF THE SETTLEMENT**

The Parties agree as follows:

**5.1 Gross Settlement Amount:** In consideration and exchange for the releases described in Section 6, Point shall pay the Gross Settlement Amount of Two Hundred Fifteen Thousand Dollar and No Cents (\$215,000.00). Funding of the Gross Settlement Amount shall occur within twenty-one (21) calendar days after the Effective Date. The Gross Settlement Amount includes payments to Qualified Claimants, Aggrieved Employees, all reasonable attorneys' fees, costs and litigation expenses related to the Action incurred by Plaintiff and/or Class Counsel to date, as well as all such reasonable fees and costs incurred in documenting the Agreement, administering the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to satisfy Point's tax obligations (e.g. employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross Settlement Amount.

**5.2 Attorneys' Fees and Costs:** Class Counsel will apply to the Court for attorney's fees of 1/3 (or \$71,666.67) of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the \$71,666.67 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$15,000.00, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$15,000.00 threshold. The Claims Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested

amounts not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed \$10,000.00. The difference between any actual costs and the allocated \$10,000.00 shall be added to the Net Settlement Amount.

5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for an Enhancement Payment to the Class Representative in an amount not to exceed Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) to compensate for the risks, time, and expense of his involvement in the Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Claim Amount Plaintiff would otherwise be due under the Agreement as a Qualified Claimant. Defendants have agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099. In the event that the Court awards less than the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the Class Representative shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

5.5 PAGA Payment: Ten Thousand Dollars and No Cents (\$10,000.00) of the Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by cashing their respective settlement checks before the deadline to do so, that remaining amount shall be donated equally, i.e. 50/50, to Capital Pro Bono, Inc. and the Center for Workers Rights. No portion of the Gross Settlement Amount will revert to Point for any reason.

1           **5.7    No Additional Benefits Contributions:** All Claim Amounts paid to Qualified Claimants  
2 and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were  
3 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not  
4 entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits  
5 under any company bonus or other compensation or benefit plan or agreement in place during the period  
6 covered by the Agreement, nor will it entitle any Qualified Claimant Aggrieved Employee to any increased  
7 retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is  
8 the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments  
9 to be made by Point to the Qualified Claimants and Aggrieved Employees in connection with this  
10 Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan  
11 document that might have been in effect during the period covered by this Agreement).

12           **5.8    Pro Rata Distribution Formula:** Payment to Qualified Claimants and Aggrieved  
13 Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement  
14 Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved  
15 attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims  
16 Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing  
17 their total weeks worked as non-exempt employees within the Class Period by the total weeks worked by  
18 all Class Members as non-exempt employees within the Class Period. That fraction will then be multiplied  
19 by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement  
20 Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined  
21 by dividing their total weeks worked within the PAGA Claim Period as a non-exempt employee by the  
22 total weeks worked by all Aggrieved Employees as non-exempt employees within the PAGA Claim  
23 Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the  
24 Aggrieved Employee's individual share.

25           **5.9    Tax Allocation:** The Parties recognize that the Claim Amounts to be paid to Qualified  
26 Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages.  
27 The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to  
28 Qualified Claimants as wages as well as calculating all required withholdings and deductions from said

1 wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved  
2 Employees are as follows:

3 5.9.1 one third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for  
4 payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall  
5 receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

6 5.9.2 two thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated for  
7 disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of  
8 the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive  
9 an IRS Form 1099-MISC.

10 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the  
11 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted  
12 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the  
13 Aggrieved Employees shall receive an IRS Form 1099-MISC.

14 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting  
15 and payment of their share of any federal, state and/or municipal income or other taxes on payments made  
16 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants' Counsel free and  
17 harmless from any claims resulting from treatment of such payments as non-taxable, including the  
18 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.  
19 No party has made any representation to any of the other Parties as to the taxability of any payments  
20 pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved  
21 Employees, the payments to Class Counsel, the payments to the Class Representative, the payroll tax  
22 liability of Defendants, or the allocation of the Net Settlement Amount or PAGA Payment to wage and  
23 non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this  
24 Agreement.

