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individually and on behalf of similarly situated employees
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**
10

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

13 Plaintiff,

14 vs.

15 POINT DIGITAL FINANCE, INC., *et al.*
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17 Defendant.
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Case No. 20CV373776

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: September 9, 2021

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: November 19, 2020

FAC Filed: February 3, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 9, 2021, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Department 1 of the above-entitled Court, Plaintiff Jesus Ferreyra, individually
4 and on behalf of all other similarly situated individuals, hereby move for entry of an Order for the
5 following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement only;
- 7 2. Preliminarily appointing Plaintiff Jesus Ferreyra as class representative for purposes of
8 settlement only;
- 9 3. Preliminarily appointing the Shimoda Law Corp. as Class Counsel for purposes of settlement
10 only;
- 11 4. Preliminarily approving the proposed class action settlement, in the amount of \$215,000.00,
12 which is incorporated herein by reference;
- 13 5. Preliminarily approving the application for payment to Class Counsel of attorneys' fees in
14 the amount of \$71,666.67 (1/3 of the Gross Settlement Amount);
- 15 6. Preliminarily approving the application for payment to class counsel of reasonable costs not
16 to exceed \$15,000.00;
- 17 7. Preliminarily and conditionally approving the Class Representative Enhancement Payment of
18 \$7,500.00 to Plaintiff Jesus Ferreyra;
- 19 8. Preliminarily approving the appointment of Simpluris, Inc. as the Claims Administrator and
20 for payment to Simpluris, Inc. for administering said class action settlement in an amount not
21 to exceed \$10,000.00;
- 22 9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
23 the total amount of \$10,000.00, 75% of which will be paid to the Labor and Workforce
24 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 25 10. Approving as to form and content the Notice of Proposed Class Action Settlement, and
26 Hearing Date for Final Court Approval of Settlement ("Notice of Settlement"), which
27 provide Class Members information regarding the settlement, their ability to opt out of, or
28

object to, the class action settlement and which provides instruction on how to dispute an individual's settlement allocation under the proposed settlement agreement;

11. Approving the proposed procedures to notify the class and determining that the proposed notification procedures and process complies with class members' due process rights and directing the Notice of Settlement to be sent by first class mail to Class Members;
12. Directing Defendant Point Digital Finance, Inc. to report employment information, including social security numbers, to the Claims Administrator to administer the settlement proceeds;
13. Scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate;
14. Directing that any residue from settlement checks that were not cashed by the check cashing deadline be donated 50/50 to Capital Pro Bono, Inc. and the Center For Workers' Rights Clinic under the doctrine of *cy pres*;
15. Preliminarily and conditionally approving and adopting the Proposed Order and its implementation schedule, which is filed herewith and incorporated by reference.

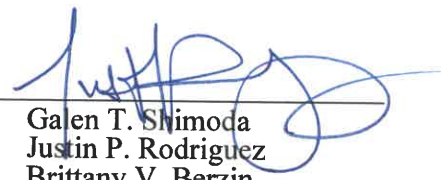
This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section 2699(l), and California Rule of Court 3.769, on the grounds that the proposed class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all class members and should be approved by the Court. This motion will be based on the notice of motion, memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Jesus Ferreyra, exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the hearing of this motion.

The Court follows CRC 3.1308(a)(1) for those departments that have elected to issue tentative rulings in civil law and motion and discovery matters. Counsel and litigants are responsible for determining whether the department hearing their motion has made this election. Those departments issuing tentative rulings will do so generally by 2:00 p.m., and no later than 3:00 p.m., on the court day preceding the scheduled hearing. If the Court has not directed oral argument, a party contesting a tentative ruling must give notice of its intention to appear to the other side and the Court no later than 4:00 p.m. on the court day preceding the scheduled hearing. Appearances may be made by telephone (through CourtCall) or in person. The tentative ruling will automatically become the order of the Court on the scheduled hearing date if the Court has not directed oral argument and if the contesting party fails to timely notice an objection to the other side and the Court. Tentative rulings will be posted on the Court's website, www.scsccourt.org, where further information may be found. If a party does not have access to the internet, the tentative ruling may be accessed by calling Court Services at (408) 882-

1 **2515. Questions about these procedures may be addressed to the specific department where the**
2 **matter is to be heard.**

3 Dated: August 2, 2021

Shimoda Law Corp.

4
5 By: 

6 Galen T. Shimoda
7 Justin P. Rodriguez
8 Brittany V. Berzin
9 Attorneys for Plaintiff
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Case No. 20CV373776

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

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TABLE OF CONTENTS

I.	Introduction and Opening Summary of Argument	1
II.	Procedural and Litigation History.....	2
III.	Investigation and Discovery Conducted	2
IV.	Negotiation and Proposed Settlement.....	3
	a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations.....	3
	b. The Terms of the Settlement.....	3
	c. Allocation of Settlement Funds	5
V.	Argument	6
	a. Class Action Settlements are Subject to Court Review and Approval Under the California Rules of Court.....	6
	b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness	6
	i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length Negotiations Between the Parties	7
	ii. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter Into an Informed and Reasonable Settlement.....	7
	iii. Plaintiff's Counsel is Experienced in Similar Litigation	8
	iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation	8
	v. The Proposed Settlement is a Reasonable Compromise of Claims	9
	vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the Putative Class Is Reasonable and Routinely Awarded by Courts.....	10
	vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable and Customarily Approved by Courts	10
	c. Provisional Certification of the Class for Settlement Purposes Only is Appropriate	13
	i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous	3
	ii. The Commonality, Predominance, and Typicality Requirements are Met	14
	iii. The Adequacy Requirement is Met	14

VI. Conclusion	15
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1 **TABLE OF AUTHORITIES**

2 **CALIFORNIA CASES**

3 *Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726,765 (2004)..... 11

4 *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974) 14

5 *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983)..... 14

6 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801, 1806, 1808 (1996) 7, 11, 13

7 *Green v. Obledo*, 29 Cal.3d 126 (1981)..... 6

8 *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972)..... 13

9 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008)..... 9

10 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016) 11

11 *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008)..... 13

12 *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-51 (1976)..... 15

13 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399 (2010) 9

14 *Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992)..... 6

15 *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019) 13

16 *North County Contr. 's Assn., Inc. v. Touchstone Ins. Svcs.*,
17 27 Cal. App. 4th 1085, 1089-90 (1994) 6

18 *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1139 (1990)..... 8

19 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462 (1981) 14

20 *Rose v. City of Hayward*, 126 Cal.App.3d 926 (1981) 13

21 *Sanders v. City of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970) 11

22 *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977)..... 11

23 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224,234-35, 246, 250, 254 (2001)..... 6, 8, 11

24 **CALIFORNIA STATUTES**

25 California Labor § 2699..... 2, 6

26 Cal. Rules of Court, Rule 3.769..... 6

27 **FEDERAL CASES**

28 *Amchem Products v. Windsor*, 521 U.S. 591 (1997) 14

1	<i>Avila v. Cold Spring Granite Co.</i> , 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017)	8
2	<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245 (N.D. Cal 2015)	9
3	<i>Benitez et al. v. Wilbur</i> , USDC Eastern District, Case No. 1:08-cv-01122	12
4	<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 477-478 (1980)	11
5	<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610, 617 (N.D. Cal. 1979).....	8
6	<i>Bravo v. Gale Triangle, Inc.</i> , 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)	8
7	<i>Chavez et al. v. Petrissans et al.</i> , USDC Eastern District, Case No. 1:08-cv-00122	12
8	<i>Dirienzo v. Dunbar Armored, Inc.</i> , USDC Southern District, Case No. 3:09-cv-02745.....	12
9	<i>Gardner v. GC Servs., LP</i> , 2012 U.S. Dist. LEXIS 47043 (S.D. Cal. 2012)	13
10	<i>Gay v. Waiters' & Dairy Lunchmen's Union</i> , 489 F.Supp. 282 (N.D. Cal. 1980)	13
11	<i>Green, et al. v. Penske Logistics, L.L.C., et al.</i> ,	
12	USDC Southern District, Case No. 3:09-cv-00069.....	12
13	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019, 1020, 1022, 1027 (9th Cir. 1998)	6, 14, 15
14	<i>Ingram v. The Coca Cola Co.</i> , 200 F.R.D. 685, 694 (N.D. Ga. 2001)	10
15	<i>In re Activision Sec. Litigation</i> , 723 F. Supp. 1373, 1379 (N.D. Cal. 1989)	12
16	<i>In re Heritage Bond Litig.</i> , 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005).....	12
17	<i>In re Ikon Office Solutions, Inc. Secur. Litig.</i> , 194 F.R.D. 166, 193 (E.D. Pa. 2000).....	12
18	<i>In re Omnivision Technologies, Inc.</i> , 559 F.Supp.2d 1036, 1042 (2007)	8, 9
19	<i>Jamison v. Butcher & Sherrerd</i> , 68 F.R.D. 479, 481 (E.D. Pa. 1975).....	6
20	<i>Martin v. Ameripride Servs.</i> , 2011 U.S. Dist. LEXIS 61796 22-23 (S.D. Cal. 2011).....	12
21	<i>Mills v. Electric Auto-Lite Co.</i> , 396 U.S. 375 (1970)	11
22	<i>Officers for Justice v. Civil Serv. Comm'n</i> , 688 F.2d 615, 628 (9th Cir. 1982)	8
23	<i>Paul, Johnson, Alston & Hunt v. Graulity</i> , 886 F.2d 268, 271 (9th Cir. 1989).....	11
24	<i>Reed v. 1-800 Contacts, Inc.</i> , 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014).....	9
25	<i>Romero v. Producers Dairy Foods, Inc.</i> ,	
26	2007 U.S. Dist. LEXIS 86270, (E.D. Cal. 2007)	12
27	<i>Schiller v. David's Bridal, Inc.</i> , 2012 U.S. Dist. LEXIS 80776 (E.D. Cal. 2012)	13
28	<i>Singer v. Becton Dickenson and Co.</i> ,	

1	2010 U.S. Dist. LEXIS 53416 (S.D. Cal. 2010)	12
2	<i>Staton v. Boeing Co.</i> , 327 F.3d 938, 967- 972 (9th Cir. 2003)	11
3	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995).....	10
4	<i>Vasquez v. Coast Valley Roofing, Inc.</i> , 266 F.R.D. 482, 491-492 (E.D. Cal. 2010)	12
5	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759, 769 (9th Cir. 1977)	11
6	<i>Waters v. Intern. Precious Metals Corp.</i> , 190 F.3d 1291 (11th Cir. 1999)	11
7	<i>Watson v. Raytheon Company</i> , USDC Southern District, Case No. 3:10-cv-00634	12
8	<i>Williams v. MGM-Pathe Communications Co.</i> , 129 F.3d 1026, 1027 (9th Cir. 1977)	11
9	<i>Willis et al. v. Cal-Western Transport</i> , USDC Eastern District, Case No. 1:00-cv-05695	12
10	FEDERAL STATUTES AND OTHER AUTHORITIES	
11	Fed. R. Civ. Proc., Rule 23(e)	6
12	Newberg on Class Actions.....	12

1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 This Motion is brought seeking preliminary approval of a wage and hour class action settlement
3 in the gross amount of \$215,000.00. *See generally* Exhibit A (Joint Stipulation Regarding Class Action
4 and PAGA Settlement and Release). Plaintiff Jesus Ferreyra (“Plaintiff”) brought this class action
5 individually and on behalf of other similarly situated employees employed by Point Digital Finance, Inc.
6 (“Point”) and Edward Lim (together “Defendants”). Plaintiff worked for Defendants in California from
7 about July 2019 to August 2020 and was subject to all the same policies and practices that are alleged to
8 be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint); Declaration of
9 Jesus Ferreyra (“Decl. Ferreyra”) ¶ 2.

