

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address	FOR COURT USE ONLY
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<input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Debtor in Possession	
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION	
In re: Point.360, a California corporation,	CASE NO.: 2:17-bk-22432 WB CHAPTER: 11
	NOTICE OF MOTION FOR: ORDER GRANTING 90-DAY EXTENSION OF EXCLUSIVITY PERIODS
	(Specify name of Motion)
Debtor(s).	DATE: 02/01/2018 TIME: 10:00 am COURTROOM: 1375; Judge Brand PLACE: United States Bankruptcy Court 255 E. Temple Street, 13th Floor Los Angeles, CA 90012

1. TO (*specify name*): Parties in Interest:
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 01/11/2018

Lewis R. Landau, Attorney at Law
Printed name of law firm

/s/ Lewis R. Landau
Signature

Lewis R. Landau
Printed name of attorney

Lewis R. Landau (CA Bar No. 143391)
Attorney-at-Law
22287 Mulholland Hwy., # 318
Calabasas, California 91302
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Attorney for Debtor and
Debtor in Possession

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

Point.360, a California corporation,
dba DVDs on the Run, Inc.
dba Digital Film Labs
dba International Video Conversions, Inc.
dba Modern VideoFilm
dba Movie Q
dba Visual Sound Closed Captioning
Services
dba Eden FX

Debtor.

Debtor's EIN: 01-0893376
Address: 2701 Media Center Drive
Los Angeles, CA 90065

Case No.: 2:17-bk-22432 WB
Chapter 11

**MOTION FOR ORDER GRANTING 90-DAY
EXTENSION OF EXCLUSIVITY PERIODS;
DECLARATION OF HAIG S. BAGERDJIAN
IN SUPPORT THEREOF**
[11 U.S.C. § 1121(d)]

Date: February 1, 2018
Time: 10:00 a.m.
Place: Courtroom 1375; Judge Brand
U.S. Bankruptcy Court
255 E. Temple Street, 13th Floor
Los Angeles, CA 90012

Point.360, a California corporation. ("Debtor" or "Point.360"), Debtor in Possession in the within Chapter 11 case, herein moves for an order granting an extension of the Debtor's plan filing and plan acceptance exclusivity periods (the "Motion"), pursuant to 11 U.S.C. § 1121(d), for 90 days each, thus advancing the plan filing and plan acceptance exclusivity periods to May 8, 2018 and July 7, 2018, respectively.

The specific details of the Debtor's Motion to extend its exclusivity periods are set forth in the following memorandum of points and authorities, as supported by the attached Declaration of Haig S. Bagerdjian ("Bagerdjian Declaration") and case file documents referenced by Electronic Case File ("ECF") number herein. Notice of this motion is given per Local Bankruptcy Form F9013-1.1 attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION, CASE SUMMARY AND

STATUS OF REORGANIZATION EFFORTS

1. Prepetition Events.

On October 10, 2017, the Debtor filed a voluntary chapter 11 petition. The Debtor continues to manage and operate its business as a debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108. No Official Committee of Creditors Holding Unsecured Claims has been appointed in Debtor's case to date.

Point.360 provides high definition and standard definition digital mastering, data conversion, video and film asset management, distribution and other services to owners, producers and distributors of entertainment and advertising content. The Debtor presently operates from two post production and administrative office locations: (1) 2701 Media Center Drive, Los Angeles, California ("Media Center"); and (2) 1122 and 1133 North Hollywood Way, Burbank, California ("HWay"). A facility formerly operating as of the petition date at 2300 Empire Avenue, Suite 100, Burbank, California ("Empire") is now closed. Typically, a feature film or television show or related material will be submitted to a facility by a motion picture studio, independent producer, advertising agency, or corporation for processing and distribution. Debtor is a public company with securities registered under the Securities Exchange Act of 1934. Debtor has 12,704,506 shares of its common stock outstanding.

On July 8, 2015, Point.360 acquired certain assets of Modern VideoFilm, Inc. ("MVF") including, but not limited to, MVF's equipment, inventory, and accounts receivable, in a private Article 9 foreclosure sale, and assumed no debts, obligations or liabilities except for agreeing to pay a portion of the rent for each facility of MVF to its landlord on a per diem basis based and certain employee liabilities. The MVF acquisition was intended to add two unique lines of business to augment Debtor's existing businesses and strengthen and synergize the existing business lines by combining operations and optimizing cost efficiencies.