25 5.11 No Additional Contribution by Point: Point's monetary obligation under this Agreement  
26 is limited to the Gross Settlement Amount and any employer side payroll taxes owed on amounts  
27 characterized as wages under this Agreement. All other costs and expenses arising out of or in connection  
28 with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly

provided otherwise herein. However, in the event this agreement is deemed null and void as described in Section 3 because the Court, in its independent determination, finds that the Agreement does not meet the standards for settlement approval, then Point and Plaintiff shall be equally responsible for the costs of the Claims Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and Aggrieved Employees.

5.14 Dismissal of Edward Lim: As part of the Final Approval Order submitted to Court, Edward Lim will be dismissed from the action with prejudice. Prior to this time and subject to Court approval based on Edward Lim's application to the Court (which neither Plaintiff nor Class Counsel will oppose), Edward Lim may be dismissed from the Action without prejudice (with a tolling of all applicable limitations periods).

## 6. RELEASE

6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's Released Claims against any of the Released Parties.

6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.

6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and forever release the Qualified Claimant's Released Claims, Released PAGA Claims, and Class

Representative's Released Claims as to all Released Parties. Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of Section 1542 of the Civil Code, which provides as follows:

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.

Upon the Effective Date, Plaintiff will be deemed to have relinquished all rights and benefits each may have under Section 1542 with respect to Qualified Claimant's Released Claims and Class Representative's Released Claims, regardless of whether he may hereafter discover facts in addition to or different from those which he now knows and whether those claims are known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts.

## **7. SETTLEMENT ADMINISTRATION**

**7.1 Duties of Claims Administrator:** The Claims Administrator shall be responsible for: 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts, including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members and Aggrieved Employee whose address or contact information as provided to the Claims Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving, independently reviewing, and resolving any challenges (in consultation with Class Counsel and Defendants' Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA

1 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability  
2 to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late  
3 opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual  
4 funds from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the  
5 statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the  
6 number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the  
7 number of total undeliverable Notice of Settlements; (e) the number of address traces performed for  
8 undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced  
9 addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the  
10 number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court  
11 regarding the final statistics of the administration and compliance with all payment obligations under the  
12 Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to  
13 Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to  
14 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims  
15 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which  
16 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and  
17 obligations contemplated by the Agreement have been fully executed.

18       7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will  
19 provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the  
20 Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the  
21 individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement  
22 will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net  
23 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,  
24 proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the  
25 class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class  
26 Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information  
27 regarding Class Member's and Aggrieved Employee's estimated Claim Amount.  
28

1           **7.3    Class Member Data and Mailing:** No later than fourteen (14) calendar days after the  
2 Preliminary Approval Date, Point shall provide the Claims Administrator with the name, last known  
3 mailing address, last known telephone number, Social Security Number, start and end date of employment  
4 (if any) of each Class Member, and any other information the Claims Administrator needs to effectuate  
5 notice to Class Members and Aggrieved Employees as outlined herein. The Claims Administrator shall  
6 review the data to determine the number of Qualifying Workweeks for each Class Member and Aggrieved  
7 Employee. No later than fourteen (14) calendar days after receipt of such address information, the Claims  
8 Administrator will perform a national change of address ("NCOA") search, update the addresses per the  
9 results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as  
10 Exhibit 1, to each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The  
11 Claims Administrator shall maintain all information received from Point confidential to itself, and  
12 Defendants Counsel. However, Class Counsel shall be able to review the breakdown of Qualified  
13 Workweeks and estimated Claim Amounts for Class Members and Aggrieved Employees prior to mailing  
14 for quality assurance provided the personal identifying information is redacted and/or omitted.

15           **7.4    Returned and/or Re-mailed Notice of Settlements:** In the event that a Notice of Settlement  
16 is returned to the Claims Administrator as non-delivered on or before the conclusion of the Notice Period,  
17 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar  
18 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to  
19 determine a correct address using a single skip-trace, computer or other search using the name, address  
20 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within  
21 five (5) calendar days. Following each search that does not result in a corrected address, for those Class  
22 Members who appear to be current employees of Point at the time of the Preliminary Approval Date, the  
23 Claims Administrator shall contact Defendants' Counsel for assistance and Point shall cooperate in good  
24 faith with the Claims Administrator's reasonable efforts to obtain valid mailing addresses for Class  
25 Members to the extent they are active employees of Point. In the event the Notice of Settlement is  
26 forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to  
27 submit any request to opt-out, dispute, or objection shall be the end of the Notice Period or 10 days from  
28 the date of the re-mailing, whichever is later. In the event the procedures in this Section are followed and

the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the Releases contained in Section 6.