10 Plaintiff has alleged that Defendants failed to pay minimum wages, failed to pay overtime,
11 failed to provide accurate wage statements, failed to pay final wages, engaged in unfair competition¹,
12 failed to provide meal periods, and failed to provide rest periods. *See generally* Exhibit B. Plaintiff has
13 also alleged Defendants are liable for civil penalties under the Private Attorneys General Act
14 (“PAGA”) based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the LWDA Regarding
15 PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendants violated
16 California law by 1) failing to pay Class Members for all hours worked; and 2) failing to incorporate or
17 correctly incorporate the value of nondiscretionary bonuses into Class Members’ regular rates of pay
18 for the purpose of calculating double time wages, meal premiums, and paid sick time. The PAGA,
19 waiting time penalty, wage statement violation, and unfair competition claims derive from these
20 violations. *See* Exhibit B. Plaintiff has contended that this is a meritorious class action lawsuit and that
21 this case is appropriate for class certification for settlement purposes as the requisites for class
22 certification in this case can be satisfied. *See* Exhibit B.

23 Defendants have denied all of Plaintiff’s allegations in their entirety and any liability or
24 wrongdoing of any kind. *See* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 5. Defendants
25 have denied that this case is appropriate for class certification other than for purposes of settlement and
26 that Plaintiff would have difficulty proving class certification is proper here. *See id.*

27 Subject to approval by the Court, the parties have been able to compromise and settle all
28

¹ This cause of action is only alleged as to Defendant Point Digital Finance, Inc.

1 asserted claims for monetary compensation as a result of extensive investigations, informal document
2 and data exchanges, and extended negotiations relating to all aspects of the asserted claims. *See*
3 Exhibit A. Plaintiff's counsel is convinced that the proposed settlement is in the best interest of the
4 putative class based on the discovery, investigations, negotiations, and a detailed knowledge of the
5 issues in this case. *See* Decl. Rodriguez, ¶¶ 3, 6-10. The prospect of potential class certification issues
6 and the uncertainty of class certification, difficulties of complex litigation, the lengthy process of
7 establishing specific damages and various possible delays and appeals were carefully considered by
8 Plaintiff and Plaintiff's counsel in agreeing to the proposed settlement. *See id.*

9 It is well within the discretion of this Court to grant preliminary and conditional approval of the
10 Agreement, which satisfies all of the criteria for preliminary settlement approval under California law.
11 Accordingly, Plaintiff requests that the Court: (1) provisionally and conditionally certify the proposed
12 settlement class; (2) grant preliminary and conditional approval of the proposed Agreement (Exhibit
13 A); (3) set dates for and direct distribution to the class of the Notice of Settlement (Exhibit F), which
14 provides Class Members information regarding the settlement, including information regarding the
15 opportunity to opt-out of, or object to, the settlement and notifies each class member of their expected
16 pro rata share of the settlement; and (4) adopt the implementation schedule contained in the proposed
17 order and schedule a final approval hearing.

18 **II. PROCEDURAL AND LITIGATION HISTORY**

19 Plaintiff filed a class action complaint on approximately November 19, 2020, in the Santa Clara
20 Superior Court against Defendants. Plaintiff alleges that he exhausted administrative remedies under
21 the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab.
22 Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Plaintiff filed a First Amended Class Action Complaint on
23 approximately February 3, 2021. *See id.*; Exhibit B. There is no date set for a motion for certification
24 or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

25 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

26 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
27 potential damages for such claims. *See id.* Plaintiff worked during the time all of Defendants' policies
28 and practices at issue in the Complaint were in effect and provided information regarding these policies

1 and practices, enabling pre-filing investigations to take place. *See* Decl. Ferreyra ¶¶3, 5. The parties
2 engaged in informal discovery and exchange of documents, including a representative sampling of
3 employee data, such as time and payroll data and relevant policies for the entirety of the statute of
4 limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims,
5 including certification issues, merits issues, damages, the scope and configuration of Class Members,
6 the content and implementation of the wage and hour policies at issue, issues relating to manageability
7 concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶ 7. The information allowed
8 Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's
9 contentions and create an accurate damages model to assess the reasonableness of any settlement. *See*
10 *id.*

11 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

12 **a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations**

13 The final settlement occurred only after extended, and sometimes contentious, arm's length
14 negotiations. Over the course of approximately seven months, Plaintiff has been investigating the
15 claims and discussing with Defendants' counsel the merits of the claims and certification issues present
16 in this case. *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and legal
17 analysis regarding the asserted claims. *See id.* Then, only after nearly seven months of litigation and
18 negotiation, which included a full day mediation with Michael J. Loeb, Esq., the parties able to reach a
19 mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties
20 agreed to a Gross Settlement Amount of \$215,000.00. *See* Exhibit A.

21 **b. The Terms of the Settlement**

22 Under the settlement agreement, Defendants have agreed to the following:

- 23 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶
24 1.2, 1.8):

25 All non-exempt employees who have worked, or continue to work, for
26 Defendants in California during the PAGA Claim Period.

27 All non-exempt employees who have worked, or continue to work, for
28 Defendants in California during the Class Period.

2. Point will pay the Gross Settlement Amount of \$215,000.00, exclusive of the employer's share of payroll taxes, to resolve and release the claims alleged in the Complaint. *See id.* at ¶¶ 5.1, 5.2. No portion of the Gross Settlement Amount will revert to Defendants. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at 7.5.1.

3. The parties agree that up to \$7,500.00 for Plaintiff Jesus Ferreyra will be paid as a Class Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be entitled to as a Class Member or an aggrieved employee. *See id.* at ¶ 5.4.

4. The parties agree that the cost of administering this class action settlement shall be paid from the settlement proceeds. Subject to Court approval, the parties have selected Simpluris, Inc. to act as the class action claims administrator, who has provided a maximum cost estimate of \$3,000.00 to administer the class settlement. *See Exhibit D (Simpluris, Inc. Quote).* The difference between any actual administration costs and the \$10,000.00 allocated under the Agreement, if any, will be paid to Class Members on a pro rata basis. *See Decl. Rodriguez*, ¶ 19.

5. The parties agree that \$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. *See Exhibit A*, ¶ 5.5.

6. The parties agree that up to one third (1/3) of the Gross Settlement Amount (\$71,666.67) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation costs as approved by the Court in an amount not to exceed \$15,000.00. *See id.* The difference between any actual costs and the \$15,000.00 will be redistributed to Class Members on a pro rata basis. *See Exhibit A*, ¶ 5.2. The proposed notice to be sent to class members will state this information. *See Exhibit F.*

7. Any Claims Administrator Costs, any amounts paid for attorneys' fees and costs, the Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See Exhibit A*, ¶¶ 5.1-5.5.

1 8. In consideration for the value received in the Agreement, Class Members who fail to
2 timely opt-out of this settlement will waive all Qualified Claimant's Released Claims as set forth in the
3 Agreement. *See* Exhibit A, ¶ 1.32. Aggrieved Employees will waive all Released PAGA Claims as set
4 forth in the Agreement regardless of whether they opt out of being a Class Member. *See id.* at 1.34,
5 7.5.1.

6 9. In consideration for the value received in the settlement agreement, class members who
7 fail to timely opt-out of this settlement will waive all claims contained in Plaintiff's Complaint and
8 Plaintiff's letter to LWDA, and any additional wage and hour claims that could have been brought
9 based on the facts alleged therein, through the Class Period. This release excludes the release of claims
10 not permitted by law. *See* Exhibit A, ¶ 1.32.

11 10. For any portion of the Net Settlement Sum or PAGA Payment allocated to Qualified
12 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
13 settlement checks within 120 days, the remaining amount shall be paid 50/50 to Capital Pro Bono, Inc.
14 and the Center for Workers Rights Clinic under the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.6.

15 **c. Allocation of Settlement Funds**

16 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
17 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
18 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
19 Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA
20 Payment. Each Class Member's share will be determined by dividing their total weeks worked within
21 the Class Period by the total weeks worked by all Class Members within the Class Period. That
22 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
23 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
24 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
25 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
26 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
27 Aggrieved Employee's individual share. *See* Exhibit A, at ¶ 5.8.

28 //

1 **V. ARGUMENT**

2 **a. Class Action Settlements are Subject to Court Review and Approval Under the**
3 **California Rules of Court**

4 A class action may not be dismissed, compromised, or settled without Court approval and the
5 decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules
6 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)²; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
7 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2) (requiring Court review of PAGA
8 settlements). However, courts should give “proper deference to the private consensual decision of the
9 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated
10 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
11 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
12 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
13 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms
14 agreeable to all parties, a court should disapprove of the settlement “only with considerable
15 circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
16 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
17 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
18 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

19 **b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

20 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
21 determine only whether the proposed settlement is within the range of possible approval and whether
22 notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is
23 warranted. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls
24 within “the range of reasonableness,” it should grant preliminary approval of the class action settlement.
25 *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90
26 (1994). To make the fairness determination, the Court must consider several factors, including:

27 the strength of the Plaintiff’s case, the risk, expense, complexity and likely
28

²The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 duration of further litigation, the risk of maintaining class action status
2 through trial, the amount offered in settlement, the extent of discovery
3 completed and the stage of the proceedings, the experience and views of
4 counsel, the presence of a governmental participant, and the reaction of the
5 class members to the proposed settlement.

6 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its
7 analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists
8 where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery
9 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
10 litigation; and (4) the percentage of objectors is small.” *Id.* at 1802.

11 **i. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length
12 Negotiations Between the Parties**

13 Settlement in this case was reached only after litigation and extensive arm’s length negotiations
14 lasting nearly seven months, which included a full day mediation with Michael J. Loeb, Esq. *See* Decl.
15 Rodriguez, ¶¶ 6-10. At all times, the negotiations were adversarial and contentious, although still
16 professional in nature. *See id.* Further, while Plaintiff contends he would ultimately prevail on the
17 claims and the issue of certification,³ this is not a certainty and there is substantial risk in proceeding to
18 further litigation. *See id.* at ¶¶ 6-10. The ability to secure a guaranteed settlement now and ensure class
19 members receive some compensation, rather than proceed to further litigation and potentially recover
20 nothing, was a motivating factor in reaching this settlement. *See id.*

21 **ii. The Extent of Investigation and Discovery Completed Provided Ample
22 Information to Enter Into an Informed and Reasonable Settlement**

23 The parties were in possession of all necessary information during the negotiations. The parties
24 engaged in substantial informal discovery and exchange of documents, including a representative
25 sampling of employee data, such as time and payroll data and relevant policies for the entirety of the
26 statute of limitations applicable to the alleged claims, which covered all aspects of the class claims and
27 helped thoroughly vet the extent of Plaintiff’s claims against Defendants and create an accurate
28 damages model. *See id.* at ¶ 6-10. Plaintiff was in possession of this information prior to calculating
the potential damages in this case. *See id.* As a result, Plaintiff was able to make a reasonable
estimation of Defendants’ potential liability. *See id.* For these reasons, the settlement now before the

³ Defendants disagree with this contention.

1 Court was reached at a stage where “the parties certainly have a clear view of the strengths and
2 weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp.
3 610, 617 (N.D. Cal. 1979).