1 Regarding the purchase of the assets of MVF, on July 8, 2015, the Debtor entered into a
2 Term Loan Agreement with Medley Opportunity Fund II, LP. The Medley Loan Agreement is
3 comprised of a five-year term loan facility in the amount of \$6,000,000, \$1,000,000 of which was
4 funded on the July 8, 2015 closing date. As of March 31, 2017, the Company had borrowed the
5 \$6,000,000 under the Medley Term Loan Agreement.

6 The MVF transaction resulted in substantial and unanticipated operating losses requiring
7 that Debtor reorganize its financial affairs. Point.360 entered the MVF acquisition in reliance on
8 misleading information concerning MVF's profitability. For example, Point.360 was given *pro*
9 *forma* projections showing \$29 million in sales and \$4.1 million in EBITDA for the 2015 - 2016
10 period. Actual results after the MVF acquisition resulted in \$15.6 million in sales and EBITDA of
11 *negative* \$6.3 million. This \$10.4 million difference between projected and actual EBITDA for
12 2105 - 2016, which continued into the fiscal 2017 period, has resulted in Debtor's need for
13 financial reorganization.

14 After the initial disappointing results of the MVF acquisition, Debtor initiated a business
15 plan to reduce expenses and reestablish profitability. The significant changes to Debtor's
16 operations are as follows:

- 17 a. Debtor eliminated approximately 100,000 square feet of rental space by vacating its
18 Santa Monica, Glendale and Empire (second floor) facilities in 2015.
- 19 b. Debtor further reduced rent and associated expenses by closing its 37,930-foot
20 Empire facility (first floor). Rent and CAM charges at this facility exceeded \$150,000
21 monthly. Debtor entered a prepetition stipulation with lessor REEP OFC 2300 Empire CA
22 LLC ("REEP") to vacate the facility by December 4, 2017 and will not incur post-petition
23 rent during the period prior to December 4, 2017 if Debtor vacates by that date. Debtor
24 met the vacate deadline but continued to store certain equipment at the facility per
25 agreement with REEP. Debtor is negotiating an agreement with REEP toward fully
26 satisfying REEP's claim. Debtor believes that it will be able to eliminate an almost \$1
27 million unsecured claim through a consensual resolution with REEP, subject to Court
28 approval.

1 While Debtor was working toward profitability, Debtor received a 3-day notice to pay rent
2 or quit for its Media Center facility on October 6, 2017. The Debtor presently intends to retain the
3 Media Center facility as a component of the reorganized business. Consequently, Debtor was
4 required to file its chapter 11 petition on October 10, 2017 to maintain its core operating facilities
5 and implement its reorganization plan through the chapter 11 process.

6 *2. Post-Petition Events.*

7 From a business operations standpoint, Debtor's post-petition period was dominated by the
8 need to preserve and maintain customer and employee relationships impacted by the chapter 11
9 filing and concurrently fully close and transition operations from its Empire facility without
10 disrupting workflow. The transition out of Empire required substantial technical service work
11 regarding computer network and server equipment. Debtor duly accomplished these burdensome
12 business obligations while staying on budget both in terms of projected income and expenses.
13 Debtor completed its transition out of the Empire facility as needed to preserve its opportunity to
14 resolve the REEP \$1 million unsecured claim.

15 In addition to business burdens, Debtor duly addressed all legal issues arising from filing
16 its chapter 11 case. After filing its voluntary chapter 11 petition on October 10, 2017, Debtor filed
17 first day motions to facilitate continued operations, including a motion to use Austin Financial
18 Service, Inc's ("Austin") cash collateral and pay prepetition payroll to approximately 250
19 employees. The cash collateral motion was granted on an interim basis and prepetition payroll
20 authorized per orders entered October 12, 2017. *See* ECF #s 13 and 14. Debtor continued
21 authorized use of cash collateral through a final order entered December 19, 2017. *See* ECF # 94.

22 During the period of cash collateral usage, Debtor negotiated a substantial Debtor in
23 Possession financing facility ("DIP Financing") with Austin. DIP Financing was critical to
24 support and strengthen Debtor's continuing operations through October 2018 and convey
25 confidence in Debtor's business operations to customers, vendors and employees. On November
26 22, 2017 Debtor moved to approve the DIP Financing. Medley objected to the DIP Financing and
27 conducted discovery including a lengthy deposition of Mr. Bagerdjian. The DIP Financing was
28 approved over Medley's objections per order entered December 22, 2017. *See* ECF # 101. Debtor

1 timely moved for an award of attorney's fees under an attorney fee shifting clause of Medley's
2 loan agreement and California Civil Code § 1717(a) set for hearing concurrently herewith. *See*
3 ECF # 111.