**7.5 Responses to Notice of Settlement:**

**7.5.1 *Opt-Outs:*** The Notice of Settlement shall provide that Class Members who wish to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (*i.e. Ferreyra v. Point Digital Finance, Inc., et al., 20CV373776*); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final judgment thereon, regardless of whether they otherwise have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member.

**7.5.2 *Objection Procedures:*** Any Class Member who does not opt-out but who wishes to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written objections to the Claims Administrator and also serve copies of the objections on Class Counsel and Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e., Ferreyra v. Point Digital Finance, Inc., et al., 20CV373776*) (e) be signed;

and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the Court and serve the notice on Class Counsel and Defendants' Counsel, if they intend to appear at the final approval hearing.

**7.5.3 Dispute Procedures:** Any Class Member who disputes the number of Qualifying Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two business days) forward all such disputes to Defendants' Counsel and request that Point review the dispute. Point's records shall presumptively control unless the Class Member can produce documentation evidencing other periods of employment worked. If Point does agree with submitted information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that Class Member's Claim Amount. If Point does not agree with the submitted information, Defendants' Counsel will promptly advise Class Counsel of the dispute, which includes turning over any documentation submitted by the Class Member as part of the dispute. Defendants' Counsel and Class Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendants' Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator or Court.

**7.5.4 Deficient Opt-Outs, Objections, or Disputes:** In the event that a deficient opt-out, objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency shall be the end of the Notice Period or 10 days from the date of the deficiency letter, whichever is later.

**7.6 Due Process Acknowledgement:** Compliance with the procedures set forth in Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and

1 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class  
2 Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

3 7.7 Claims Administrator Declaration Regarding Notice Period: Within twenty-one (21) days  
4 after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and  
5 Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed  
6 report regarding the statistics and responses of settlement administration to date and all the Claims  
7 Administrators' obligations under Sections 5.8 to 5.9-5.9.3, 7.1 to 7.5.4, and 7.9.

8 7.8 Claims Administrator Payments to Qualified Claimants Class Counsel and Plaintiff:  
9 Within seven (7) calendar days after the Final Approval Date and the Court's determination of the amount  
10 of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the  
11 PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net  
12 Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any  
13 applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants'  
14 Counsel. Point shall wire the Gross Settlement Amount and applicable taxes necessary to fund the  
15 Settlement as described in Section 5.1 to the Claims Administrator within twenty-one (21) days after the  
16 Effective Date to be to be held in trust in a QSF. Within seven (7) days thereafter, the Claims  
17 Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement  
18 Payment payable to Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Claims  
19 Administrator Costs, and payment to Qualified Claimants and/or Aggrieved Employees as required under  
20 this Agreement and approved by Court.

21 7.8.1 The Claims Administrator shall wire the Court-approved attorneys' fees and costs  
22 to Class Counsel unless other method is requested by Class Counsel. Class Counsel shall provide the  
23 Claims Administrator with the pertinent taxpayer identification number and payment instructions after the  
24 Final Approval Date.

25 7.8.2 The Claims Administrator shall send a check by mail for the Court-approved  
26 Enhancement Payment to the Class Representative, care of Class Counsel unless other method is requested  
27 by Class Counsel.  
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1           7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim  
2 Amount.

3           7.8.4 The Claims Administrator shall remit and report the applicable portions of the  
4 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this  
5 Agreement. Point agrees to reasonably cooperate with the Claims Administrator to the extent necessary  
6 to determine the amount of the payroll tax payment required.

7           7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue  
8 Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall  
9 become null and void if not deposited within one hundred twenty (120) calendar days of issuance. After  
10 one hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all  
11 uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall  
12 deliver these funds within fourteen (14) calendar days after the check cashing deadline.

13           7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration:  
14 Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash  
15 their settlement checks, the Claims Administrator shall provide Class Counsel and Defendants' Counsel  
16 with a signed declaration under penalty of perjury providing a complete and detailed report regarding the  
17 settlement administration documenting that all payments under the Agreement have been made, that the  
18 Court's final approval order has been complied with, and that all the obligations of the Claims  
19 Administrator have been completed.