4 **iii. Plaintiff's Counsel is Experienced in Similar Litigation**

5 Plaintiff's counsel has considerable experience in class actions and wage and hour litigation.
6 Plaintiff's counsel has brought and is currently bringing several wage and hour class and/or PAGA
7 actions. Thus, Plaintiff's counsel is qualified to evaluate the class claims, value of settlement versus
8 moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl.*
9 *Rodriguez*, ¶¶ 11-17. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the
10 complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to
11 the class. *See id.* at ¶ 6.

12 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
13 **and the Risks and Costs of Further Litigation**

14 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
15 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 55.5% and a
16 net recovery of approximately 26.7% of the claims' maximum likely value. *See id.* at ¶¶ 9-10.
17 Additionally, the average net award per class member is approximately \$1,845.24. *See id.* This
18 settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile
19 ranges of the total available damages that have been approved in other class settlements. *See Wershba*,
20 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers*
21 *for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision*
22 *Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of
23 6% of maximum potential recovery after reduction for attorney's fees was higher than median
24 percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000
25 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving
26 a settlement where the net recovery to class members was approximately 7.5% of the projected
27 maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D.
28 Cal. 2017): (approving a settlement with a gross recovery of 11% of the projected maximum damages

1 available and a net recovery of approximately 6.7% of the projected maximum recovery);
2 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where
3 the gross recovery was approximately 8.5% of the projected maximum recovery).

4 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

5 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
6 information be presented to the Court, acting as a fiduciary for the absent class members “to ensure that
7 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
8 being released, discounted by the risks and expenses of attempting to establish and collect on those
9 claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
10 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to
11 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
12 risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an
13 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
14 claims provided there is a record that allows “an understanding of the amount that is in controversy and
15 the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record
16 before the trial court was sufficient, having included the number of class members, payroll data,
17 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
18 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
19 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
20 that is in controversy within the meaning of *Kullar*.” *Id.*

21 Plaintiff similarly relied upon payroll data and Class Members data to determine the realistic
22 potential damages suffered by the class as a whole. *See* Decl. Rodriguez, ¶¶ 6-10. This analysis
23 allowed Plaintiff to determine the extent and frequency of potential violations on all claims as to all
24 Class Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative
25 class that is within the range of what has been found to be sufficient in several other cases. *See, supra*,
26 Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-*
27 *800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7
28 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of

1 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
2 approximately \$800 per class member). This settlement represents a reasonable compromise given the
3 percentage of the total demand that was secured, the average recovery per class member, the Court's
4 ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See* Decl.
5 Rodriguez, ¶¶ 9-10.

6 **vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the**
7 **Putative Class Is Reasonable and Routinely Awarded by Courts**

8 The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort
9 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
10 compensate named plaintiffs for the services they provide and the risks they incurred during the course
11 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
12 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
13 recognition of the services they provided to the class by responding to discovery, participating in the
14 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
15 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
16 enhancement payment).

17 In this case, Plaintiff provided and explained documents, being available at all times to discuss
18 the case with Plaintiff's counsel. *See* Decl. Rodriguez, ¶ 7; Decl. Ferreyra, ¶ 5. Plaintiff spent a
19 significant amount of time pursuing this litigation for the benefit of all Class Members. *See id.*
20 Plaintiff brought this action knowing there would be a delay in any payment as the litigation
21 progressed, rather than proceeding on individual claims in front of the California Labor Commissioner.
22 *See id.* Payment of \$7,500.00 to Plaintiff is appropriate given the risk, assistance, time required in
23 bringing this case and resolution of this case.

24 **vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
25 **and Customarily Approved by Courts**

26 California state and federal courts have recognized that when a litigant's efforts create or
27 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
28

1 among all the beneficiaries to compensate those who created the fund⁴. See *Boeing Co. v. Van Gemert*,
2 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other
3 than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*
4 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
5 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); see also *Serrano v.*
6 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
7 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation
8 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
9 burden alone.” *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
10 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
11 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
12 sum of money. See *Dunk*, 48 Cal. App. 4th at 1808.

13 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
14 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
15 shifted with some exactitude to those benefitting. See *Paul, Johnson, Alston & Hunt v. Gaulty*, 886
16 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a certified class
17 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
18 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
19 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
20 class of beneficiaries (e.g. the settlement class), the benefits can be accurately traced to the settlement
21 Plaintiff and Plaintiff’s counsel were able to negotiate on behalf of the class, and the fee can be shifted
22 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
23 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
24 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
25 common fund. See, e.g., *Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
26 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
27 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

28
⁴ Plaintiff’s counsel will provide a lodestar analysis to support this request for attorney’s fees with Plaintiff’s final approval motion.

1 Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of
2 the fund, depending on the circumstances of the case. *See* Newberg on Class Actions, (3rd Ed.), 1992,
3 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
4 generally approved as reasonable in wage and hour settlements below \$10 million:

5 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
6 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
7 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
8 recent wage and hour class actions where federal district courts approved attorney fee
9 awards ranging from 30 to 33%); *Singer v. Becton Dickinson and Co.*, 2010 U.S. Dist.
10 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

11 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiff's
12 request of one third (1/3) of the settlement sum for attorneys' fees is within established rates for fee
13 awards in class settlements pursuant to the common fund doctrine, especially in light of the excellent
14 results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal.
15 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634; *Dirienzo v.*
16 *Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske*
17 *Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur*,
18 USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC Eastern
19 District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case
20 No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should consider: (1) the
21 percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied
22 in other class actions; (3) the quality of class counsel; (4) the size of the award; and (5) whether there
23 are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur. Litig.*, 194 F.R.D.
24 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal.
25 2005) ("the absence of objections or disapproval by class members to class counsel's fee request further
26 supports finding the fee request reasonable").

27 These factors support Plaintiff's request for reasonable attorneys' fees. The typical percentage
28 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation

1 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
2 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiff's
3 request of 1/3 falls within these typical fee arrangements. *See* Decl. Rodriguez, ¶ 19. The quality of
4 counsel, counsel's time spent on this case, and the average size of settlement payments to Class
5 Members and Aggrieved Employees (\$1,845.24) also support the fee request when compared to other
6 settlements courts have considered as good results. *See Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist.
7 LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class Members will receive an average of approximately
8 \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that
9 the results achieved are good, which is highlighted by the fact that there was no objection to the
10 settlement amount or the attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist.
11 LEXIS 47043, 18 (S.D. Cal. 2012) ("the results achieved in this case were very favorable. Class
12 members are provided with immediate monetary relief, with an average award of around several
13 hundred dollars and a minimum award of \$50").

14 **c. Provisional Certification of the Class for Settlement Purposes Only is Appropriate**

15 Class certification is appropriate when (1) the class is ascertainable and (2) there is "a well-
16 defined community of interest in the questions of law and fact involved affecting the parties to be
17 represented." *Dunk*, 48 Cal. App. 4th at 1806. The "community of interest" element "embodies three
18 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
19 defenses typical of the class; and (3) class representatives who can adequately represent the class." *Id.*
20 Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

21 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

22 The proposed settlement class is ascertainable because all putative class members can be readily
23 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th
24 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
25 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 56 individuals
26 who fall within the definition of Class Member, which makes joinder of all members impracticable.
27 *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531
28 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to

1 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
2 these requirements are satisfied.

3 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

4 The commonality requirement is met when there are questions of law or fact regarding the class
5 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
6 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
7 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
8 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
9 and class-wide treatment of a dispute must be superior to individual litigation.⁵ *See Richmond*, 29
10 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
11 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
12 named representative are typical of those of the class, though “they need not be substantially identical.”
13 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

14 The common questions of law and fact in this case stem from Plaintiff’s contention that
15 Defendants violated California law by 1) failing to pay Class Members for all hours worked; and 2)
16 failing to incorporate or correctly incorporate the value of nondiscretionary bonuses into Class
17 Members’ regular rates of pay for the purpose of calculating double time wages, meal premiums, and
18 paid sick time. *See Exhibit B*. The waiting time penalties, wage statement, unfair competition, and
19 PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class Members seek the same
20 remedies under state law. Under these specific circumstances, the commonality and predominance
21 requirements are satisfied for settlement purposes. Regarding the typicality requirement, Plaintiff
22 contends he suffered from the same unlawful policies, treatment, and circumstances as Class Members
23 did, will request the same remedies, and will rely on the same methods of proof to establish liability
24 and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

25 **iii. The Adequacy Requirement is Met**

26 The adequacy of representation requirement is met if the named representative and counsel have
27 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
28

⁵When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
2 Cal.App.3d 442, 450-51 (1976). Plaintiff contends that those standards are met here for settlement
3 purposes. Under the proposed settlement, Plaintiff and the putative class members will receive a pro
4 rata share of the settlement based on the number of workweeks they worked for Defendants. *See*
5 Exhibit A. Finally, any settlement class member who wishes to opt-out of the settlement may do so,
6 and he or she may also dispute the number of workweeks stated in the Notice of Settlement (Exhibit F).

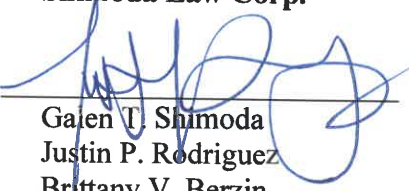
7 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
8 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
9 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
10 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
11 engaged Defendants' counsel in settlement discussions over the course of approximately seven months.
12 Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because
13 Plaintiff's counsel has vigorously pursued Plaintiff's and the class members' claims, the adequacy
14 requirement is met for settlement purposes. *See generally* Decl. Rodriguez.

15 VI. CONCLUSION

16 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
17 conditionally certify the class for settlement purposes only; grant preliminary and conditional approval
18 to the proposed settlement, including the Plaintiff's Class Representative Enhancement Payment, the
19 payment to the LWDA under PAGA, and Class Counsel's application for reasonable attorneys' fees
20 and costs; approve the Notice of Settlement, including the proposed deadlines for opting-out of and
21 objecting to the settlement; and schedule the final settlement approval hearing. A copy of Plaintiff's
22 proposed order is being filed concurrently herewith.

23
24 Dated: August 2nd, 2021

Shimoda Law Corp.

25
26 By: 

27 Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
28 Attorneys for Plaintiff

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6 Attorneys for Plaintiff JESUS FERREYRA
individually and on behalf of similarly situated employees
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**
10

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

13 Plaintiff,

14 vs.

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

16 Defendants.
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Case No. 20CV373776

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: September 9, 2021

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: November 19, 2020

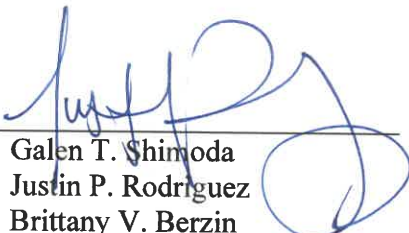
FAC Filed: February 3, 2021

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Simpluris, Inc. Quote
E	Plaintiff's Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: August 2, 2021

Shimoda Law Corp.

By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff

EXHIBIT A

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and EDWARD LIM
12

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

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.

1.35 "Released Parties" 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. Subject to Court approval based on Edward Lim's application to the Court (which Plaintiff will not oppose), Edward Lim will be dismissed from the Action without prejudice (with a tolling of all applicable limitations period) prior to the Final Approval Order. Following final approval of the settlement, Edward Lim will be dismissed from the Action with prejudice.

2. DESCRIPTION OF THE LITIGATION

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

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

2.3 Through informal discovery, Point and Defendants' Counsel provided Class Counsel with a randomly selected sample of time and payroll records for Class Members, regular rate calculations for the sample of Class Members the total number of Class Members, Class Members' dates of employment, Class Members' average rate of pay, and Point's relevant employee handbooks and policies.