4 Medley has also recently moved for adequate protection with an initial hearing set for
5 January 11, 2018. The matter was continued to February 7, 2018. In connection with Medley's
6 motion, Debtor has requested the production of documents from Medley regarding the MVF
7 Purchase Agreement transaction in which the Medley financing was an integrated component.

8 A claims bar date is set for January 31, 2018 and 36 claims have been filed to date. Debtor
9 scheduled over 165 creditors, so many more claims are anticipated, including Medley's claims.

10 The Debtor's significant liabilities, disputed and undisputed, are summarized as follows:

- 11 1. Medley Opportunity Fund II, LP ("Medley"): \$6,477,565.
- 12 2. Austin: \$2,475,676.48.
- 13 3. REEP (Empire lessor per prepetition stipulation): \$927,522.30.
- 14 4. Other 20 largest unsecured creditors: approximately \$1.5 million.
- 15 5. Various other insider, relatively small trade and contingent liabilities, including personal
16 property equipment leases.

17 The Debtor scheduled Medley as a contingent, unliquidated and disputed creditor. *See*
18 ECF 45:15. Debtor further identified certain claims concerning Medley in its schedules as follows
19 and Debtor is actively investigating these claims:

20 Point.360 is investigating and fully reserves all rights, claims and defenses arising from its
21 acquisition of the assets of Modern VideoFilm ("MVF") in 2015. On July 8, 2015, Point.360
22 acquired certain assets of MVF including, but not limited to, MVF's equipment, inventory, and
23 accounts receivable. Point.360 concurrently entered into a Term Loan Agreement with Medley
24 Capital Corporation and Medley Opportunity Fund II, LP (collectively "Medley"). The Medley
25 Term Loan Agreement is comprised of a five-year term loan facility in the amount of \$6,000,000,
26 \$1,000,000 of which was funded on the July 8, 2015 closing date. As of March 31, 2017, the
27 Company had borrowed the \$6,000,000 under the Medley Loan Agreement. Debtor has elected to
28 pay interest as payment in kind ("PIK") as permitted by the Loan Agreement. The outstanding
principal balance and all accrued and unpaid interest on the Term Loan are due and payable on
July 8, 2020. As further consideration for the MVF sale purchase transaction, the Debtor issued
2,000,000 shares of common stock, and five-year warrants to purchase an aggregate of 800,000
shares of common stock at an exercise price of \$0.75 per share. As consideration for the Medley
Loan Agreement, the Debtor also issued warrants to Medley to purchase an aggregate of 500,000
shares of common stock.

1 The MVF transaction resulted in substantial and unanticipated operating losses requiring
2 that Debtor reorganize its financial affairs. Point.360 entered into the MVF acquisition in reliance
3 on misleading information concerning MVF's profitability. For example, Point.360 was given pro
4 forma projections showing \$29 million in sales and \$4.1 million in EBITDA for the 2015 - 2016
5 period. Actual results after the MVF acquisition resulted in \$15.6 million in sales and EBITDA of
6 negative \$6.3 million. This \$10.4 million difference between projected and actual EBITDA for
7 2105 - 2016, which continued into the fiscal 2017 period, has resulted in Debtor's need for
8 financial reorganization.

9 Claims by prior ownership related to the MVF sale were asserted in Los Angeles Superior
10 Court case number BC583437 captioned, Moshe Barkat and Modern VideoFilm Holdings, LLC
11 vs. Medley Capital Corporation; Medley Opportunity Fund II LLP; MCC Advisors, LLC; Deloitte
12 Transactions and Business Analytics, LLP A/K/A/ Deloitte CRG; Charles Sweet; Modern
13 VideoFilm, Inc. and Does 1 through 10 inclusive. The facts, circumstances and claims set forth in
14 the Barkat complaint, among others, may give rise to claims held by Point.360 against some or all
15 of the same parties.

16 *See* ECF 45:12.

17 Debtor has also retained the following professionals with employment applications filed or
18 to be filed prior to the hearing on this motion: Lewis R. Landau as general bankruptcy counsel per
19 order entered November 27, 2017. *See* ECF # 58. TroyGould, LLP as special transactional
20 counsel. An order is pending Court approval. *See* ECF # 60. McCabe & Hogan, P.C. as special
21 litigation counsel. Holthouse Carlin & Van Trigt LLP as accountants for tax returns. GlassRatner
22 Advisory & Capital Group, LLP as financial consultant and expert witness.