20 **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

21           8.1 The schedule may be modified depending on whether and when the Court grants necessary  
22 approvals, orders notice to Class Members, and sets further hearings. The schedule may also be modified  
23 to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event  
24 of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously  
25 as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures  
26 carrying out the Agreement is as follows:  
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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Last day for Point to provide Claims Administrator with Class Member information</b>                                                                                                                                                                                             | <b>Within 14 calendar days after the Preliminary Approval Date</b>                                                                          |
| <b>Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement</b>                                                                                                                                            | <b>Within 14 calendar days after the Claims Administrator's receipt of Class Members' information from Defendant</b>                        |
| <b>Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests</b>                                                                                                                                                                          | <b>45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later</b> |
| <b>Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics</b>                                                                                                                                               | <b>Within 21 calendar days after end of the Notice Period</b>                                                                               |
| <b>Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel</b> | <b>Within 7 days after the Final Approval Date</b>                                                                                          |
| <b>Last day for Point to fund settlement</b>                                                                                                                                                                                                                                        | <b>Within 21 calendar days after the Effective Date</b>                                                                                     |
| <b>Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees</b>                                        | <b>Within 7 calendar days after Point has funded the settlement</b>                                                                         |
| <b>Last day for Qualified Members and Aggrieved Employees to cash settlement checks</b>                                                                                                                                                                                             | <b>120 days after issuance of checks to Qualified Members and Aggrieved Employees</b>                                                       |
| <b>Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries</b>                                                                                                                                                             | <b>Within 14 days after settlement check cashing deadline</b>                                                                               |

Last day for Claims Administrator to provide Parties with compliance declaration

Within 21 days after settlement check cashing deadline

## 9. DUTIES OF THE PARTIES

**9.1 Preliminary Approval:** The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments and/or proposed revisions within two weeks after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar two week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

**9.1.1** Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)

1 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally  
2 approved as fair, reasonable and adequate as to the Class Members.

3 9.1.2 Defendants shall not oppose Plaintiff's motion for approval of the proposed  
4 Agreement.

5 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during  
6 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and  
7 appropriate to assure effective communication to individual Class Members of information about their  
8 rights and obligations under this Agreement.

9 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the  
10 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if  
11 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the  
12 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice  
13 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of  
14 the Claim Administrator's mailings including tracing and re-mailing efforts.

15 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which  
16 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,  
17 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the  
18 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's  
19 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)  
20 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to  
21 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

22 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the  
23 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the  
24 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside  
25 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class  
26 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and  
27 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and  
28 assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each

1 other and assist the Claims Administrator as needed or requested in completing the distribution of any  
2 residual amounts, as specified above, to the *cypres* beneficiaries; 4) Class Counsel, in conjunction with  
3 the Claims Administrator, will certify to the Court completion of all payments required to be made by this  
4 Agreement.

5 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness  
6 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action  
7 and PAGA Settlement and Final Judgment.

8 9.4 Notice to LWDA: Plaintiff agrees to provide notice to the Labor and Workforce  
9 Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

10 **10. MISCELLANEOUS TERMS**

11 10.1 Right to Withdraw Based on Opt-Outs or Increased Class Size: If, prior to the Final  
12 Approval Date, 10% or more of the Class Members have submitted proper and timely requests to opt-out  
13 in accordance with the provisions of the Agreement, Defendants may, at their election, rescind the  
14 Agreement and all actions taken in its furtherance will be thereby null and void. Defendants must exercise  
15 this right of rescission, in writing, to Class Counsel, within seven (7) calendar days after the Claims  
16 Administrator notifies the Parties of the total number of opt-outs. If the option to rescind is exercised,  
17 then any Claims Administrator Costs shall be paid by Point. In the event that the total number of Class  
18 Members increases by 20% or more than what Point has represented to exist (56 Class Members), Plaintiff  
19 may at his option, void the agreement. However, Plaintiff agrees to pay the cost of the Claims  
20 Administrator incurred in administering the settlement up to that date if he chooses to exercise this opt-  
21 out option.