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

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

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

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

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

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

5.11 No Additional Contribution by Point: Point's monetary obligation under this Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in connection 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.

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;

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

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

21 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
22 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator
23 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If
24 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency
25 shall be the end of the Notice Period or 10 days from the date of the deficiency letter, whichever is later.

26 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
27 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
28

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.
28

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:
27
28

1	Last day for Point to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
2		
3	Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrator's receipt of Class Members' information from Defendant
4		
5		
6	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
7		
8		
9	Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
10		
11	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	Within 7 days after the Final Approval Date
12		
13		
14		
15		
16	Last day for Point to fund settlement	Within 21 calendar days after the Effective Date
17		
18		
19	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	Within 7 calendar days after Point has funded the settlement
20		
21		
22		
23	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
24		
25		
26	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
27		
28		

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

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

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

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

10. MISCELLANEOUS TERMS

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

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

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

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

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

10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this 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 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.

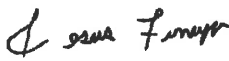
9 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
11 or constitute a further waiver by such party of the same or any other condition, covenant, right or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

28 SIGNATURES CONTINUED ON NEXT PAGE

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: _____

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

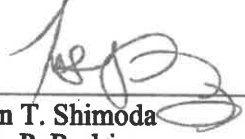
26 _____
Edward Lim

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. *Ferreya 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' 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

EXHIBIT B

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/3/2021 10:26 AM
Reviewed By: L. Quach-Marcellana
Case #20CV373776
Envelope: 5768632

Galen T. Shimoda (Cal. State Bar No. 226752)
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Attorneys for Plaintiff JESUS FERREYRA
on behalf of himself and other similarly situated employees

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

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

Plaintiff,

vs.

POINT DIGITAL FINANCE, INC., a
Delaware Corporation;
EDWARD LIM, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. 20CV373776

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition
8. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff JESUS FERREYRA ("Plaintiff"), on behalf of himself and all other similarly
situated employees, hereby files this Complaint against Defendants POINT DIGITAL FINANCE,
INC., a Delaware Corporation; EDWARD LIM, an individual; and DOES 1 to 100, inclusive
(hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff alleges
the following:

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PARTIES

5. JESUS FERREYRA is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, POINT DIGITAL FINANCE, INC., is now and/or at all times mentioned in this Complaint was a Delaware Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that EDWARD LIM is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that EDWARD LIM is an owner, director, officer, and/or managing agent of POINT DIGITAL FINANCE, INC. responsible for causing the violations outlined in the first through sixth and eighth causes of action. As such EDWARD LIM is individually liable pursuant to California Labor Code section 558.1.

8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

11. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

13. Plaintiff brings the First through Seventh Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All non-exempt employees who have worked, or continue to work, for Defendants in California from November 19, 2016 to the present.

14. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid putative class members for all hours worked;
- (2) Whether Defendants paid all overtime wages owed;
- (3) Whether Defendants failed to correctly calculate putative class members' regular rate of pay;
- (4) Whether Defendants maintained accurate payroll records;
- (5) Whether Defendants failed to authorize and permit all meal and rest periods;

1 (6) Whether as a result of Defendants' policies and practices Plaintiff and putative
2 class members received all wages, due and owing, at the time of their termination
3 or separation; and

4 (7) Whether Defendants provided Plaintiff's and putative class members with wage
5 statements that complied with Labor Code section 226.

6 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
7 class. The putative class also sustained damages arising out of Defendants' common
8 course of conduct in violation of the law as complained of herein. Additionally,
9 Defendants issued Plaintiff and all members of the putative class wage statements that
10 did not comply with Labor Code section 226. As a result, Plaintiff and each member of
11 the putative class will have suffered the same type of harm and seek the same type of
12 recovery based on the same legal theories.

13 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
14 putative class. For all relevant times, Plaintiff resided in California and worked for
15 Defendants in California. Moreover, Plaintiff is an adequate representative of the
16 putative class as Plaintiff has no interests that are adverse to those of putative class
17 members. Additionally, Plaintiff has retained counsel who has substantial experience in
18 complex civil litigation and wage and hour matters.

19 (e) Superiority: A class action is superior to other available means for the fair and efficient
20 adjudication of the controversy since individual joinder of all members of the putative
21 class is impracticable. Class action treatment will permit a larger number of similarly
22 situated persons to prosecute their common claims in a single forum simultaneously,
23 efficiently, and without the unnecessary duplication of effort and expense that numerous
24 individual actions would engender. Further, as damages suffered by each individual
25 member of the class may be relatively small, the expenses and burden of the individual
26 litigation would make it difficult or impossible for individual members of the class to
27 redress the wrongs done to them, and an important public interest will be served by
28 addressing the matter as a class action. The cost to the court system of adjudication of

1 such individualized litigation would be substantial. Individualized litigation would also
2 present the potential for inconsistent or contradictory judgments.

3 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
4 management of this action that would preclude its maintenance as a class action.

5 **GENERAL ALLEGATIONS**

6 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully
7 set forth herein.

8 17. Plaintiff worked for Defendants from approximately July 2019 to August 2020 as a non-
9 exempt employee. Plaintiff's job was to help Defendants' customers obtain home financing. Similarly
10 situated employees also worked for Defendants as non-exempt employees. Plaintiff and similarly
11 situated employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week,
12 incurring overtime and were paid non-discretionary remuneration, such as bonuses. For example,
13 Plaintiff's time records reflect that from 2/24/20 to 3/1/20 he worked 52.65 hours and worked over eight
14 (8) hours in a day on all five (5) days he worked that week. Plaintiff's 2/24/20-3/8/30 paystub reflects
15 he was paid a performance bonus of \$350. Plaintiff was paid performance bonuses that were based on
16 the number of files that were funded. Plaintiff is informed and believed that similarly situated
17 employees regularly worked similar schedules incurring overtime and earning bonuses and other non-
18 discretionary payments within the same workweek and/or pay period.

19 18. Plaintiff and similarly situated employees were also not authorized and permitted to take
20 all meal and rest periods they were entitled to, being paid meal and rest period premiums on occasions,
21 but not for each instance they were unlawfully denied meal and rest periods. For instance, Plaintiff's
22 2/24/20-3/8/20 paystub reflects that Defendants paid him four missed meal period premiums.

23 19. Plaintiff is informed and believes that Defendants did not correctly incorporate the value
24 of the non-discretionary remuneration, such as bonuses, etc., into Plaintiff's and similarly situated
25 employees' regular rate of pay when calculating overtime, double time, meal and rest period premiums,
26 or sick leave pay. For example, Plaintiff's 2/24/20-3/8/20 paystub reflects that Plaintiff was paid the
27 four meal period premiums at his base \$28.85 hourly rate of pay, which did not incorporate the value of
28 his performance bonus earned in that same period. Additionally, the overtime paid on the paystub

1 shows the overtime rate of \$43.2750, which is exactly 1.5x his base hourly rate, demonstrating no
2 additional consideration was given to the bonus payments he received when calculating the overtime
3 rate of pay. Plaintiff is informed and believes that Defendant similarly only paid sick leave wages at an
4 employee's base rate of pay rather than their regular rate of pay when sick leave and bonuses were paid
5 within the same workweek and/or pay period. For these reasons, Plaintiff and similarly situated
6 employees were underpaid their wages owed.

7 20. Plaintiff is informed and believes that Defendants also failed to pay double time wages at
8 the correct rate of pay. For example, Plaintiff's 3/9/20 to 3/22/20 paystub reflects that he worked 3.08
9 hours of double time that was paid at his base \$28.85 hourly rate of pay. Plaintiff is informed and
10 believes that similarly situated employees also worked double time and were only paid double time
11 wages at their base hourly rate of pay. Defendants failed to pay Plaintiff and similarly situated
12 employees for all hours worked. Plaintiff and similarly situated employees would have to wait several
13 minutes, ranging from 2 to 4 for the computer to turn on or wake up and to log in to the ADP website
14 prior to being able to clock in. Plaintiff's and similarly situated employees' time was automatically
15 recorded at the time their login process was completed on the ADP website and could not be changed
16 through the website to reflect the time Plaintiff and similarly situated employees spent waiting for the
17 computer to turn on or wake up and to log in to ADP. Plaintiff and similarly situated employees were
18 not paid for this time spent working prior to logging in. As a result, Plaintiff and similarly situated
19 employees were not paid at least the minimum wage for each hour they worked, and Defendants failed
20 to maintain accurate records of the hours Plaintiff and similarly situated employees worked.

21 21. Defendants failed to provide Plaintiff and similarly situated employees with legally
22 compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, accurate
23 regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate
24 gross and net wages earned. Plaintiff's and similarly situated employees' paystubs do not provide an
25 overtime rate of pay or overtime hours worked calculation that includes all remuneration paid within the
26 workweek and/or pay period. As a result, Plaintiff and similarly situated employees were not able to
27 determine the total wages owed to them from their paystubs alone.

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22. As of this date of this letter, Defendants have not paid Plaintiff and similarly situated employees all minimum wages, overtime and double time wages, paid sick time, and meal and rest period premiums owed to them.

23. Defendant Point Digital Finance, Inc. identified Defendant Edward Lim in its filings with the California Secretary of State from 2014 to the present as its President, Chief Executive Officer, Secretary, and Chief Financial Officer. Plaintiff observed during his employment that Edward Lim would announce changes to Plaintiff's and similarly situated employees' compensation policies. Plaintiff is informed and believes that Edward Lim was responsible for creating and electing to implement Point Digital Finance, Inc.'s payroll and compensation policies and practices or that Edward Lim was aware of such policies and practices and ratified them.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully set forth herein.

25. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 4, section (3)(A); Cal. Lab. Code §§ 510, 1194.

26. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at the correct overtime rate of pay because Defendants did not incorporate the value of bonuses it paid to into the regular rate for the purpose of calculating overtime.

27. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

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1 28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
2 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
3 the extent pertinent as if set forth here in full.

4 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PAY MINIMUM WAGES**
6 **(As to all Defendants)**

7 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as though fully
8 set forth herein.

9 30. For the period preceding the filing of this Complaint, Defendants were required to
10 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
11 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code §
12 1194. Defendants failed to pay Plaintiff and similarly situated employees for all time they spent
13 working for Defendants.

14 31. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
15 obligation to pay the minimum wage for each hour worked but failed to do so.

16 32. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
17 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
18 the extent pertinent as if set forth here in full.

19 **THIRD CAUSE OF ACTION**
20 **MEAL PERIOD VIOLATIONS**
21 **(As to all Defendants)**

22 33. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 32 as though fully
23 set forth herein.

24 34. An employer must provide an employee a meal period in accordance with the
25 applicable Wage Order, and California Labor Code sections 226.7 and 512.

26 35. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section
27 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
28 minutes for each work period of more than five (5) hours.

 36. California Labor Code section 512 and Wage Order No. 4 section 11(B) further
provide that employers may not employ employees for a work period for more than ten (10) hours

1 per day without providing the employee with a second meal period of at least thirty (30) minutes.
2 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
3 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
4 (1) hour of pay at their regular rate of compensation for each meal period not provided.

5 37. Defendants employed Plaintiff and similarly situated employees for periods of more
6 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
7 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
8 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
9 employees to take their first meal period before the completion of their fifth hour of work and failed
10 to allow Plaintiff and similarly situated employees to take their second meal period before the
11 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
12 rights to all meal periods throughout their employment.

13 38. Defendants further failed to pay Plaintiff and similarly situated employees all
14 applicable meal period premiums at the correct rate for any such missed meal breaks.

