

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**IN RE GOOGLE INC. COOKIE PLACEMENT
CONSUMER PRIVACY LITIGATION**

CIVIL ACTION NO.: 12-MD-2358 (SLR)

CONFIDENTIAL SETTLEMENT AGREEMENT

The Named Plaintiffs¹ individually and as representatives of the asserted Class (Named Plaintiffs and the asserted Class Members are also referred to collectively as "Plaintiffs"), and the Defendant Point Roll, Inc. ("Defendant" or "PointRoll") (collectively, "the Parties"), pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and Rule 408 of the Federal Rules of Evidence, hereby enter into the following Stipulation and Class Settlement Agreement ("Agreement"), dated as of July 19, 2013, and subject to approval of the Court.

RECITALS

WHEREAS, on December 19, 2012, Plaintiffs filed a Consolidated Class Action Complaint (the "Complaint") against PointRoll and other parties the United States District Court for the District of Delaware, which consolidated and superseded the prior actions against PointRoll, Lourdes Villegas v. Google, Inc., et al., C.A. No. 12-00915 and Nobles v. Google, Inc. et al, C.A. No. 12-03589.

WHEREAS, Plaintiffs alleged in the Complaint and continue to believe that Defendant set cookies on Plaintiffs' Safari Browsers in conflict with the default cookie settings of such browsers in violation of law.

WHEREAS, Defendant has denied and continues to deny all of the allegations made by Plaintiffs against PointRoll in the Complaint and has denied and continues to deny any and all violations of law, wrongdoing, liability or damages to anyone with respect to the alleged facts, alleged damages or causes of action asserted against PointRoll in the Complaint.

WHEREAS, without admitting or conceding any liability or damages whatsoever, PointRoll has agreed to settle the Plaintiffs' claims against PointRoll on the terms and conditions set forth in the Agreement to avoid the burden, expense, and uncertainty of

¹ All capitalized terms not otherwise defined shall carry the meaning set forth in Section 1 below.

continuing the litigation of the Complaint (sometimes “the Litigation” as more fully defined in Paragraph 1.2 of the Definitions below).

WHEREAS, having analyzed and evaluated the merits of Plaintiffs’ claims against Defendant in the Complaint and the impact of the Agreement on Named Plaintiffs and the Class, Class Counsel has determined that the terms and conditions of the Agreement are fair, reasonable, adequate and proper, and that the Agreement is in the best interests of the Class.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in the Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Litigation on the following terms and conditions:

1 DEFINITIONS

1.1 For the purposes of the Agreement, the following words and terms shall be defined to have the meanings set forth below.

1.2 **Action or Litigation** means the case captioned *In re Google Inc. Cookie Placement Consumer Privacy Litigation*, No. 12-MD-2358 (SLR), filed in the United States District Court for the District of Delaware.

1.3 **PointRoll or Defendant** means Point Roll, Inc., a Delaware corporation.

1.4 **AdChoices Icon** means the icon displayed in online advertisements signifying the advertiser’s adherence to the Self-Regulatory Program for Online Behavioral Advertising, managed at the time of the Agreement by Evidon, Inc. and the Digital Advertising Alliance (“DAA”). The Self-Regulatory Program for Online Behavioral Advertising currently permits online consumers to (i) opt-out of browser-enabled, interest-based advertising; (ii) ascertain which companies have enabled customized advertisements for the consumer’s browser; (iii) determine which opt-out settings the consumer has already created.

1.5 **Class or Class Members** means all persons in the United States of America who used the Safari Browser with the Safari Browser cookie setting set, by default or by choice, either to accept cookies from “visited” sites or to block cookies from “third parties and advertisers, and who visited a website containing an advertisement served by PointRoll and, as a result of which, PointRoll set cookies, and includes all persons described in Paragraphs 191 and 192 of the Complaint.

1.6 **Class Counsel** means those attorneys duly appointed by the Court as interim class counsel in this Action pursuant to Fed. R. Civ. P. 23(g)(3).

1.7 **Class Settlement Notice or Notice** means the notices concerning this Action and the Agreement to be provided to Class Members and that are described in Section 4 to this Agreement.