22 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF  
23 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT  
24 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND  
25 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN  
26 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR  
27 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH  
28 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON

1 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT  
2 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS  
3 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX  
4 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS  
5 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE  
6 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY  
7 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR  
8 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY  
9 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO  
10 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT  
11 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX  
12 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON  
13 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX  
14 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED  
15 BY THIS AGREEMENT.

16 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not  
17 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
18 any person or entity any portion of any liability, claim, demand, action, cause of action or right released  
19 and discharged in this Agreement.

20 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by  
21 signing this Agreement Plaintiff is waiving any rights to appeal from the Court's approval of the settlement  
22 unless the Court materially modifies the settlement. Furthermore, by signing this Agreement Plaintiff is  
23 waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

24 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set  
25 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this  
26 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

1        **10.6 Judgment and Retention of Jurisdiction to Enforce:** Upon the Final Approval Date,  
2 judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties  
3 to enforce the terms therein.

4        **10.7 Mutual Cooperation:** The Parties agree to cooperate fully with one another to accomplish  
5 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,  
6 execution of such other documents and the taking of such other action as may reasonably be necessary to  
7 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including  
8 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court  
9 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

10       **10.8 No Admission of Liability:** Neither the acceptance nor the performance by Defendants of  
11 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to  
12 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the  
13 Complaint, the representative character of the Action, the validity of any of the claims that were or could  
14 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of  
15 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by  
16 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,  
17 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or  
18 wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered  
19 into this Stipulation with the intention to avoid further disputes and litigation.

20       **10.9 Notices:** Unless otherwise specifically provided herein, all notices, demands, or other  
21 communications given hereunder shall be in writing and shall be deemed to have been duly given as of  
22 the third business day after mailing by United States certified mail, return receipt requested, addressed as  
23 follows:

24                    To Plaintiff and the Class:

25                    Galen T. Shimoda  
26                    Justin P. Rodriguez  
27                    Brittany V. Berzin  
28                    Shimoda Law Corp.  
                     9401 East Stockton Blvd., Suite 120  
                     Elk Grove, CA 95624

To Defendant:

Steven L. Friedlander  
Tatyana A. Shmygol  
SV Employment Law Firm PC  
160 Bovet Road, Suite 401  
San Mateo, CA 94402  
Telephone: (650) 265-0222  
Facsimile: (650) 265-0223

**10.10 Mutual Drafting of Agreement:** The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

**10.11 Binding Effect of Agreement:** The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement. This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Claims Administrators, successors, and assigns.

**10.12 Attorneys' Fees and Costs Limitations:** Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided in this Agreement. The Parties stipulate and agree that the Superior Court of California, County of Santa Clara County shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6 and that the prevailing party in any action necessary to enforce the terms of the Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

**10.13 No Modifications:** This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

**10.14 Authorization to Enter Into Settlement Agreement:** Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this

1 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of  
2 this Agreement.

3 **10.15 Class Member Signatories:** Because the Action has not yet been certified, and the Class  
4 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member  
5 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement  
6 may be executed on behalf of all Class Members by the Class Representative.

7 **10.16 Counterparts:** This Agreement shall become effective upon its execution by all of the  
8 undersigned. Plaintiff, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement  
9 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed  
10 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force  
11 and effect of originals.

12 **10.17 Choice of Law:** The Agreement and any exhibits hereto shall be considered to have been  
13 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and  
14 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance  
15 with, and governed by, the substantive laws of the State of California without giving effect to that State's  
16 choice of law principles.

17 **10.18 Headings and Captions:** Section titles or captions contained in the Agreement are inserted  
18 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of  
19 this Agreement, or any provision thereof.

20 **10.19 No Retaliation or Discouragement:** The Parties agree they will take no action that could  
21 be construed as retaliation against any Class Members for participating or seeking to participate in this  
22 class action settlement. The Parties will not discourage any class member from participating or seeking  
23 to participate in this class action settlement. This is a material term of the Agreement and non-breaching  
24 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they  
25 shall be entitled to further attorneys' fees and costs.

26 **10.20 Integrated Agreement:** This Agreement sets forth the entire understanding between the  
27 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.  
28 Each party acknowledges that there is no representation, inducement, promise or agreement which has

1 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,  
2 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent  
3 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

4 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to  
5 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

6 10.22 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the  
7 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with  
8 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

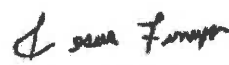
9 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this  
10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply  
11 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

12 10.24 Captions: The captions and section numbers in this Agreement are inserted for the reader's  
13 convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this  
14 Agreement.