15 39. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
16 employees have been damaged as stated in the section below entitled "DAMAGES," which is
17 incorporated here to the extent pertinent as if set forth here in full.

18 **FOURTH CAUSE OF ACTION**
19 **REST PERIOD VIOLATIONS**
20 **(As to all Defendants)**

21 40. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 39 as though fully
22 set forth herein.

23 41. An employer must provide an employee a rest period in accordance with the
24 applicable Wage Order and California Labor Code section 226.7.

25 42. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an
26 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
27 four (4) hours or a major fraction thereof.

28 //

//

43. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

44. Defendants further failed to pay Plaintiff and similarly situated employees all applicable rest period premiums at the correct rate for any such missed rest periods.

45. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

46. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 45 as though fully set forth herein.

47. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

48. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the

1 requirements set forth in California Labor Code section 226(a). The paystubs Defendants issued did
2 not itemize the total hours worked, accurate regular and overtime rates of pay, accurate missed meal
3 and rest period premiums owed, and accurate gross and net wages earned. Plaintiff and similarly
4 situated employees were not able to promptly and easily determine all information required to be
5 stated under Labor Code section 226(a) from their paystubs alone. Additionally, Plaintiff and
6 similarly situated employees suffered confusion over whether they received all wages owed and were
7 prevented from effectively challenging information on their wage statements.

8 49. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
9 employees have been damaged as stated in the section below entitled "DAMAGES," which is
10 incorporated here to the extent pertinent as if set forth here in full.

11 **SIXTH CAUSE OF ACTION**
12 **WAITING TIME PENALTIES**
(As to all Defendants)

13 50. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 49 as though fully
14 set forth herein.

15 51. An employer must pay an employee who is terminated all unpaid wages immediately
16 upon termination. *See* Cal. Lab. Code § 201.

17 52. An employer must pay an employee who resigns all unpaid wages within seventy-two
18 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

19 53. Plaintiff and similarly situated employees did not receive all wages, including minimum
20 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
21 within the required time after their separation from employment.

22 54. An employer who willfully fails to pay an employee wages in accordance with California
23 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
24 days. *See* Cal. Lab. Code § 203.

25 55. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
26 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
27 and similarly situated employees were receiving additional non-discretionary remuneration, such as
28 bonuses, in addition to their basic hourly rate that were not included in the regular rate of pay for

1 premium pay purposes and were not receiving all meal and rest periods owed or premium payments in
2 lieu thereof. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of
3 separation, yet Defendants still refused to pay the remaining wages owed.

4 56. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
5 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
6 thirty (30) days for Defendants' failure to pay all wages due.

7 **SEVENTH CAUSE OF ACTION**
8 **UNFAIR COMPETITION**
9 **(As to Point Digital Finance, Inc and DOES 1 to 100)**

10 57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 56 as though fully
11 set forth herein.

12 58. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
13 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
14 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
15 California Business and Professions ("B&P") Code § 17200.

16 59. Plaintiff and similarly situated employees were not paid all wages owed, including
17 minimum and overtime wages and paid sick time.

18 60. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
19 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
20 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

21 61. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
22 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
23 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
24 sections 17203, 17208, all in an amount as yet unascertained but subject to proof at trial, for four (4)
25 years from the filing of this Action.

26 **EIGHTH CAUSE OF ACTION**
27 **PRIVATE ATTORNEYS GENERAL ACT**
28 **(As to all Defendants)**

62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully
set forth herein.

63. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with him and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.3, 1174, 1198; IWC Wage Order 4, § 7(A) (Failure to Maintain Accurate Records)

64. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

65. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. \$500,000;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;

- 1 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
2 Code section 1194;
- 3 3. As to the Second Cause of Action:
- 4 a. \$500,000;
- 5 b. Interest for the wages due pursuant to California Labor Code section 1194;
- 6 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
7 Code section 1194;
- 8 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 9 4. As to the Third Cause of Action:
- 10 a. \$500,000;
- 11 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
12 section 1021.5;
- 13 5. As to the Fourth Cause of Action:
- 14 a. Wages in an amount to be proven at trial;
- 15 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
16 section 1021.5;
- 17 6. As to the Ninth Cause of Action:
- 18 a. For civil penalties as provided for in the Labor Code for each enumerated
19 violation in the amount of \$2,000,000;
- 20 b. For those Labor Code sections, the violation of which there is no civil penalty
21 provided, the default penalty provided in Labor Code section 2699(f): for any
22 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
23 period; For any subsequent violation, two hundred dollars (\$200) for each
24 aggrieved employee per pay period;
- 25 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 26 d. For any other remedies as allowed by law and/or deemed appropriate by the
27 Court;
- 28 7. For such other and further relief as this Court may deem just and proper,

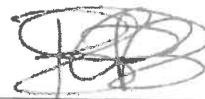
including, but not limited to:

- a. Wages as proved at trial;
- b. Injunctive and Declaratory relief;
- c. Attorney's fees and costs as provided for by law; and
- d. Interest.

Dated: February 3, 2021

Shimoda Law Corp.

By: _____



Galen T. Shimoda
Justin P. Rodríguez
Brittany V. Berzin
Attorneys for Plaintiff

1 *Ferreira v. Point Digital Finance, Inc., et al.*
2 *Santa Clara County Superior Court of California 20CV373776*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Rylee K. Fonseca, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On February 3, 2021, I served the following documents on the party below:

- 9 • First Amended Complaint For Damages

10 Tatyana A. Shmygol (SBN 267104)
11 Steven L. Friedlander (SBN 154146)
12 SV Employment Law Firm PC
13 160 Bovet Road Suite 401
14 San Mateo, California 94402
15 Phone: (650) 265-0226
16 Facsimile: (650) 265-0223
17 Email: tshmygol@svelf.com
18 sfriedlander@svelf.com

19 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
20 processing of correspondence for mailing with the United States Postal
21 Service and that each day's mail is deposited with the United States Postal
22 Service that same day in the ordinary course of business. On the date set
23 forth above, I served the aforementioned document(s) on the parties in
24 said action by placing a true copy thereof enclosed in a sealed envelope
25 with postage thereon fully prepaid, for collection and mailing on this date,
26 following ordinary business practices, at Elk Grove, California, addressed
27 as set forth above.

28 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to
be personally delivered via the following overnight courier service: UPS.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on February 3, 2021, at Elk Grove,
26 California

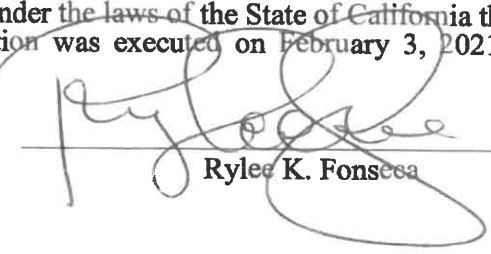
27 
28 Rylee K. Fonseca

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

September 14, 2020

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Ferreya v. Point Digital Finance, Inc., et al.*

Dear Labor Commissioner,

As counsel for Jesus Ferreyra ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Point Digital Finance, Inc.
635 High St.
Palo Alto, CA 94301

Edward Lim
635 High St.
Palo Alto, CA 94301

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Point Digital Finance, Inc. and Edward Lim ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt employees who have worked, or continue to work, for Defendants in California from one year prior to this notice to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants from approximately July 2019 to August 2020 as a non-exempt employee. Aggrieved Employees also worked for Defendants as non-exempt employees. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty



(40) hours in a week, incurring overtime and were paid non-discretionary remuneration, such as bonuses. Plaintiff and Aggrieved Employees were also not authorized and permitted to take all meal and rest periods they were entitled to, being paid meal and rest period premiums on occasions. Defendants did not correctly incorporate the value of the non-discretionary remuneration, such as bonuses, into Claimant's and similarly situated employees' regular rate of pay when calculating overtime, double time, meal and rest period premiums, or sick leave pay.

Defendants failed to pay Plaintiff and Aggrieved Employees for all hours worked. Plaintiff and Aggrieved Employees would have to wait a few minutes for the computer to turn on and for a program to load prior to being able to clock in. Plaintiff and Aggrieved Employees were not paid for this time. As a result, Plaintiff and Aggrieved Employees were not paid at least the minimum wage for each hour they worked, and Defendants failed to maintain accurate records of the hours Plaintiff and Aggrieved Employees worked.

Defendants failed to provide Plaintiff and Aggrieved Employees with legally compliant paystubs. The paystubs Defendants issued did not itemize the total hours worked, accurate regular and overtime rates of pay, accurate missed meal and rest period premiums owed, and accurate gross and net wages earned. As a result, Plaintiff and Aggrieved Employees were not able to determine the total wages owed to them from their paystubs alone.

As of this date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees all minimum wages, overtime and double time wages, paid sick time, and meal and rest period premiums owed to them.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

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//



Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 4, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Four – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum and overtime wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Five – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section



558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Edward Lim was an officer, director, shareholder, and/or managing agent of Point Digital Finance, Inc. responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Six - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4 section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count Seven – Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 4 section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count Eight – Violation of Labor Code §§ 1174, 1198 and Wage Order No. 4, § 7(A) (Failure to Maintain Accurate Records)

Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained



incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

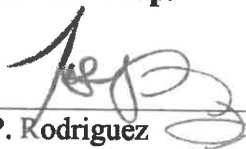
Labor Code section 1198 provides the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees. The records requirement in Wage Order No. 4, § 7(A) is a "standard condition of labor fixed by the commission." *See* Cal. Labor Code § 1198. It provides, "Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including ... time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded ... Total hours worked during the payroll period and applicable rates of pay..." *See* Wage Order No. 4, § 7(A)(1)-(4). Defendants failed to keep accurate records in compliance with Wage Order No. 4, § 7(A) and Labor Code § 1198. This was against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Justin P. Rodriguez 

JPR:bb

cc: Client via e-mail

1 *Ferreira v. Point Digital Finance, Inc., et al.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Caitlyn A. Lopez, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On September 14, 2020, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9
10 Point Digital Finance, Inc.
635 High St.
11 Palo Alto, CA 94301

Edward Lim
635 High St.
Palo Alto, CA 94301

12 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
13 and processing of correspondence for mailing with the United States Postal
14 Service and that each day's mail is deposited with the United States Postal
15 Service that same day in the ordinary course of business. On the date set forth
16 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

17 [] [By Personal Service] By personally delivering a true copy thereof to the office
18 of the addressee above.

19 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: _____.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct, and that this declaration was executed on September 14, 2020, at Elk Grove,
22 California.