- 1.8 **Court** means the United States District Court for the District of Delaware.
- 1.9 **Effective Date** means the first business day following the date the Final Approval Order have become final and unappealable, whether by affirmance on or exhaustion of any possible appeal or review, writ of certiorari, lapse of time or otherwise.
- 1.10 **Fairness Hearing** means any hearing or proceeding during which the Court determines whether this Settlement is reasonable and fair.
- 1.11 **Final Approval Order or Final Approval or Final Judgment** means the order and final judgment to be entered by the Court approving the Settlement Agreement, including arrangements for Injunctive Relief.
- 1.12 **Injunctive Relief** means such remedial and future measures to be adopted by the Parties, as listed in Paragraph 3.1 of the Agreement.
- 1.13 **Named Plaintiffs** means William Gourley, Jose M. ("Josh") Bermudez, Nicholas Todd Heinrich, and Lynne Krause.
- 1.14 **Parties** refers to the Named Plaintiffs, the Class, and Defendant.
- 1.15 **Plaintiffs** means Named Plaintiffs and all other Class Members.
- 1.16 **Preliminary Approval Order** means the order to be entered by the Court preliminarily approving the Settlement Agreement, including arrangements for Injunctive Relief, substantially in the form attached hereto as Exhibit 2, or as modified by the Court with the consent of the Parties, or as modified by agreement of the Parties.
- 1.17 **Released Claims** means any and all potential or actual matters, claims, demands, rights, liabilities, losses, obligations, duties, actions, potential actions, and causes of action of any kind whatsoever, whether at common law, pursuant to statute, ordinance, or regulation, in equity or otherwise, which any Class Member has or might have, known or unknown, including Unknown Claims, defined below, of any kind whatsoever prior to the Effective Date and that Plaintiffs alleged or could have alleged in the Complaint against PointRoll or that otherwise are based on or relate to, wholly or partially, the facts and circumstances Plaintiffs alleged in the Complaint's claims against PointRoll.

Without limiting the generality of the foregoing description of Released Claims, the Class Members may hereafter discover facts in addition to or different from those that any of them now knows or believes to be true with respect to the facts, circumstances and import of Plaintiffs' Complaint's claims against PointRoll. However, the Class Members fully, finally, and forever settle and release any and all claims set forth in this Paragraph, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist, or heretofore have existed upon any theory of law or equity now existing or coming

into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Members acknowledge that the inclusion of such "Unknown Claims" in the Agreement was separately bargained for and was a key element of the Agreement.

By the definition of Released Claims set forth above, the Class Members hereby intend expressly to waive the provisions, rights, and benefits of any state law or rule that seeks to or does preserve known or unknown claims that would otherwise be released by this Settlement Agreement, including California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Named Plaintiffs and Class Members expressly waive any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or of any other nation that is similar, comparable, or equivalent to California Civil Code § 1542.

1.18 **Released Parties** means PointRoll, and its past, present, and future parents, divisions, subsidiaries, partnerships, affiliates, and other related entities (whether or not they are wholly owned), together with the directors, officers, employees, agents, insurers, reinsurers and attorneys of any of them. Released Parties does not include any of the other Defendants named in the Complaint, or any of their past, present and future parents, divisions, subsidiaries, partnerships, affiliates and other related entities (whether or not wholly owned), together with their directors, officers, employees, agents, insurers, reinsurers and attorneys. The Parties expressly intend all of the Released Parties to be third party beneficiaries of the Agreement.

1.19 **Safari Browser** means the web browser developed and distributed by Apple Inc.

1.20 **Safari Cookie Technique** means the technique PointRoll employed to place cookies on Safari Browsers, regardless of whether a user's particular Safari Browser cookie setting was set either to accept cookies from "visited" sites or to block cookies from "third parties and advertisers," as alleged in the Complaint. As used in this Agreement, "cookie setting" shall refer solely to a browser's settings under the user options of "Accept Cookies," "Block cookies" or "Private Browsing," or equivalent cookie options and, for the avoidance of doubt, shall not refer to a browser's settings, if any, with regard to "do not track" signals.

1.21 **Stipulation or Settlement or Agreement** means this Stipulation and Class Settlement Agreement, including all of its Exhibits.

1.22 **Unknown Claims** means any claim for monetary, declaratory, or injunctive relief that a Named Plaintiff or any other Class Member did or does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against any of the Released Parties, including without limitation those that, if known, might have affected a person's decision to participate in this settlement, opt out of the Class, or submit a Claim. With respect to any of the Released Claims, the Parties stipulate and agree that upon entry of the Final Approval Order, Named Plaintiffs and each Class Member shall be deemed to have, and by operation of the Final Approval Order by the Court shall have, waived, relinquished and released any and all provisions, rights and benefits conferred by 18 U.S.C. § 2510, *et seq.*, 18 U.S.C. § 2701, *et seq.*, 18 U.S.C. § 1030, and other laws as set out in the definition of Released Claims. Named Plaintiffs acknowledge, and the Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Named Plaintiffs, and by operation of law the Class Members, to completely, fully, finally and forever extinguish any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, and without regard to the subsequent discovery of additional or different facts. Named Plaintiffs acknowledge, and the Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims was separately bargained for and was a material element of the Agreement and was relied upon by PointRoll in entering into the Agreement.