15 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly  
16 authorized attorneys, as of the day and year herein set forth.

17 **For Plaintiff:**

18 Date: 6/14/2021

  
Jesus Ferreyra

21 **For Defendant:**

22 Date: \_\_\_\_\_

By: Matt Brady  
For Point Digital Finance, Inc.

25 Date: \_\_\_\_\_

Edward Lim

27 SIGNATURES CONTINUED ON NEXT PAGE  
28

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14 Agreement.

15 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly  
16 authorized attorneys, as of the day and year herein set forth.

17 **For Plaintiff:**

18 Date: \_\_\_\_\_

19 \_\_\_\_\_  
Jesus Ferreyra

21 **For Defendant:**

22 Date: 6/9/21 \_\_\_\_\_

23 \_\_\_\_\_  
By: Matt Brady  
For Point Digital Finance, Inc.

25 Date: 6/9/21 \_\_\_\_\_

26 \_\_\_\_\_  
Edward Lim

27 SIGNATURES CONTINUED ON NEXT PAGE  
28

1 APPROVED AS TO FORM

SHIMODA LAW CORP.

2  
3 Dated: 6/16/21

By:   
Galen T. Shimoda  
Justin P. Rodriguez  
Brittany V. Berzin  
Attorney for Plaintiff and Aggrieved  
Employees

4  
5  
6 APPROVED AS TO FORM

SV EMPLOYMENT LAW FIRM PC

7  
8  
9 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven L. Friedlander  
Tatyana A. Shmygol  
Attorneys for Defendants

1 APPROVED AS TO FORM

SHIMODA LAW CORP.

2  
3 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Galen T. Shimoda  
Justin P. Rodriguez  
Brittany V. Berzin  
Attorney for Plaintiff and Aggrieved  
Employees

4  
5  
6 APPROVED AS TO FORM

SV EMPLOYMENT LAW FIRM PC

7  
8  
9 Dated: 6/16/21 \_\_\_\_\_

By:  \_\_\_\_\_  
Steven L. Friedlander  
Tatyana A. Shmygol  
Attorneys for Defendants

# EXHIBIT 1

**CALIFORNIA SUPERIOR COURT**  
**FOR THE COUNTY OF SANTA CLARA**

**JESUS FERREYRA, individually and on behalf  
of all other similarly situated employees,**

**Plaintiff,**

**vs.**

**POINT DIGITAL FINANCE, INC., et al.**

**Defendant.**

**Case No. 20CV373776**

**CLASS ACTION**

**NOTICE OF PROPOSED CLASS ACTION  
AND PAGA SETTLEMENT, AND HEARING  
DATE FOR FINAL COURT APPROVAL OF  
SETTLEMENT**

**ATTENTION:** all non-exempt employees who have worked, or continue to work, for Point Digital Finance, Inc. in California from November 19, 2016 to \_\_\_\_\_ (the "Class Members").

**PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.**

Pursuant to an order from the Santa Clara County Superior Court ("Court") granting preliminary approval of this class and Private Attorney General Act ("PAGA") action settlement, entered on \_\_\_\_\_, you are receiving notice of a proposed class action settlement between Plaintiff Jesus Ferreyra ("Plaintiff" or "Class Representative") and Defendant Point Digital Finance, Inc. ("Point") and Edward Lim (together "Defendants") on behalf of Class Members as defined above. You are receiving this notice because Point's records indicate you fall within the definition of "Class Member." Point's records also indicate that you worked \_\_\_\_\_ workweeks as a non-exempt employee during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be \_\_\_\_\_. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, **YOU ARE HEREBY NOTIFIED AS FOLLOWS:**