23 Finally, Debtor negotiated resolution of various executory contract issues with creditors.
24 Debtor obtained approval of motions to assume insurance premium finance and payroll services
25 contracts with AFCO Acceptance Corporation ("AFCO") [ECF # 40] and ADP, LLC ("ADP")
26 [ECF # 100]. Debtor also obtained stipulations for 90-day extensions of time to assume or reject
27 real property leases pursuant to 11 U.S.C. § 365(d)(4) with lessors LEAFS Properties, L.P.
28 ("LEAFS") regarding the Media Center facility and HWay, LLC (an affiliate of Mr. Bagerdjian)
for the HWay facility. Such stipulations will be filed shortly.

Finally, to the best of Debtor's knowledge, Debtor is in full compliance with all of its
duties under 11 U.S.C. §§ 521, 1106 and 1107 and all applicable guidelines of the Office of the
United States Trustee, including all Monthly Operating Reports.

The Debtor intends to seek approval of a disclosure statement and confirmation of a plan
of reorganization that will be designed to pay allowed claims and interests. The Debtor intends to

1 utilize the proceeds of its business plan to allocate pro rata payments to its unsecured creditors,
2 after paying priority and administrative claims in full. The Debtor intends to propose a disclosure
3 statement and plan of reorganization based on appropriate projections with respect to its
4 anticipated revenues over the course of the next three to five years.

5 Debtor's current plan and disclosure statement filing deadline set at the December 14, 2017
6 case status hearing is April 1, 2018, subject to extension for cause shown. Debtor may require an
7 extension of the current plan and disclosure statement filing deadline based on claims related
8 matters arising after the bar date. The requested extension will provide Debtor sufficient
9 flexibility for a potential 30-day extension of the plan and disclosure statement filing deadline.

10 Maintaining exclusivity for an additional 90 days will facilitate moving the case forward
11 toward a fair and equitable resolution. A 90-day extension will advance the plan filing and plan
12 acceptance exclusivity periods to May 8, 2018 and July 7, 2018, respectively. For these reasons,
13 the Debtor respectfully requests an order approving extension of the Debtor's plan filing and plan
14 acceptance exclusivity periods pursuant to 11 U.S.C. § 1121(d) for 90 days each.

15 **II.**

16 **A 90 DAY EXTENSION OF THE EXCLUSIVITY PERIODS IS WARRANTED**

17 **TO FACILITATE MOVING THE CASE FORWARD TOWARD**

18 **A FAIR AND EQUITABLE RESOLUTION**

19 The Ninth Circuit Bankruptcy Appellate Panel ("BAP") has held that "a transcendent
20 consideration [in a § 1121(d) motion] is whether adjustment of exclusivity *will facilitate moving*
21 *the case forward toward a fair and equitable resolution.*" Official Committee of Unsecured
22 Creditors v. Henry Mayo Newhall Memorial Hospital (In re Henry Mayo Newhall Memorial
23 Hospital), 282 B.R. 444 (B.A.P. 9th Cir. 2002) (emphasis added). The BAP in Henry Mayo
24 identified the following nine (9) factors typically considered as probative of "cause" to extend a
25 debtor's exclusivity periods:

- 26 (1) a first extension;
27 (2) in a complicated case;
28 (3) that had not been pending for a long time, relative to its size and complexity;

- (4) in which the debtor did not appear to be proceeding in bad faith;
- (5) had improved operating revenues so that it was paying current expenses;
- (6) had shown a reasonable prospect for filing a viable plan;
- (7) was making satisfactory progress negotiating with key creditors;
- (8) did not appear to be seeking an extension of exclusivity to pressure creditors; and
- (9) was not depriving the Committee of material or relevant information.

Id., 282 B.R. at 452; *citing*, In re Dow Corning Corp., 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); In re Express One Int'l, Inc., 194 B.R. 98, 100 (Bankr. E.D. Tex.1996).

Herein, an analysis of these nine factors supports an initial 90-day extension of the exclusivity periods, as follows:

1. A First Extension.

The within request to extend exclusivity constitutes the Debtor's first such request. The Debtor will be similarly seeking approval of stipulations for 90-day extensions of the Debtor's time to assume or reject its real estate leases. Fundamental plan-related terms cannot be determined until claims are filed, reviewed and reconciled for plan treatment. In addition, Debtor anticipates filing a motion to approve a settlement with REEP to resolve that \$1 million claim pursuant to FRBP 9019. The requested 90-day extension should be sufficient to allow the Debtor to address these fundamental case contingencies.