2 **CERTIFICATION OF CLASS FOR SETTLEMENT PURPOSES**

- 2.1 The Parties agree to the certification of the Class and approval of Named Plaintiffs as Class representatives for purposes of this Settlement only, pursuant to Rules 23(b) (2), (3) of the Federal Rules of Civil Procedure.
- 2.2 The certification of the Class shall be binding only with respect to the Agreement. If the Agreement is terminated pursuant to its terms, is not approved in all material respects by the Court, or any judgment or order entered pursuant hereto is reversed, vacated, or modified in any material respect by the Court or any other court, the certification of the Class shall, except as provided in Section 6, be deemed vacated, the Action shall proceed as though the Class had never been certified, and no reference to the Class, or to this Settlement Agreement or any documents related thereto, shall be made by the Parties for any purpose, except as expressly authorized by the terms of the Agreement.

3 **INJUNCTIVE AND OTHER RELIEF**

3.1 **Injunctive and Prospective Relief.** The Parties agree that the following injunctive and prospective actions ("**Injunctive Relief**") shall be instituted as part of this Settlement:

- (a) **Cookie Deletion.** PointRoll agrees to take the steps described here to expire or delete, by modifying the cookie deletion date contained in each cookie, all third-party PointRoll cookies that exist in the Safari Browser files for Safari Browsers as set forth below. The foregoing will not apply to PointRoll "opt-out" cookies. PointRoll will take the foregoing action by means of an expiration code that will expire the cookies and through ordinary operation of the user's browser will result in the user's browser deleting existing PointRoll cookies when a user directs his or her Safari Browser to a Web page containing a PointRoll advertisement. This expiration code will be operational on PointRoll's servers for a period of twelve (12) weeks following entry of the Final Approval Order. The Parties agree that this action by PointRoll is a practical, reasonable and effective means of removing the cookies from Safari Browsers. The Parties acknowledge and accept the risk that this method of removing cookies might not expire, delete or remove all cookies from Plaintiffs' Safari Browsers. The Parties agree that the efforts set forth herein represent the full extent of the affirmative efforts required by PointRoll to cause the removal of cookies from Plaintiffs' devices, provided that PointRoll will also maintain the "Removal All Cookies" feature as described, and for the period, below.
- (b) **Future Cookie Settings.** Plaintiffs and Class Counsel agree not to object to, and release all future claims predicated upon, any prospective efforts by PointRoll to set new third-party cookies on any Safari Browser to the extent, but only to the extent, PointRoll's setting of any such new cookies is done in a manner that complies with such browser's cookie settings. Defendant agrees to maintain for two (2) years following entry of the Final Approval Order, with substantially similar functionality, the "Remove All Cookies" feature that Defendant currently maintains and displays on its home page, at <http://www.pointroll.com>, and on its privacy notice, at <http://www.pointroll.com/privacy.php>. Such feature will operate to provide substantially the following functionality: "By removing all PointRoll cookies you will also be declining the PointRoll Opt Out cookie, in effect removing the ability to block all other cookies. If you would like to Opt Out of receiving cookies the Opt Out cookie must be in place. Choose Opt Out to remove all PointRoll cookies except the Opt Out cookie."

- (c) **AdChoices Icon Availability.** PointRoll agrees to make available to its advertiser clients the option to include within their PointRoll advertisements an AdChoices Icon, or an icon of a similar nature and purpose, for a period of two (2) years following entry of the Final Approval Order, provided that AdChoices or any reasonably equivalent or substitute program continues to exist in substantially the same form AdChoices now embodies during such period and that AdChoice's or any equivalent or substitute program's applicable terms and provisions remain substantially the same during that period as they were in AdChoice's program as of the Effective Date.
- (d) **Revision to Privacy Statement.** PointRoll agrees to maintain the material privacy protections set out in its current privacy notice (reflecting revisions as of December 2012) substantially in their current form, subject to changes in applicable law. The Parties agree that PointRoll will amend its Website privacy notice to state expressly and conspicuously that: "PointRoll will not set cookies on user devices in contravention of a user's browser's cookie settings." PointRoll agrees to maintain the foregoing amendment to its privacy notice for two (2) years following entry of the Final Approval Order. If applicable law, precedent or regulatory guidance changes within two (2) years of the entry of the Final Approval Order, PointRoll may reasonably modify this amendment and its cookie practices and privacy notice to comply with such changes, subject to providing public notice on the PointRoll Website that PointRoll is modifying its cookie practices.