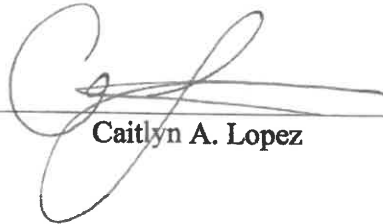
23
24
25 
Caitlyn A. Lopez
26
27
28

EXHIBIT D



Class Action Settlement Administration

3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	13233	Prepared By:	Kimberly Sutherland
Estimate Date:	4/26/2021	Direct Dial #	321-223-5067
		Email:	ksutherland@simpluris.com

Attorney/Client: Attorney
Brittany Berzin
Firm: SHIMODA LAW
Email: Brittany.Berzin <bberzin@shimodalaw.com>

Attorney/Client: Defense Attorney
Firm:
Email:

Case Name: Ferreyra v. Point Digital Finance: Distribution

Not to Exceed Fee:	\$3,000
---------------------------	----------------

Terms:
1) Estimated Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	65	Undeliverable Rate:	25%
Response Rate:	0%	Call Rate:	
Mailing Document Language:	English	Redistribution:	None
Reminder Post Card	No	States	One
Unclaimed Funds	Cy Pres		

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports			
Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$75.00	1	\$75.00
Database Manager - Initial Data Analysis	\$140.00	1	\$140.00
Total			\$215.00

Distribution

Setup a Disbursement Account			
Print & Mail Checks to Class Members- 1099's- File Reports with Appropriate Federal & State Taxing Authorities			
Account Management & Reconciliation.			
Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	1	\$140.00
Disbursement Manager - Data Validation	\$75.00	1	\$75.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Mailing Supervisor	\$50.00	2	\$100.00
NCOA	\$25.00	1	\$25.00
Print & Mail-Check, 1099/W-2/ 1- Page notice included	\$5.00	65	\$325.00
Postage	\$0.55	65	\$35.75
Process Returned Checks	\$0.50	13	\$6.50
Skip Trace Search Undeliverable Checks	\$5.00	13	\$65.00
Remail Checks	\$5.00	13	\$65.00
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$250.00	1	\$250.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee, 2021	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	1	\$5.00
Reissuing W2s/1099s	\$5.00	1	\$5.00
Disbursement Manager	\$125.00	1	\$125.00
Total			\$2,822.25



Class Action Settlement Administration

3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com**Case Wrap Up**

Send Final Reports to Counsel			
Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Postage \$35.75

Total Case Costs \$3,337.25

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 - Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 - Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT E

Date	Description	Cost
9/14/2020	Payment to LWDA - PAGA Filing Fee	\$75.00
9/14/2020	Certified Mail - PAGA Letter to Employers	\$4.20
9/30/2020	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Westlaw Research Fees	\$500.00
11/19/2020	Payment to Court - Complaint Fee	\$435.00
11/19/2020	One Legal Fee - E-filing Complaint	\$30.11
12/21/2020	Payment for Records - PRA Documents	\$2.09
1/5/2021	One Legal Service Fee - E-filing Proof of Service of Summons	\$18.72
2/3/2021	One Legal Service Fee - E-filing First Amended Complaint	\$18.72
3/3/2021	Mediation Fee	\$6,594.65
4/16/2021	Mediation - Attorney Lunch	\$26.99
4/19/2021	Consultant Fee - Damages Calculation For Mediation	\$1,425.00
Anticipated	Complex Fee	\$1,000.00
Anticipated	Payment to Court - Preliminary Approval Motion	\$60.00
Anticipated	One Legal Fee - E-filing Preliminary Approval Motion	\$125.00
Anticipated	UPS - Preliminary Approval Motion to OC	\$27.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	One Legal Fee - E-filing Final Approval Motion	\$125.00
Anticipated	UPS - Final Approval Motion to OC	\$27.00
		\$10,554.48

EXHIBIT F

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. The Court's mailing address for sending objections is Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113. 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

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, the Complaint, and/or other documents filed with the Court in this case, you may either view the Court's electronic filing and service website at www.scefiling.org and www.scsccourt.org, view the documents in person at 191 N. 1st Street, San Jose, California 95113 between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday, excluding Court holidays and closures, or go to www.simpluris.com/case-information and type in the name of this case. 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

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

Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

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

EXHIBIT G

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733
5

6 Attorneys for Plaintiff JESUS FERREYRA
individually and on behalf of similarly situated employees
7

8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SANTA CLARA**

10
11 JESUS FERREYRA, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.

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

16 Defendants.
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Case No. 20CV373776

CLASS ACTION

**DECLARATION OF JUSTIN P.
RODRIGUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: September 9, 2021

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: November 19, 2020

FAC Filed: February 3, 2021

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Jesus Ferreyra ("Plaintiff") herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff's
5 Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion"). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 ("Agreement") in this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention
9 that Point Digital Finance, Inc. ("Point") and Edward Lim (together "Defendants") failed to pay
10 minimum wages, failed to pay overtime, failed to provide accurate wage statements, failed to pay final
11 wages, engaged in unfair competition¹, failed to provide meal periods, and failed to provide rest
12 periods. Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act
13 ("PAGA"). These claims were based allegations that Defendants violated California law by 1) failing
14 to pay Class Members for all hours worked; and 2) failing to incorporate or correctly incorporate the
15 value of nondiscretionary bonuses into Class Members' regular rates of pay for the purpose of
16 calculating double time wages, meal premiums, and paid sick time. The PAGA, waiting time penalty,
17 wage statement violation, and unfair competition claims derive from these violations.

18 3. Plaintiff is the only named representative in this matter. From our initial investigations
19 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
20 class action. We filed the action on or about November 19, 2020. Plaintiff exhausted administrative
21 remedies through the Labor and Workforce Development Agency ("LWDA") prior to filing his
22 Complaint. Plaintiff filed a notice with the LWDA on September 14, 2020 setting forth the facts and
23 theories of liability. A true and correct copy of the notice filed with the LWDA is being filed with this
24 Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified mail and the \$75.00
25 filing fee was remitted to the LWDA at that time. There was no response by the LWDA regarding its
26 intent to investigate the claims alleged in Plaintiff's notice for more than 65 days. As such, Plaintiff
27 became authorized to commence a civil action under the PAGA. Plaintiff filed a First Amended
28

¹ This cause of action was only alleged as to Defendant Point Digital Finance, Inc.

1 Complaint on February 3, 2021 to provide additional facts to support his claims. A true and correct
2 copy of Plaintiff's operative Complaint is filed with this Motion as Exhibit B. A copy of the Complaint
3 was uploaded to the LWDA on March 9, 2021, after we received an endorsed copy back from Court.

4 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

5 5. Defendants are represented in this matter by Steven L. Friedlander and Tatyana A.
6 Shmygol of SV Employment Law Firm PC. From the beginning, Defendants have contested the merits
7 of this case, the suitability of the case for class action or representative treatment, the manageability of
8 the case at trial, and Plaintiff's ability to prove a violation in each pay period for each employee among
9 other defenses and contentions they made challenging the propriety of this action. Defendants further
10 contended that, even assuming there was a finding supporting the imposition of PAGA penalties, the
11 Court would likely exercise its discretion to substantially reduce any such penalties owed based on
12 evidence of good faith attempts to comply with Labor Code obligations by Defendants.

13 Notwithstanding their agreement to settle this matter, Defendants believe the practices Plaintiff is
14 contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state
15 and federal employment laws with respect to Plaintiff and Class Members. Also, Defendants have
16 contended that this matter is not appropriate for class certification outside of this proposed class
17 settlement.

18 6. Based on the expected testimony from Plaintiff and Class Members, a review of
19 Defendants' policies and procedures and other documents relating to the alleged claims, information on
20 the number of Class Members, Class Members' dates of employment, and a representative sample of
21 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light
22 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that
23 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The
24 length and risks of trial and other normal perils of litigation that impact the value of the claims were also
25 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of
26 potential class certification issues as well as the uncertainty of class certification, the difficulties of
27 complex litigation, and the lengthy process of establishing specific damages and various possible delays
28 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the

1 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on
2 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
3 at separation, which would eliminate the value of the waiting time penalty entirely. Overall, I believe it
4 is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation
5 and potentially obtain zero funds to the class due to legal or factual issues in the case.

6 7. My office, including my partner, Galen T. Shimoda, my associate Brittany V. Berzin, my
7 paralegals, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
8 and potential damages for such claims. The parties engaged in informal discovery and exchange of
9 documents, including a representative sampling of employee data, such as time and payroll data, regular
10 rate calculations, and relevant policies for the entirety of the statute of limitations applicable to the
11 alleged claims. The discovery covered all aspects of the asserted claims, including certification issues,
12 merits issues, damages, the scope and configuration of Class Members, the content and implementation
13 of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other
14 relevant areas. Based on the informal discovery and investigations in this case, I was able to determine
15 that there were 56 class members as of the date the parties engaged in mediation, 43 of which were
16 current employees and 13 of which were former employees. There were a total of 3,755.43 workweeks,
17 1,877.71 pay periods, and 16,085 shifts in the class period. Within the PAGA statute of limitations there
18 were 54 class members and 1,708 pay periods. The average rate of pay for class members was \$31.02.
19 This information allowed my office to assess both liability and damages and create an accurate damages
20 model. Plaintiff assisted in all aspects of this litigation including providing factual information relating
21 to Plaintiff's and similarly situated employees' employment conditions, providing a substantial number
22 of documents, and answering questions regarding Defendants' factual contentions in this matter. This
23 was important because it directly related to our ability to maintain this case as a class action and our
24 ability to obtain a favorable settlement for the class.

25 8. Throughout this litigation our office had numerous communications with Defendants'
26 Counsel discussing our respective positions. The parties engaged in full day mediation on April 16,
27 2021 using an experienced wage and hour mediator, Michael J. Loeb, Esq. It was only after
28 approximately seven months of extensive, arm's length negotiations that the parties were able to reach a

1 settlement, which only occurred after a full-day mediation. The negotiations were at all times
2 contentious and adversarial, though still professional in nature.

3 9. The parties reviewed and analyzed substantial amounts of data regarding the class
4 claims. Based on our analysis and review of all relevant documents and Class Member information, I
5 have determined that the maximum damages for the asserted class claims is approximately
6 \$1,098,826.18, which includes civil penalties under the PAGA:

- 7 a) Failure to Pay All Double Time Wages: The maximum likely value of this claim is
8 approximately \$177.44. Based on an analysis of class members' time and pay records the
9 average underpayment amount was approximately \$6.75 for each instance where a class
10 member worked double time hours that were paid at 1.5x a class member's hourly rate
11 rather than 2x the hourly rate. Of the 1,877.71 pay periods during the class period this
12 violation occurred during approximately 1.4% of those pay periods;
- 13 b) Unpaid Minimum Wages and Liquidated Damages: The maximum likely value of this claim
14 is approximately \$13,940.33. This is based on an underpayment of two (2) minutes per shift
15 for time class members spent working prior to being able to clock in due to Defendants'
16 timekeeping system. This calculation is based on a 100% violation rate for the 16,085 shifts
17 during the class period. This amount includes the value of minimum wages and liquidated
18 damages owed;
- 19 c) Unpaid Meal Premiums²: The maximum likely value of this claim is approximately
20 \$1,310.65. Based on an analysis of class members' time and pay records, the average
21 underpayment amount was approximately \$16.62 for each instance where a class member
22 was paid a missed meal premium and nondiscretionary bonus in the same pay period.
23 Defendants paid meal period premiums at class members' base hourly rate of pay rather
24 than the regular rate of pay, which includes the value of bonuses. Of the 1,877.71 pay
25 periods during the class period, this violation occurred during approximately 4.2% of pay
26 periods;

27
28 ² Plaintiff also alleged unpaid rest period premiums because to the extent class members missed any rest periods and were paid missed rest period premiums, the rest premiums would not have been paid at the regular rate of pay. An analysis of class members' time and pay records showed that class members did not have missed rest periods.