2. Complicated Case Aspects.

Although this is not a "mega case," the Debtor's Chapter 11 case clearly involves complicated "case aspects" that create complexity with respect to advancing the case through a chapter 11 plan now. The Debtor must conclude its negotiations with REEP toward eliminating a potential \$1 million claim in the case and address Medley's substantial claims once filed.

Ascertaining a fixed and final schedule of claims to be addressed under the Debtor's anticipated plan of reorganization is a fundamental aspect of plan preparation and will determine the term of any plan that is designed to pay allowed claims in full. The requested exclusivity extension will presumably provide the Debtor with sufficient time to conclude its lease negotiations and related matters involving the landlords, to reconcile claims after the bar date has

1 passed, to file any objections to claims, and to draft and propose its chapter 11 plan. The
2 requested extension of exclusivity is reasonable in view of these complicated aspects of the
3 Debtor's Chapter 11 case.

4 **3. Not Pending for Long Relative to Complexity.**

5 The Chapter 11 case has not been pending long relative to the contingencies creating
6 complexity in this particular case. The initial 120-days of Debtor's case has been consumed by
7 business obligations related to preserving and maintain customer and employee relationships
8 impacted by the chapter 11 filing and concurrently fully closing and transitioning operations from
9 its Empire facility without disrupting workflow. From a legal standpoint, the Debtor filed and
10 stabilized its case ultimately obtaining approval of the DIP Financing facility and addressing
11 numerous case compliance matters.

12 **4. Debtor Not Proceeding in Bad Faith.**

13 The Debtor is not proceeding in bad faith. The facts of the Debtor's case strongly point to
14 the contrary conclusion, i.e., that the Debtor is proceeding in good faith, making all required
15 disclosures and demonstrating its transparency and desire to facilitate a resolution which will inure
16 to the benefit of all its general unsecured creditors. Avoiding liquidations is a fundamental
17 purpose underlying chapter 11. The principal purposes of chapter 11 reorganization have been
18 summarized by the Ninth Circuit Court of Appeals as follows:

19 Chapter 11 has two major objectives 1) to permit successful
20 rehabilitation of debtors (NLRB v. Bildisco and Bildisco, 465 U.S.
21 513, 527, 79 L. Ed. 2d 482, 104 S. Ct. 1188 (1984)); and 2) to
maximize the value of the estate (Toibb v. Radloff, 115 L. Ed. 2d
145, 111 S. Ct. 2197, 2201 (1991)).

.....

22 [W]hile the protection of creditors' interests is an important purpose
23 under Chapter 11, the Supreme Court has made clear that successful
debtor reorganization and maximization of the value of the estate are
24 the primary purposes. See Bildisco, 465 U.S. at 527; Toibb v.
Radloff, 111 S. Ct. at 2201. Chapter 11 is designed to avoid
25 liquidations under Chapter 7, since liquidations may have a negative
impact on jobs, suppliers of the business, and the economy as a
26 whole. See United States v. Whiting Pools, Inc., 462 U.S. 198, 203,
76 L. Ed. 2d 515, 103 S. Ct. 2309 (1983).
27
28

1 Bonner Mall Partnership v. U.S. Bancorp Mortgage Co. (In re Bonner Mall Partnership), 2 F.3d
2 899, 915-916 (9th Cir. 1993), *cert. granted*, 510 U.S. 1039, *vacatur denied and appeal dismissed as*
3 *moot*, 513 U.S. 18 (1994). The Debtor's case fulfills the primary purposes of chapter 11 and
4 clearly was filed in good faith as Debtor is acting to avoid liquidation and the negative impact
5 thereof on approximately 250 jobs, numerous suppliers and the economy. Such good faith will
6 continue into the Debtor's plan proposal, which will be developed over the extended exclusivity
7 period.

8 **5. Improved Operating Revenues and Paying Current Expenses.**

9 The Debtor is operating profitably post-petition. *See*, ECF # 53, 83 (MORs 1 and 2) and
10 ECF # 96 (cash flow projections supporting DIP loan). The Debtor has timely paid its post-
11 petition expenses.