PointRoll agrees to remain a member of the Network Advertising Initiative ("NAI") or any successor organization to NAI for two (2) years following the entry of the Final Approval Order, provided that NAI or any successor organization continues to exist in substantially the same form during such period as the NAI reflects as of entry of the Final Approval Order and that the NAI's or any successor's membership requirements remain substantially the same during that period as they were as of the Effective Date.
- (e) **Disclosure of Cookie Practices.** The Parties agree that PointRoll will take the actions specified in this Paragraph regarding its cookie practices for a period of two (2) years following entry of the Final Approval Order. Subject to the foregoing limitations, PointRoll agrees that it will include within its Website privacy notice language that generally describes the categories of cookies that PointRoll uses, including first-party and third-party cookies, flash cookies and web beacons; cookie durations; and cookie purposes (e.g., frequency capping, sequencing, effectiveness metrics, behavioral advertising). Subject to the foregoing limitations, PointRoll further

agrees that prior to entering into a new contract or agreement with an advertisement publisher, PointRoll will provide PointRoll's online privacy notice to such advertisement publisher or its representative by email or other electronic communication, or by including or forwarding a link to PointRoll's online privacy notice in communications with such publishers. Subject to the foregoing limitations, PointRoll further agrees that it will not, through any contract with any advertisement publisher, negligently, knowingly or intentionally violate its online privacy notice or agree to violate such policy.

- (f) **Disclosure Regarding the Safari Cookie Technique.** PointRoll represents that PointRoll (i) used its cookies for advertising effectiveness purposes that did not include profiling specific users or behavioral advertising; (ii) used the Safari Cookie Technique for only two months; and (iii) received gross revenues not exceeding \$25,000 USD from the campaign for which it developed the Safari Cookie Technique.
- (g) **Cooperation.** PointRoll agrees to provide Plaintiffs and Class Counsel the opportunity to interview in person PointRoll employees knowledgeable about the conception, design, implementation, administration, purposes, uses and termination of the Safari Cookie Technique, including, without limitation, the technological methods the Safari Cookie Technique involved and the business purposes for which the Safari Cookie Technique was used. These employees will be identified and mutually agreed upon through discussions between the Parties' counsel. Plaintiffs and Class Counsel will be permitted to interview these PointRoll employees for an aggregate of twenty-five (25) hours, provided that any of PointRoll's proprietary or trade secret information disclosed in such interviews will remain strictly confidential to the Plaintiffs and Class Counsel and will not be used, referenced in, or otherwise relied upon by Plaintiffs and Class Counsel in any claims, demands, rights, liabilities, losses, obligations, duties, actions, potential actions, and causes of action of any kind whatsoever, whether at common law, pursuant to statute, ordinance, or regulation, in equity or otherwise against PointRoll or any of the Released Parties. Any and all interviews arising under this Paragraph must be concluded within three (3) months of the Court's approval of this Settlement Agreement. Plaintiffs and Class Counsel further agree that any and all interviews arising under this Paragraph must be arranged through and conducted with the participation of counsel for PointRoll. Nothing in this paragraph is meant to limit any party's right to discovery permissible under the Federal Rules of Civil Procedure.

- (h) **Public Statement.** Upon entry of the Final Approval Order, the Parties agree to publish a brief joint written public statement to be published for three (3) months on PointRoll's website and in the notice described in Section 4.2.1, below, wherein:
 - (i) PointRoll will state that its use of the Safari Cookie Technique for a period of two months was not consistent with best industry practices, and PointRoll is pleased to take a leadership role by deploying new practices and commitments as stated in its revised privacy notice.
 - (ii) Plaintiffs and Class Counsel will state that PointRoll's new privacy practices and commitments demonstrate online responsibility and reflect an important step towards enhanced online privacy practices.

The Parties agree not to make any other public statements regarding the settlement outside of the court proceedings in this case unless specifically and mutually agreed upon by the Parties in writing in advance of any such statement.

3.2 Attorneys' Fees and Costs.

- (a) The Parties agree that attorney's fees and expenses of \$115,000.00 represents a fair and reasonable to compensate Class Counsel for their representation of the Named Plaintiffs and asserted Class Members in preparing, filing and litigating this case against PointRoll, and arriving at this settlement on behalf of Plaintiffs. The Parties further agree to jointly support these fees and costs, and jointly request that the Court approve and award such fees and costs in that amount.
- (b) Any attorneys' fees, monetary payments to the Named Plaintiffs ("**Incentive Awards**") and costs awarded by the Court shall be paid by PointRoll by electronic transfer in immediately available collected funds in U.S. Dollars to Class Counsel within ten (10) days of the Effective Date; provided however that no such payment shall be due until Class Counsel has provided PointRoll with a validly completed IRS Form W-9. The details of the transfer including account number and routing number shall be provided through separate correspondence to be provided no later than ten (10) days before the Effective Date.