- 1 d) Failure to Pay Final Wages: The maximum likely value of this claim is approximately
2 \$95,572.62. There are approximately 13 employees within the claim period and this was
3 based on an average of 7.9 hours worked per shift for class members at the average hourly
4 rate of pay of \$31.02. This calculation is based on a full 30 day penalty for each class
5 member;
- 6 e) Failure to Pay All Paid Sick Leave Wages: The maximum likely value of this claim is
7 approximately \$34,952.52. Based on an analysis of class members' time and pay records,
8 the average underpayment amount was approximately \$132.96 for each instance where a
9 class member was paid sick leave and a nondiscretionary bonus in the same pay period.
10 Defendants paid sick leave at class members' base hourly rate of pay rather than the regular
11 rate of pay, which includes the value of bonuses. Of the 1,877.71 pay periods during the
12 class period, this violation occurred during approximately 14% of pay periods;
- 13 f) Wage Statement Violations: The maximum likely value of this claim is approximately
14 \$85,400. This is calculated at \$50 per violation as our investigation did not uncover any
15 judicial or Labor Commissioner decisions specifically stating Defendants' practices were
16 unlawful pursuant to *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157 (2008);
- 17 g) PAGA Claims: The maximum likely value of the asserted PAGA claims is approximately
18 \$867,472.62 based on the penalty valuation structure in California Labor Code 2699(f) and
19 using Labor Code section 256 to value waiting time penalty claims and Labor Code section
20 226.3 to value wage statement penalty claims. This valuation is, again, based on the lack of
21 prior judicial or Labor Commissioner finding specifically stating Defendants' practices were
22 unlawful, causing only the initial, lesser penalty of \$100 to be used rather than a subsequent
23 violation penalty of \$200. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157 (2008).
24 Additionally, no separate PAGA penalty value was attributed to sick leave claims because
25 they were valued through Plaintiff's unfair competition claim (see above).

26 10. I believe the PAGA penalties in this case may be reduced however due to the fact that
27 the penalties would be in addition to amounts owed for relatively small substantive violations and much
28 of the penalties are based on violations due to technical non-compliance with the Labor Code.

1 Furthermore, Defendants produced a substantial number of documents that a Court may find
2 demonstrates a good faith attempt at compliance that merits the reduction of civil penalties. Courts
3 regularly cut civil penalties on PAGA claims where statutory penalties for the same violations are
4 assessed as well. The statutorily authorized discretion that Courts have used to reduce penalties ranges
5 substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30%
6 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82%
7 reduction). Thus, civil penalties may be cut to approximately \$156,145.07 (82% reduction) or lower
8 given the derivative recovery. Taking this into account, the likely recovery if Plaintiff was successful
9 at trial on proving all the substantive class damages plus civil penalties after a reduction of the PAGA
10 penalties would be approximately \$387,498.63. Taking this into account, Plaintiff's \$215,000.00 gross
11 recovery under the Agreement represents approximately 55.5% of the maximum likely value in this
12 matter. After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees
13 and costs, any Enhancement Payment to the Class Representative, Claims Administrator Costs, and the
14 75% portion of the PAGA Payment to the LWDA, the net recovery under the Agreement represents
15 approximately 26.7% of the maximum likely value in this matter. The average net award is
16 approximately \$1,845.24. I believe the Agreement represents a reasonable compromise of claims based
17 on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and
18 ensure Class Members receive some compensation, rather than proceed to further litigation and
19 potentially recover nothing, was a motivating factor in reaching this Agreement. Further, I believe that
20 the allocation of the settlement payments to class members as 1/3 wages and 2/3 penalties is reasonable
21 given the relatively low value of class members' substantive wage loss (see above) compared to
22 recoverable statutory and civil penalties.

23 11. I am a shareholder at Shimoda Law Corp. In agreeing to represent Plaintiff and take on
24 the case for all Class Members, I agreed to take this case on a contingency basis, meaning that I would
25 take a percentage of any settlement or judgment should we recover a monetary amount. I took a risk
26 that we would not recover any money in this matter if we were unsuccessful at trial. I also took on the
27 risk that the case may not be certified as a class action and/or be subject to an unfavorable summary
28 judgment ruling. However, I believe it is important to make sure employees are able to find affordable

1 representation in order to ensure that employers are complying with all their legal obligations towards
2 employees and paying employees all their hard-earned wages.

3 12. My law firm is a boutique law practice that focuses primarily in employment litigation,
4 emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a
5 Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the
6 Philosophy program. I was one of only two recipients of this award out of the entire Philosophy
7 Department. After U.C. Davis, I attended the University of the Pacific, McGeorge School of Law,
8 graduating in 2011 and receiving a Juris Doctorate. I graduated in the top 20% of my class and was a
9 member of the Traynor Honor Society at McGeorge. Other academic achievements of mine include
10 receiving a Witkin Award (top grade) in my legal research and writing course, a Witkin Award in
11 complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative
12 Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for
13 the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being
14 selected as a Sacramento County Bar Association Diversity Fellow in 2009. I was also a member of
15 the Employment and Labor Law Society and an officer for the Latino Law Students Association from
16 2009 to 2010.

17 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
18 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Since 2017, I have
19 received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards.
20 From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). In September 2018, I
21 was a panel speaker for the Sacramento County Bar Association Labor and Employment Law Section's
22 presentation of "*Epic Systems*, PAGA, and the Future of Employment Arbitration in California." In
23 July 2020, I was a panel speaker for the Association of Defense Counsel of Northern California &
24 Nevada presentation of "Class Actions and PAGA Claims." My practice focuses on complex civil
25 litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act
26 ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm.
27 Class and/or PAGA actions I have litigated or am currently litigating, including the instant case,
28 includes, but is not limited to, the following:

- 1 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 2 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 3 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 4 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup.
- 5 Ct.);
- 6 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-
- 7 0012080 (San Joaquin Sup. Ct.);
- 8 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 9 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 10 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 11 Sup. Ct.);
- 12 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
- 13 Ct.);
- 14 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 15 • *Bershell v. Dignity Health Methodist Hospital Sacramento, et al.*, Case No. 34-2017-
- 16 0222269 (Sac. Sup. Ct.);
- 17 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
- 18 00271174 (Sac. Sup. Ct.);
- 19 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 20 Ct.);
- 21 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac.
- 22 Sup. Ct.);
- 23 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880
- 24 (Sac. Sup. Ct.);
- 25 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 26 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 27 Ct.);
- 28 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);

- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);

- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

14. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

15. My partner, Galen T. Shimoda, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the

1 Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a
2 number of employment law articles for journals and our firm regularly publishes articles on our firm's
3 website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
4 Employment Review seminars from 2014 to the present. His speaking engagements include the
5 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
6 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
7 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
8 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
9 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
10 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
11 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
12 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
13 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
14 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
15 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
16 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
17 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
18 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
19 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
20 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
21 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
22 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
23 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
24 as a Super Lawyer from 2014 to present.

25 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
26 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
27 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
28 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is

1 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
2 Federal Courts, including up to certification, settlement, preliminary and final approval, and
3 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
4 Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel
5 include the following:

- 6 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 7 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 8 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 9 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 10 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 11 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 12 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 13 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 14 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
15 Sup. Ct.);
- 16 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 17 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
18 Ct.);
- 19 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
20 Ct.);
- 21 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
22 Sup. Ct.);
- 23 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 24 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
25 Ct.);
- 26 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 27 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
28 00209613 (Sac. Sup. Ct.);

- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
- *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);

- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

17. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

18. My associate, Brittany V. Berzin, Esq., also worked with me on this matter with me and was critical in assisting with all aspects of the litigation of this case. In May 2017, Ms. Berzin graduated from University of the Pacific, McGeorge School of Law with Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of her class. From 2018 to present, Ms. Berzin has been recognized as a Super Lawyer (Rising Star). Ms. Berzin has been a member of the executive committee of the Sacramento County Bar Association Labor and Employment Law Section since about December 2019 and has served as Co-Chair since January 2021. Ms. Berzin has worked on a variety of individual, class action, and Private Attorneys General Act cases involving wage and hour

1 claims. As an associate, some of the class action and/or PAGA cases Ms. Berzin is litigating and/or has
2 litigated as co-counsel include the following:

- 3 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
4 Sup. Ct.);
- 5 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 6 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.
7 Cal.);
- 8 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 9 • *Cirrincione v. American Scissor Lift, Inc., et al.*, Case No. STK-CV-UOE-2018-7558 (San
10 Joaquin Sup. Ct.);
- 11 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 12 • *Haynes v. SAI Trucking, Inc., et al.*, Case No. FCS052298 (Solano Sup. Ct.);
- 13 • *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- 14 • *Magat v. Medical Care Professionals, Inc., et al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- 15 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 16 • *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup.
17 Ct.);
- 18 • *Nguyen v. Cardinal Health Pharmacy Services, LLC*, Case No. 34-2019-00263185 (Sac.
19 Sup. Ct.);
- 20 • *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- 21 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 22 • *Sveen v. Heritage Hotel Group, Inc., et al.*, Case No. SCV0042933 (Placer Sup. Ct.);
- 23 • *Tracy v. Von Housen's Sacramento, Inc., et al.*, Case No. 34-2020-00282778 (Sac. Sup.
24 Ct.);

25 19. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
26 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
27 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
28 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). I will provide a lodestar analysis of my request for

1 attorney's fees with Plaintiff's final approval motion for the court's review. Plaintiff and our firm have
2 been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the
3 representation should be born equally amongst all class members receiving these benefits. The
4 settlement recovery provides an excellent result and is the product of substantial time and effort in
5 analyzing the facts and law applicable to this case. I agreed to take this case on a contingency and as a
6 class action with the possibility that I would not receive any compensation for my time and efforts due
7 to issues regarding the merits and/or certification and have carried that risk over the course of the case.
8 I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I believe that
9 the one third (1/3) fee request is within the accepted ranges and will prove to be reasonable through a
10 lodestar calculation. In my experience with contingency cases in employment law cases, the typical
11 percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in
12 individual litigation. In class action litigation, my experience in my own firm and working with several
13 other firms has been that the typical percentage negotiated between parties and approved by a court
14 ranges from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed
15 several recent Federal District Court Cases where the Court has approved common fund based fee
16 requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal.
17 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v.*
18 *Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske*
19 *Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*,
20 USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern
21 District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern District,
22 Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and Authorities. I
23 believe my request of \$71,666.67 (approximately 1/3) for attorneys' fees is justified given the time my
24 firm has expended and the results obtained on behalf of the class. Moreover, at this time, my firm has
25 advanced all costs for Plaintiff and Class Members and has not received any compensation whatsoever
26 for our time expended in this case. The expected costs through final approval are not expected to
27 exceed \$15,000.00. Attached as Exhibit E is a true and correct copy of the costs incurred prior to the
28 filing of this Motion and the expected costs incurred through the final approval and fairness hearing.

1 Any difference in the actual costs and the maximum amount allocated under the Agreement will be
2 added to the Net Settlement Amount.

3 20. I have used several class action administrator companies in the wage and hour class
4 actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer
5 the proposed class settlement. Simpluris, Inc. has provided a quote for the estimated maximum cost of
6 administering the class settlement of approximately \$3,000.00. A true and correct copy of a cost
7 estimate provided by Simpluris, Inc. is filed with this Motion as Exhibit D. This is only an estimate,
8 and final pricing may vary depending on the issues, if any, that arise during the administration of the
9 settlement. However, the difference between the actual, lesser costs and \$10,000.00, if any, will be paid
10 to the participating Class Members on a pro rata basis.

11 21. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
12 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
13 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
14 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
15 Exhibit G.

16 22. A true and correct copy of the proposed Notice of Settlement is being filed with this
17 Motion as Exhibit F. A URL to website maintained by Simpluris, Inc., the claims administrator, that
18 has links to Plaintiff's operative Complaint, the notice, settlement agreement, and Plaintiff's
19 preliminary approval motion will be included in the notice.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct. Executed this 2nd day of August 2021 in Sacramento, California.