12 **6. Reasonable Prospect for Filing a Viable Plan.**

13 The Debtor has a reasonable prospect for filing a viable plan. The Debtor's cash flow
14 projections reflect the Debtor's ability to generate revenues to support a plan. The Debtor will
15 need to strategically determine how best to maximize value for the estate through negotiated
16 resolutions with some or all its substantial creditors, which may include sale or abandonment of
17 certain personal property assets. Debtor has retained GlassRatner Advisory & Capital Group,
18 LLC as financial consultant and expert witness to support Debtor's plan formulation efforts. All
19 this complex strategic planning is in process and requires additional time to reasonably conclude
20 in the best interests of the estate.

21 **7. Making Satisfactory Progress Negotiating with Key Creditors.**

22 The Debtor is earnestly working both to maintain satisfactory relationships and to make
23 progress with its key creditors and customers. Debtor negotiated and concluded the DIP
24 Financing facility with Austin. Debtor negotiated and resolved executory contract issues with
25 AFCO, ADP, LEAFS and HWay. Debtor is continuing negotiations toward resolution of a
26 substantial almost \$1 million claim with REEP. To date, the Debtor has remained current on its
27 post-petition obligations. The Debtor has cooperated with responding to general creditor inquiries
28

1 and is properly administering its chapter 11 estate. The Debtor has also retained a financial
2 consultant to assist the Debtor in developing its plan.

3 Medley remains an adversarial party having opposed most of Debtor's requests for relief
4 and having recently moved for an unspecified form of adequate protection. Nonetheless, Debtor's
5 president contacted Medley's business representative to open a line of communication. While this
6 contact has not yet brought consensus, Debtor remains willing to negotiate with Medley as matters
7 develop within the bankruptcy case. Debtor anticipates further negotiations with Medley during
8 the requested extension period.

9 Thus, the Debtor believes it has made satisfactory progress in negotiations with its key
10 creditors sufficient to warrant the extension of exclusivity it has requested herein.

11 **8. Not Seeking an Extension of Exclusivity to Pressure Creditors.**

12 The Debtor is seeking a 90-day extension of exclusivity consistently with its concurrently
13 pending request for approval of stipulations for 90-day extensions of the Debtor's time to assume
14 or reject its real estate leases. The instant extension as requested by this Motion seeks to retain
15 exclusivity and the *status quo*, and thereby avoid the cost and expense of competing plans while
16 fundamental case contingencies are in the process of being addressed and resolved.

17 **9. Not Depriving the Committee of Material or Relevant Information.**

18 No committee was appointed in this case. Nonetheless, the Debtor has remained current
19 with respect to all its United States Trustee ("UST") reporting requirements and the filing of its
20 UST Monthly Operating Reports. The Debtor has responded affirmatively to all requests for
21 information or documentation received from general creditors. The Debtor is, therefore, duly
22 meeting all its disclosure requirements and is not depriving the creditors of any material or
23 relevant information.

24 Accordingly, the Debtor is making good faith progress toward proposing a confirmable
25 chapter 11 plan of reorganization. The Debtor's case is in good standing before the Court and
26 with respect to its compliance with the UST Guidelines and all other compliance UST and
27 Bankruptcy Court requirements. Maintaining exclusivity for an additional 90 days will facilitate
28 moving the case forward toward a fair and equitable resolution.

1 For these reasons, the Debtor respectfully requests an order approving the extensions of the
2 Debtor's plan filing and plan acceptance exclusivity periods sought pursuant to 11 U.S.C. §
3 1121(d) for 90 days each.

4 **III.**

5 **CONCLUSION**

6 *Wherefore*, the Debtor respectfully requests Court approval of a 90-day extension of each
7 of its plan filing and plan acceptance exclusivity periods, without prejudice to any subsequent
8 requests for extensions based upon the status of the case at such future times or other
9 unforeseeable circumstances.

10 Dated: January 11, 2018

Respectfully submitted,

11 **Lewis R. Landau**
12 **Attorney-at-Law**

13 By /s/ Lewis R. Landau
14 Lewis R. Landau
15 Attorneys for Debtor
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DECLARATION OF HAIG S. BAGERDJIAN

I, Haig S. Bagerdjian, do hereby declare:

1. I am the president of Point.360, a California corporation (“Point.360” or “Debtor”) and I have personal knowledge of the facts set forth herein. I offer this declaration in support of the Debtor’s motion for a 90-day extension of exclusivity periods.

2. On October 10, 2017, the Debtor filed a voluntary chapter 11 petition. The Debtor continues to manage and operate its business as a debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108. No Official Committee of Creditors Holding Unsecured Claims has been appointed in Debtor’s case to date.