3.3 No Further Obligation. The Parties agree and acknowledge that the cost of PointRoll's own attorneys' fees and expenses, of the Injunctive Relief in Section 3.1 of the Agreement, the Attorneys Fees and Costs in Section 3.2 of the Agreement, Named Plaintiff Incentive Awards totaling \$2,000,

through payments of \$500 to each of the Named Plaintiffs, and the costs of Class Notice set forth in Section 4.2 below collectively represent Defendant's maximum financial obligation under the Agreement. The parties further agree and acknowledge that Defendant shall have no further monetary obligation whatsoever, including, but not limited to, any monetary obligations with respect to the Named Plaintiffs, the Class, Class Counsel, or the claims alleged against PointRoll in the Complaint. PointRoll understands and agrees that neither Named Plaintiffs, the Class, or Class Counsel shall under any circumstances be liable, and expressly disclaim any duty, to indemnify, defend, hold harmless or otherwise compensate PointRoll or its attorneys from or against any claims from any other Defendant or such Defendant's counsel in the Litigation, or from any other persons or entities of any description whatsoever who might allege claims against Defendant and who are not included within the Class described in the Complaint and in this Agreement in Section 1.5, above.

4 **APPROVAL AND CLASS NOTICE**

- 4.1 **Preliminary Approval by the Court.** Within thirty (30) days of the execution of the Agreement, Named Plaintiffs and Defendant will submit to the Court the Agreement, a Motion for Conditional Certification of the Class, a Motion for Judgment and Approval of the Agreement, a proposed Notice, and a proposed Approval Order. Pursuant to the terms of the Agreement, Named Plaintiffs and Defendant will seek conditional certification of the Class.
- 4.2 **Class Settlement Notice.** Upon entry of the Approval Order, Defendant shall notify Class Members of the Settlement of this Litigation. Notice will be given by
 - 4.2.1 Publication of a notice for a period of three (3) days consecutive Mondays in the legal notice section of the print and e-Newspaper editions of the USA TODAY newspaper.
 - 4.2.2 Publication by serving Internet advertising of up to 20 million impressions to unique Safari Browsers that visit www.usatoday.com or websites affiliated with USA TODAY. PointRoll will serve such advertising on www.usatoday.com and at least 10 affiliated websites every day during the three-week period contemplated in this section 4.2.2 ("Internet Notice Period") to Safari Browser users who visit such sites at any time of day during the Internet Notice Period. PointRoll will use first-party publisher cookies on www.usatoday.com and the affiliated sites, along with frequency capping, to target unique Safari Browsers. The Internet Notice Period will correspond to the three-week period beginning at 12:01 AM on the first Monday on which notice is published in USA TODAY via print and

e-Newspaper formats as specified in Section 4.2.1, and will terminate at 11:59 PM on the first Sunday following the last Monday on which such notice is published in the print and e-Newspaper editions of USA TODAY pursuant to 4.2.1.

- 4.2.3 The language displayed by the Internet advertising contemplated in section 4.2.2 will state: "If you used a Safari browser from December 2011 through February 2012, you may be covered by a class action settlement by Point Roll, Inc., one of the defendants in the case *In re Google Inc. Cookie Placement Consumer Privacy Litigation*, No. 12-MD-2358 (SLR) (D. Del). For more information click here." Such link will display the text of the Preliminary Approval Order Settlement Notice, in such form as ultimately approved by the Court.
- 4.2.4 The parties agree to cooperate in good faith to develop language for the Preliminary Approval Order Settlement Notice.
- 4.3 **Entry of Judgment.** At the Fairness Hearing, the Parties will request that the Court, among other things, issue a Final Approval Order that will (a) certify the Class, (b) enter judgment in accordance with the Agreement, (c) approve the Settlement (including the Release of Claims) as final, fair, reasonable, adequate and binding on all Class Members, (d) approve the payment of \$500 Incentive Awards to each of the Named Plaintiffs and (e) approve the payment of reasonable attorneys' fees and costs for Class Counsel pursuant to Section 3.2.
- 4.4 **Effect of Failure to Grant Final Approval.** In the event the Court fails to enter the Final Approval Order in accordance with the Agreement, the Court is found to lack jurisdiction over this Action, or the Final Approval Order is vacated on appeal, the Parties shall proceed as follows:
- (a) The Litigation will resume unless the Parties jointly agree to: (1) seek reconsideration or appellate review of the decision denying entry of Final Approval, vacating the Final Approval Order or finding the Court to lack jurisdiction over this Action, or (2) attempt to renegotiate the Settlement and seek Court approval of the renegotiated Settlement;
 - (b) In the event any reconsideration and/or appellate review is denied, the Parties shall have no further rights or obligations under the Agreement; and
 - (c) If the Settlement is not approved, the case will proceed as if no Settlement has been attempted. In that event, the class(es) certified for purposes of Settlement shall be decertified, and Defendant retains the right to contest whether this case should be maintained as

a class action and to contest the merits of the claims being asserted by Plaintiffs in this action.