**I. BACKGROUND OF THE CASE**

On November 19, 2020, Plaintiff, a former employee, filed a Complaint against Defendants in the California Superior Court for the County of Santa Clara on behalf of himself and Class Members. The term "Action" means this putative class and PAGA action pending in the Superior Court of California for the County of Santa Clara, Case No. 20CV373776. The Class Period is November 19, 2016 to \_\_\_\_\_ (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendants violated California law by failing to pay minimum wages, failing to pay overtime, failing to provide accurate wage statements, failing to timely pay final wages, violating Labor Code section 558, failing to provide meal and rest periods, failing to provide paid sick time, and failing to maintain accurate records. Defendants have denied all of Plaintiff's allegations. The Action has been actively litigated and Defendants provided extensive documentation and information prior to mediation. The Parties have participated in a full day mediation facilitated by a neutral third-party mediator experienced in wage and hour class and PAGA actions. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"),

which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

## **II. SUMMARY OF THE PROPOSED SETTLEMENT**

### **A. The Amount of the Settlement**

Under the terms of the Agreement, Point agrees to pay a total sum of Two Hundred Fifteen Dollars and No Cents (\$215,000.00) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 1/3 of the Gross Settlement Amount which equals \$71,666.67, attorneys' costs not to exceed \$15,000.00, Claims Administrator Costs estimated not to exceed \$10,000.00, Class Representative's Enhancement Payment not to exceed \$7,500.00, and \$10,000.00 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Point in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members as non-exempt employees during the Class Period. Of the \$10,000.00 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all non-exempt employees who have worked, or continue to work, for Point in California during the PAGA Claim Period.

The number of weeks you worked as a non-exempt employee during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

### **B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees**

Point will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties and reported on IRS Forms 1099-MISC.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked as a non-exempt employee within the Class Period by the total weeks worked as non-exempt employees by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked as a non-exempt employee within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees as non-exempt employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

### **C. Calculations to Be Based on Point's Records and Resolution of Workweek Disputes**

For each Class Member, the amount payable will be calculated by the Claims Administrator from Point's records. Point's records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Point's records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked as a non-exempt employee by an individual Class Member. If a Class Member disputes the accuracy of Point's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than \_\_\_\_\_. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. Point's records shall

control. The Claims Administrator's decision on all disputes will be final and binding.

**D. Release of Claims**

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims contained in Plaintiff's Complaint and Plaintiff's letter to LWDA, and any additional wage and hour claims that could have been brought based on the facts alleged therein, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought or could have been brought under the Private Attorneys General Act, Labor Code § 2698 et seq., based on the facts or claims alleged in the Complaint or Plaintiff's letter to the LWDA during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include means Defendants, Point Digital Finance, Inc. and Edward Lim, as well as Point's past and present officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

**E. Attorneys' Fees and Costs**

Point has agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 1/3 of the Gross Settlement Amount which equals \$71,666.67, and attorneys' costs not to exceed \$15,000.00. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

**F. Reasonableness of Settlement**

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

**III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER**

**A. Participating in the Settlement**

If you wish to participate in the settlement and believe your workweek information is accurate, you do not need to take any further action. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

**B. Excluding Yourself from the Settlement**

If you do not wish to participate in the settlement, you may be excluded (i.e., "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (i.e. Ferreyra v. Point Digital Finance, Inc., 20CV373776); (d) be signed; and (e) be post-marked no later than \_\_\_\_\_.

The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than \_\_\_\_\_. If you submit a request to opt out which is not postmarked by \_\_\_\_\_, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or

the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

### **C. Objection to Settlement**

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. *Ferreira v. Point Digital Finance, Inc.*, 20CV373776) (e) be signed; and (f) be post-marked no later than \_\_\_\_\_. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear through your own attorney, you are responsible for paying that attorney.

If you both opt out of and object to the settlement, it will count as an opt-out only.

### **IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS**

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendants and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Point in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

### **V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing in Department \_\_\_, [address] on \_\_\_\_ at \_\_\_\_ to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

### **VI. ADDITIONAL INFORMATION**

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda  
Justin P. Rodriguez  
Brittany V. Berzin  
Shimoda Law Corp.  
9401 East Stockton Blvd., Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733  
*On behalf of Plaintiff*

Steven L. Friedlander  
Tatyana Shmygol  
SV Employment Law Firm PC  
160 Bovet Road, Suite 401  
San Mateo, CA 94402  
Telephone: (650) 265-0222  
Facsimile: (650) 265-0223  
*On behalf of Defendant*

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS**

**SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]**

**BY ORDER OF THE COURT**