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12 EBITDA for 2105 - 2016, which continued into the fiscal 2017 period, has resulted in Debtor's
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14 7. After the initial disappointing results of the MVF acquisition, Debtor initiated a
15 business plan to reduce expenses and reestablish profitability. The significant changes to Debtor's
16 operations are as follows:

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26 satisfying REEP's claim. Debtor believes that it will be able to eliminate an almost \$1
27 million unsecured claim through a consensual resolution with REEP, subject to Court
28 approval.

1 8. While Debtor was working toward profitability, Debtor received a 3-day notice to
2 pay rent or quit for its Media Center facility on October 6, 2017. The Debtor presently intends to
3 retain the Media Center facility as a component of the reorganized business. Consequently,
4 Debtor was required to file its chapter 11 petition on October 10, 2017 to maintain its core
5 operating facilities and implement its reorganization plan through the chapter 11 process.

6 9. From a business operations standpoint, Debtor's post-petition period was
7 dominated by the need to preserve and maintain customer and employee relationships impacted by
8 the chapter 11 filing and concurrently fully close and transition operations from its Empire facility
9 without disrupting workflow. The transition out of Empire required substantial technical service
10 work regarding computer network and server equipment. Debtor duly accomplished these
11 burdensome business obligations while staying on budget both in terms of projected income and
12 expenses. Debtor completed its transition out of the Empire facility as needed to preserve its
13 opportunity to resolve the REEP \$1 million unsecured claim.

14 10. In addition to business burdens, Debtor duly addressed all legal issues arising from
15 filing its chapter 11 case. After filing its voluntary chapter 11 petition on October 10, 2017,
16 Debtor filed first day motions to facilitate continued operations, including a motion to use Austin
17 Financial Service, Inc's ("Austin") cash collateral and pay prepetition payroll to approximately
18 250 employees. The cash collateral motion was granted on an interim basis and prepetition
19 payroll authorized per orders entered October 12, 2017. *See* ECF #s 13 and 14. Debtor continued
20 authorized use of cash collateral through a final order entered December 19, 2017. *See* ECF # 94.

21 11. During the period of cash collateral usage, Debtor negotiated a substantial Debtor
22 in Possession financing facility ("DIP Financing") with Austin. DIP Financing was critical to
23 support and strengthen Debtor's continuing operations through October 2018 and convey
24 confidence in Debtor's business operations to customers, vendors and employees. On November
25 22, 2017 Debtor moved to approve the DIP Financing. Medley objected to the DIP Financing and
26 conducted discovery including a lengthy deposition of Mr. Bagerdjian. The DIP Financing was
27 approved over Medley's objections per order entered December 22, 2017. *See* ECF # 101. Debtor
28 timely moved for an award of attorney's fees under an attorney fee shifting clause of Medley's

1 loan agreement and California Civil Code § 1717(a) set for hearing concurrently herewith. *See*
2 ECF # 111.

3 12. Medley has also recently moved for adequate protection with an initial hearing set
4 for January 11, 2018. The matter was continued to February 7, 2018. In connection with
5 Medley's motion, Debtor has requested the production of documents from Medley regarding the
6 MVF Purchase Agreement transaction in which the Medley financing was an integrated
7 component.

8 13. A claims bar date is set for January 31, 2018 and 36 claims have been filed to date.
9 Debtor scheduled over 165 creditors, so many more claims are anticipated, including Medley's
10 claims. The Debtor's significant liabilities, disputed and undisputed, are summarized as follows:

11 Medley Opportunity Fund II, LP ("Medley"): \$6,477,565.

12 Austin: \$2,475,676.48.

13 REEP (Empire lessor per prepetition stipulation): \$927,522.30.

14 Other 20 largest unsecured creditors: approximately \$1.5 million.

15 Various other insider, relatively small trade and contingent liabilities, including personal
16 property equipment leases.