5 CONDITIONS OF SETTLEMENT

- 5.1 **Conditions of Settlement.** This Settlement Agreement is expressly conditioned on and subject to each of the following conditions and, except as provided in Section 6.2, shall be cancelled and terminated unless:
- (a) the Court enters the Preliminary Approval Order substantially in the form attached hereto as Exhibit 2;
 - (b) the Court enters the Final Approval Order and Judgment; and
 - (c) the Effective Date shall have occurred.
- 5.2 **Effect of Disapproval, Cancellation or Termination.** If either (a) the Court does not enter the Final Approval Order, (b) the Court enters the Final Approval Order, but on or following appellate review the Final Approval Order is modified or vacated or reversed in any material respect, or (c) any of the other conditions of Section 5.1 is not satisfied, the Agreement shall be cancelled and terminated unless counsel for the Named Plaintiffs and Defendant, within ten (10) business days from receipt of such ruling or event, agrees to proceed with the Agreement and Settlement, including only with such modifications, if any, as to which all Parties in their sole judgment and discretion may agree, in which case the modified Agreement shall be submitted to the Court for its approval. For purposes of this Section, an intent to proceed shall not be valid unless it is expressed in a signed writing. Neither a modification nor a reversal on appeal of the amount of fees and costs awarded by the Court to Class Counsel shall be deemed a material modification of the Final Approval Order or the Agreement.

6 ADMINISTRATION

- 6.1 **No Tolling of Limitations.** The Parties acknowledge and agree that all applicable statutes of limitation ceased tolling, and recommenced running, as of the Effective Date.
- 6.2 **Responsibility of Defendant.** Defendant's counsel and Class Counsel will have the authority jointly to make all decisions necessary for the orderly implementation and administration of the Settlement, subject to review by the Court and as allowed by the Agreement.
- 6.3 **Responsibility for Inquiries of Class Members.** Class Counsel expressly reserves the right to communicate orally and in writing with, and to respond to inquiries from, Class Members concerning the Agreement and the Settlement. Accordingly, among other topics, Class Counsel may respond

to questions from any Class Member concerning that Class Member's Individual Settlement Benefit and Defendant will refer any such questions in the first instance to Class Counsel. Absent express written agreement from Class Counsel, Defendant shall not be entitled to communicate directly with Class Members.

- 6.4 **Notices.** Copies of any and all notices, documents or filings required under the Agreement shall be served by registered United States mail on the Parties to counsel of record for PointRoll and Class Counsel.

7 **RELEASE OF CLAIMS.**

- 7.1 As of the Effective Date, the Action shall be dismissed with prejudice, and without costs, except as provided herein.
- 7.2 As of the Effective Date, Named Plaintiffs and Class Members, and their respective heirs, executors, administrators, estates, predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns, shall fully, finally and forever release, settle and discharge the Released Parties from and with respect to the Released Claims and will be forever barred and enjoined from commencing, instituting or prosecuting any action or other proceeding, in any forum, asserting any Released Claims against any of the Released Parties (the "Release of Defendant"); provided, however, that the Release of Defendant shall not include Named Plaintiffs' and Class Counsel's rights to enforce the Settlement as set forth in the Agreement. This release shall become fully operative as of the Effective Date.
- 7.3 Named Plaintiffs represent that this waiver and release of claims is given knowingly and voluntarily and that they have had an opportunity to consult with legal counsel on their own behalf and on behalf of all Class Members.

8 **MISCELLANEOUS PROVISIONS**

- 8.1 **Cooperation and Dispute Resolution.** Any dispute between or among the Parties or Class Counsel regarding an alleged breach of the Agreement shall be subject to the following dispute resolution process:
- (a) The party asserting that a breach has occurred shall give prompt written notice to the party allegedly committing the breach at the address(es) set forth in Section 6.4.
 - (b) Within ten (10) calendar days of receipt of the notice, Class Counsel and a representative for PointRoll shall confer in person or by telephone and attempt to resolve the dispute.
 - (c) If the confer process does not occur or does not resolve the dispute, the matter may be referred by either Class Counsel or PointRoll to

mediation before a neutral third party mutually agreed to by Class Counsel and PointRoll.

- (d) The Parties agree not to file any motion to enforce this Class Settlement Agreement until complying with the requirement to confer and mediate and then only if the allegations of noncompliance have not been corrected.

8.2 Stay Pending Final Approval Order. Named Plaintiffs and Class Counsel agree to request from the Court a stay of the proceedings against PointRoll in the Action and to refrain from initiating any and all other proceedings other than those incident to the Settlement itself pending the occurrence of the Effective Date. The Parties agree to not seek the enforcement of any deadlines to respond to any filed or served pleadings or discovery requests. The Parties also agree to cooperate and support efforts to prevent, stay or seek dismissal of or oppose entry of any interim or final relief in favor of any Class Member in any other litigation against any of the Released Parties that challenges the Settlement including any transactions contemplated thereby, or that otherwise involves, directly or indirectly, a Released Claim. Other than as required by law or by this Agreement, and except for any review by a party-retained expert subject to a requirement of keeping both the terms of the Settlement Agreement confidential, Defendant, Defendant's counsel, Named Plaintiffs and Class Counsel shall not disclose the existence of the Agreement until the Court is notified, and not disclose the terms of the Agreement to any other party until after it is presented to the Court for approval.