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24
25 Justin P. Rodriguez
26
27
28

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda Law Corp.
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5
6 Attorneys for Plaintiff JESUS FERREYRA
individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**

10
11 JESUS FERREYRA, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

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

16 Defendants.
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Case No. 20CV373776

CLASS ACTION

**DECLARATION OF JESUS FERREYRA IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: September 9, 2021

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: November 19, 2020

FAC Filed: February 3, 2021

Trial Date: None Set

1 I, Jesus Ferreyra, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Point Digital Finance, Inc. ("Point") and Edward Lim (together
6 "Defendants") from approximately July 2019 to August 2020 as a non-exempt employee receiving an
7 hourly wage and incentive payments, such as bonuses. I was subject to all of Defendants' alleged
8 policies and practices that have been alleged as unlawful in the Complaint and the notice sent to the
9 Labor and Workforce Development Agency, with respect to the following: failure to pay minimum
10 wages, failure to pay overtime, failure to provide accurate wage statements, failure to pay final wages,
11 unfair competition, failure to provide meal periods, and failure to provide rest periods.

12 3. I have actively participated in the litigation of this case. I have given a detailed account
13 of all the facts related to my employment and the claims asserted in the Complaint, including but not
14 limited to facts about how bonuses were earned and Defendants' timekeeping system. I provided to my
15 counsel extensive documentation in support of the claims brought against Defendants including
16 paystubs, Defendants' policies, and other documents related to my work with Defendants and to the
17 claims brought in the class action. This assisted my attorneys in understanding how double time, meal
18 period premiums, and paid sick leave were calculated by Defendants. I also met with and regularly
19 communicated via telephone with my attorneys to assist them in understanding the documents and
20 providing context for Defendants' wage and hour policies and payroll process as it applied to me and
21 how I believed it applied to Defendants' other employees.

22 4. My attorneys explained to me the risks and benefits of bringing a class action and a
23 claim under the Private Attorneys General Act. I understood that I took on the risk, both professionally
24 and financially, in pursuing the case as a class and representative action rather than pursuing my claims
25 individually. I understood that pursuing the case as a class action meant that it would take substantially
26 longer than pursuing a claim with the California Labor Commissioner and that I risked getting nothing
27 in the end, but I believed it was important to make sure that Defendants followed the law for everyone.

28 //

7. As a Class Representative, I took on the risk of having to pay Defendants' costs if we were unsuccessful in bringing our claims.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2 of August 2021 in Sacramento, California.

JF DECL. ISO MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
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6 Attorneys for Plaintiff JESUS FERREYRA
individually and on behalf of similarly situated employees
7

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

10 JESUS FERREYRA, individually and on
11 behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

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

16 Defendants.
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Case No. 20CV373776

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: September 9, 2021

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: November 19, 2020

FAC Filed: February 3, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on September 9, 2021, at 1:30 p.m., in Department 1.
4 Named Plaintiff Jesus Ferreyra (“Plaintiff”) filed this putative class action on November 19, 2020.
5 The operative Complaint alleges that Point Digital Finance, Inc. (“Point”) and Edward Lim (together
6 “Defendants”) failed to pay minimum wages, failed to pay overtime, failed to provide accurate wage
7 statements, failed to pay final wages, engaged in unfair competition¹, failed to provide meal periods,
8 and failed to provide rest periods. Plaintiff has also alleged Defendants are liable for a civil penalties
9 under the Private Attorneys General Act (“PAGA”) based on these violations. Plaintiff sought
10 attorneys’ fees and costs as part of this Action. Defendants denied all of Plaintiff’s claims and denied
11 that this case was appropriate for class treatment. No class has been certified.

12 The parties have agreed to settle the class and PAGA claims. Point will provide monetary
13 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
14 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
15 (“Agreement”). Any capitalized terms herein shall have the same meaning as set forth in the
16 Agreement. The Court, having received and considered Plaintiff’s Motion for Preliminary Approval of
17 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
18 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
19 FOLLOWS:

20 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS FOR SETTLEMENT**
21 **PURPOSES ONLY; APPOINTMENT OF A CLASS REPRESENTATIVE FOR**
22 **SETTLEMENT PURPOSES ONLY; APPOINTMENT OF CLASS COUNSEL FOR**
23 **SETTLEMENT PURPOSES ONLY**

24 The Court finds that certification of the following class for settlement purposes only is
25 appropriate under the California Code of Civil Procedure and related case law:

26 All non-exempt employees who have worked, or continue to work, for
27 Defendants in California from November 19, 2016 up to either (1) the
28 Preliminary Approval Date, or (2) June 15, 2021, whichever is earlier.

The Court recognizes that the foregoing definition is for Class Member identification purposes

¹ This cause of action was only alleged as to Defendant Point Digital Finance, Inc.

only and is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.

The Court finds that for the purposes of this Settlement Class Members meet the ascertainability and numerosity requirements since the parties can identify with a matter of certainty, based on payroll records, individuals who fall within the definition and the number of Class Members would make joinder impractical. The commonality and predominance requirements are met for settlement purposes since there are questions of law and fact common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's contentions that Defendants caused the violations outlined above by 1) failing to pay Class Members for all hours worked; and 2) failing to incorporate or correctly incorporate the value of nondiscretionary bonuses into Class Members' regular rates of pay for the purpose of calculating double time wages, meal premiums, and paid sick time. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from these violations. Additionally, Class Members seek the same remedies under state law. The typicality requirement for settlement purposes is also satisfied since the claims of the Class Representative is based on the same facts and legal theories as those applicable to the class members.

The Court also finds that preliminarily and conditionally certifying the settlement class for settlement purposes is required to avoid each Class Member from litigating similar claims individually. This settlement will achieve economies of scale for Class Members with relatively small individual claims and conserve the resources of the judicial system.

The Court finds that Plaintiff Jesus Ferreyra and Plaintiff's counsel, Galen T. Shimoda, Justin P. Rodriguez and Brittany V. Berzin of the Shimoda Law Corp., to be adequate representatives of the settlement class. The Court appoints them as class representative and class counsel, respectively.

2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of a settlement, which could ultimately be given final approval by this Court. The Court also acknowledges that Class Members may object to the settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement.

1 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
2 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
3 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
4 \$215,000.00 Gross Settlement Amount.

5 The Court orders that Plaintiff Jesus Ferreyra will receive \$7,500.00 as a Class Representative
6 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
7 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

8 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
9 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
10 \$10,000.00. Any difference between the actual cost of the Claims Administrator and the approved
11 payment will be redistributed to Qualified Claimants on a pro-rata basis.

12 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
13 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
14 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
15 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
16 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
17 *v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
18 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of one
19 third (1/3) of the Gross Settlement Amount, *i.e.*, \$71,666.67, to be appropriate compensation for Class
20 Counsel. The attorneys' fees request is within the range that has been approved by other Courts in
21 similar cases and is reasonable in light of the circumstances of this case, the substantial and beneficial
22 results obtained on behalf of Class Members, and the contingent nature of the recovery over the course
23 of this case, which included potential loss at summary judgment, certification, and/or trial proceedings.
24 Additionally, the Court orders that up to \$15,000.00 of the settlement proceeds will be paid to Class
25 Counsel for reasonable costs incurred in this case. Any difference between the actual costs incurred and
26 the \$15,000.00 shall be paid to the Qualified Claimants on a pro-rata basis.

27 The Court approves of the Ten Thousand Dollars and No Cents (\$10,000.00) PAGA Payment,
28 which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount,

1 to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to
2 the Labor and Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid
3 to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also finds that the
4 Agreement provides a recovery that creates an effective substantial deterrent to any potential future non-
5 compliance, furthering the purpose of the Labor Code and LWDA.

6 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
7 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
8 paid out 50/50 to Capital Pro Bono, Inc. and the Center For Workers’ Rights Clinic.

9 The releases and waivers for Class Members who do not opt out of being bound by the
10 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representative are also
11 approved by the Court as set forth in the Agreement.

12 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
13 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

14 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff’s
15 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
16 rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during
17 the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement,
18 how to file documentation in opposition to the proposed settlement, and when to appear at the fairness
19 hearing to be conducted on the date set forth below. The Court further finds that the Notice of
20 Settlement and proposed distribution of such notice by first class mail to each identified Class Member
21 at his or her most recent address based on a National Change of Address database search from the Class
22 Members’ last known address and a skip trace on any Class Members who have the Notice of Settlement
23 returned as “undeliverable” or “not at this address” comports with all constitutional requirements,
24 including those of due process.

25 The Court also finds that because there is a strong interest in providing Class Members the
26 opportunity to participate in the settlement, along with the Parties’ efforts to minimize any intrusion to
27 privacy rights, the sharing of employment information, including social security numbers, is not a
28 serious intrusion on their privacy rights. Hence, the Court orders Point to provide first and last name,

last known mailing address, social security number, hire and termination dates, total number of workweeks during which the Class Member performed any actual work to the Claims Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Claims Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement.

4. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Point to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Point
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
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	Within 7 days after the Final Approval Date
Last day for Point to fund settlement	Within 21 calendar days after the Effective Date

1 2 3 4	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	Within 7 calendar days after the Effective Date
5 6 7	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
8 9	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
10 11	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of January 13, 2022, at 1:30 p.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: _____

By: _____

Judge of the Superior Court

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
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6 Attorneys for Plaintiff JESUS FERREYRA
individually and on behalf of similarly situated employees
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**
10

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

13 Plaintiff,

14 vs.

15 POINT DIGITAL FINANCE, INC., *et al.*
16

17 Defendant.
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Case No. 20CV373776

CLASS ACTION

PROOF OF SERVICE

Date: September 9, 2021

Time: 1:30 p.m.

Dept.: 1

Judge: Hon. Sunil R. Kulkarni

Filed: November 19, 2020

FAC Filed: February 3, 2021

Trial Date: None Set

1 *Ferreya v. Point Digital Finance, Inc., et al.*
2 *Santa Clara County Superior Court of California 20CV373776*

3 **PROOF OF SERVICE — CCP §§ 1013a, 1010.6 and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On August 3, 2021, I served the following documents on the party below:

- 9 • PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY
- 10 APPROVAL OF CLASS ACTION AND PAGE SETTLEMENT
- 11 • DECLARATION OF JUSTIN P. RODRIGUEZ IN SUPPORT OF PLAINTIFF'S
- 12 MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA
- 13 SETTLEMENT
- 14 • DECLARATION OF JESUS FERREYRA IN SUPPORT OF PLAINTIFF'S MOTION
- 15 FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 16 • EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION FOR
- 17 PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
- 18 • MEMORANDUM OF POINT AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
- 19 MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA
- 20 SETTLEMENT
- 21 • [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY
- 22 APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

23 Steven L. Friedlander (SBN 154146) 24 Tatyana A. Shmygol (SBN 267104) 25 SV Employment Law Firm PC 26 160 Bovet Road Suite 401 27 San Mateo, California 94402 28 Phone: (650) 265-0226 Facsimile: (650) 265-0223 Email: tshmygol@svelf.com sfriedlander@svelf.com	
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29 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
30 processing of correspondence for mailing with the United States Postal
31 Service and that each day's mail is deposited with the United States Postal
32 Service that same day in the ordinary course of business. On the date set forth
33 above, I served the aforementioned document(s) on the parties in said action
34 by placing a true copy thereof enclosed in a sealed envelope with postage
35 thereon fully prepaid, for collection and mailing on this date, following
36 ordinary business practices, at Elk Grove, California, addressed as set forth
37 above.

38 [] [By Personal Service] By personally delivering a true copy thereof to the
39 office of the addressee above.

40 [] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
41 above. No error was reported by the e-mail service that I used.

1 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
2 personally delivered via the following overnight courier service: UPS.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct, and that this declaration was executed on August 3, 2021, at Elk Grove, California

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7 Erika F. Collazo
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