8.3 No Public Comments. Named Plaintiffs hereby agree not to make any statements to the media or any other third party about the Released Parties, and Named Plaintiffs and Class Counsel agree not to undertake any affirmative efforts to generate media coverage, Internet postings, or other publicity except as expressly permitted by the Agreement. The parties agree that, upon entry of the Final Approval Order, the undersigned Class Counsel may announce the fact of a settlement on their firms' websites including the Public Statement as set forth in this Agreement. Defendant agrees not to make any statements to the media or any other third party about the Named Plaintiffs or Class Members. Other than as required by law and the Agreement, Defendant, Defendant's counsel, Named Plaintiffs, and Class Counsel shall issue no press release or make any other public statement describing the Agreement or its terms. The Parties and the Parties' counsel agree to undertake best efforts to promote the Settlement Agreement and to not take any action that may undermine its approval by the Court. The Parties hereby acknowledge that remedies at law are inadequate to fully remedy the harms anticipated by this section, and thus consent to the entry of equitable relief, including injunctions, to enforce this section.

- 8.4 **No Third-Party Beneficiaries.** Except as specifically provided herein, the Agreement shall not be construed to create rights in, or to grant remedies to or delegate any duty, obligation or undertaking established herein to, any third party as a beneficiary of the Agreement.
- 8.5 **Deadlines.** If any deadline set forth in the Agreement or the Exhibits thereto falls on a Saturday, Sunday or legal holiday, that deadline will be continued to the next day that is not a Saturday, Sunday or legal holiday..
- 8.6 **Headings.** The headings in the Agreement are solely for the convenience of the attorneys for the Parties and the Court. The headings shall not be deemed to be a part of the Agreement and shall not be considered in construing or interpreting the Agreement.
- 8.7 **Choice of law and forum selection.** The Agreement shall be construed and interpreted in accordance with the internal laws of the State of Delaware. Any and all disputes arising out of, relating to, or in any way associated with the Agreement shall be adjudicated only in the Court or in a mediation site of the Parties' joint selection.
- 8.8 **Dismissal with prejudice.** The Parties shall file with the Court a Stipulation of Dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure dismissing with prejudice the entire Action within ten (10) days after the Effective Date. Subsequent to the filing of such stipulation of dismissal, the Court shall retain jurisdiction solely to enforce the terms of the Agreement.
- 8.9 **Interpretation.** In the event that the Court or any other court is called upon to interpret the Agreement, no one party shall be deemed to have drafted the Agreement.
- 8.10 **Assignment.** The Agreement shall be binding upon, and inure to the benefit of, the successors, assigns and heirs of the Released Parties, and assigns and heirs of Class Members.
- 8.11 **Entire Agreement.** The Agreement constitutes the entire agreement and understanding of the Parties hereto with regard to the matters described herein and supersedes any and all prior and/or contemporaneous agreements and understandings, oral or written, between the Parties. The Agreement may be modified only in writing, and any Party's failure to enforce the Agreement in the event of one or more events that violate the Agreement shall not constitute a waiver of any right to enforce the Agreement against subsequent violations.
- 8.12 **Amendment to Agreement.** Any amendment to the Agreement must be in writing signed by a duly authorized representative of each Party and stating the intentions of the Parties to amend the Agreement.

- 8.13 **Executed in counterparts.** The Agreement may be executed in counterparts, each of which may be a separate document, and all of which together shall be deemed and considered an original of the Agreement. The Parties hereto agree to accept electronic transmission of copies of signature pages as and in place of originals.
- 8.14 **No Admission of Liability.** Neither the Agreement nor the terms of the Agreement is evidence, or a presumption, admission or concession by any Party, any signatory hereto, or any of the Released Parties, of any fault, liability, or wrongdoing whatsoever, or lack of any fault, liability, or wrongdoing, as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings. Neither the Agreement nor the terms of the Agreement is a finding or evidence of the validity or invalidity of any claims or defenses in the Action or any wrongdoing by any of the Released Parties or any damages or injury to any Class Members. Neither the Agreement nor the terms of the Agreement is, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement proceedings, nor any statements in connection therewith, (a) shall (i) be argued to be, used or construed as, offered, or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damage to the Named Plaintiffs or any Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released Parties concerning any fact alleged or that could have been alleged, or any claim asserted or that could have been asserted in the Action, or of any purported liability, fault, or wrongdoing of the Released Parties or of any injury or damages to any person or entity, or (b) otherwise be admissible, referred to or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Settlement Agreement and/or Final Approval Order and Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to argue that the Agreement and/or the Final Approval Order has *res judicata*, collateral estoppel or other issue or claim preclusion effect or to otherwise consummate or enforce the Agreement and/or the Final Approval Order.
- 8.15 **No Waiver.** Failure or delay by Named Plaintiffs or Class Counsel to seek enforcement of any provision of this Settlement Agreement including any deadlines will not be deemed a waiver of their right to enforce any other provision.

[SIGNATURES ON FOLLOWING PAGE]

THE PARTIES STATE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AND KNOWINGLY AND VOLUNTARILY INTEND TO BE BOUND THERETO:

FOR CLASS COUNSEL

Date: 07/23/2013

S. Grygiel by BRS
STEPHEN G. GRYGIEL

Date: 07/23/2013

Brian Russell Strange
BRIAN RUSSELL STRANGE

Date: 07/23/2013

James Frickleton by BRS
JAMES FRICKLETON

NAMED PLAINTIFFS:

Date: _____

William Gourley

Date: _____

Jose M. ("Josh") Bermudez

Date: _____

Nicholas Todd Heinrich

Date: _____

Lynn Krause

FOR DEFENDANT

Date: _____

Mario Diez
Chief Executive Officer
On behalf of
POINT ROLL, INC.

FOR SETTLEMENT PURPOSES ONLY
FRE 408

DRAFT 7/18/13

THE PARTIES STATE THAT THEY HAVE READ AND UNDERSTAND THE
FOREGOING AND KNOWINGLY AND VOLUNTARILY INTEND TO BE BOUND
THERE TO:

FOR CLASS COUNSEL

Date: _____

STEPHEN G. GRYGIEL

Date: _____

BRIAN RUSSELL STRANGE

Date: _____

JAMES FRICKLETON

NAMED PLAINTIFFS:

Date: 07/19/13

William Gourley
William Gourley

Date: _____

Jose M. ("Josh") Bermudez

Date: _____

Nicholas Todd Heinrich

Date: _____

Lynn Krause

FOR DEFENDANT

Date: _____

Mario Diaz
Chief Executive Officer
On behalf of
POINT ROLL, INC.

Deleted:
Date: _____
..... Lourdes Villegas
Date: _____
..... Zetha Nobles

[SIGNATURES ON FOLLOWING PAGE]

THE PARTIES STATE THAT THEY HAVE READ AND UNDERSTAND THE
FOREGOING AND KNOWINGLY AND VOLUNTARILY INTEND TO BE
BOUND THERETO:

FOR CLASS COUNSEL

Date: _____

STEPHEN G. GRYGIEL

Date: _____

BRIAN RUSSELL STRANGE

Date: _____

JAMES FRICKLETON

NAMED PLAINTIFFS:

Date: _____

William Gourley

Date: 07/21/2013

Jose M. ("Josh") Bermudez

Date: _____

Nicholas Todd Heinrich

Date: _____

Lynn Krause

FOR DEFENDANT

Date: _____

Mario Diez
Chief Executive Officer
On behalf of
POINT ROLL, INC.

FOR SETTLEMENT PURPOSES ONLY
FRE 408

DRAFT

THE PARTIES STATE THAT THEY HAVE READ AND UNDERSTAND
FOREGOING AND KNOWINGLY AND VOLUNTARILY INTEND TO BE B
THERETO:

FOR CLASS COUNSEL

Date: _____

STEPHEN G. CRYGIEL

Date: _____

BRIAN RUSSELL STRANGE

Date: _____

JAMES FRICKLETON

NAMED PLAINTIFFS:

Date: _____

William Gourley

Date: _____

Jose M. ("Josh") Bermudez

Date: 7-22-13


Nicholas Todd Heinrich

Date: _____

Lynn Krause

FOR DEFENDANT

Date: _____

Mario Diez
Chief Executive Officer
On behalf of

THE PARTIES STATE THAT THEY HAVE READ AND UNDERSTAND THE
FOREGOING AND KNOWINGLY AND VOLUNTARILY INTEND TO BE
BOUND THERETO:

FOR CLASS COUNSEL

Date: _____

STEPHEN G. GRYGIEL

Date: _____

BRIAN RUSSELL STRANGE

Date: _____

JAMES FRICKLETON

NAMED PLAINTIFFS:

Date: _____

William Gourley

Date: _____

Jose M. ("Josh") Bermudez

Date: _____

Nicholas Todd Heinrich

Date: 07/23/2013

L Krause *By BRS with consent*

Lynn Krause

FOR DEFENDANT

Date: _____

Mario Diez
Chief Executive Officer
On behalf of
POINT ROLL, INC.