17 14. The Debtor scheduled Medley as a contingent, unliquidated and disputed creditor.
18 *See* ECF 45:15. Debtor further identified certain claims concerning Medley in its schedules as
19 follows and Debtor is actively investigating these claims:

20 Point.360 is investigating and fully reserves all rights, claims and defenses arising from its
21 acquisition of the assets of Modern VideoFilm ("MVF") in 2015. On July 8, 2015, Point.360
22 acquired certain assets of MVF including, but not limited to, MVF's equipment, inventory, and
23 accounts receivable. Point.360 concurrently entered into a Term Loan Agreement with Medley
24 Capital Corporation and Medley Opportunity Fund II, LP (collectively "Medley"). The Medley
25 Term Loan Agreement is comprised of a five-year term loan facility in the amount of \$6,000,000,
26 \$1,000,000 of which was funded on the July 8, 2015 closing date. As of March 31, 2017, the
27 Company had borrowed the \$6,000,000 under the Medley Loan Agreement. Debtor has elected to
28 pay interest as payment in kind ("PIK") as permitted by the Loan Agreement. The outstanding
principal balance and all accrued and unpaid interest on the Term Loan are due and payable on
July 8, 2020. As further consideration for the MVF sale purchase transaction, the Debtor issued
2,000,000 shares of common stock, and five-year warrants to purchase an aggregate of 800,000
shares of common stock at an exercise price of \$0.75 per share. As consideration for the Medley
Loan Agreement, the Debtor also issued warrants to Medley to purchase an aggregate of 500,000
shares of common stock.

1 The MVF transaction resulted in substantial and unanticipated operating losses requiring
2 that Debtor reorganize its financial affairs. Point.360 entered into the MVF acquisition in reliance
3 on misleading information concerning MVF's profitability. For example, Point.360 was given pro
4 forma projections showing \$29 million in sales and \$4.1 million in EBITDA for the 2015 - 2016
5 period. Actual results after the MVF acquisition resulted in \$15.6 million in sales and EBITDA of
6 negative \$6.3 million. This \$10.4 million difference between projected and actual EBITDA for
7 2105 - 2016, which continued into the fiscal 2017 period, has resulted in Debtor's need for
8 financial reorganization.

9 Claims by prior ownership related to the MVF sale were asserted in Los Angeles Superior
10 Court case number BC583437 captioned, Moshe Barkat and Modern VideoFilm Holdings, LLC
11 vs. Medley Capital Corporation; Medley Opportunity Fund II LLP; MCC Advisors, LLC; Deloitte
12 Transactions and Business Analytics, LLP A/K/A/ Deloitte CRG; Charles Sweet; Modern
13 VideoFilm, Inc. and Does 1 through 10 inclusive. The facts, circumstances and claims set forth in
14 the Barkat complaint, among others, may give rise to claims held by Point.360 against some or all
15 of the same parties.

16 *See* ECF 45:12.

17 15. Debtor has also retained the following professionals with employment applications
18 filed or to be filed prior to the hearing on this motion: Lewis R. Landau as general bankruptcy
19 counsel per order entered November 27, 2017. *See* ECF # 58. TroyGould, LLP as special
20 transactional counsel. An order is pending Court approval. *See* ECF # 60. McCabe & Hogan,
21 P.C. as special litigation counsel. Holthouse Carlin & Van Trigt LLP as accountants for tax
22 returns. GlassRatner Advisory & Capital Group, LLP as financial consultant and expert witness.

23 16. Finally, Debtor negotiated resolution of various executory contract issues with
24 creditors. Debtor obtained approval of motions to assume insurance premium finance and payroll
25 services contracts with AFCO Acceptance Corporation ("AFCO") [ECF # 40] and ADP, LLC
26 ("ADP") [ECF # 100]. Debtor also obtained stipulations for 90-day extensions of time to assume
27 or reject real property leases pursuant to 11 U.S.C. § 365(d)(4) with lessors LEAFS Properties,
28 L.P. ("LEAFS") regarding the Media Center facility and HWay, LLC (an affiliate that I wholly
own) for the HWay facility. Such stipulations will be filed shortly.

17 17. Finally, to the best of my knowledge, Debtor is in full compliance with all of its
18 duties under 11 U.S.C. §§ 521, 1106 and 1107 and all applicable guidelines of the Office of the
19 United States Trustee, including all Monthly Operating Reports.

20 18. The Debtor intends to seek approval of a disclosure statement and confirmation of a
21 plan of reorganization that will be designed to pay allowed claims and interests. The Debtor

1 intends to utilize the proceeds of its business plan to allocate pro rata payments to its unsecured
2 creditors, after paying priority and administrative claims in full. The Debtor intends to propose a
3 disclosure statement and plan of reorganization based on appropriate projections with respect to its
4 anticipated revenues over the course of the next three to five years.

5 19. Debtor's current plan and disclosure statement filing deadline set at the December
6 14, 2017 case status hearing is April 1, 2018, subject to extension for cause shown. Debtor may
7 require an extension of the current plan and disclosure statement filing deadline based on claims
8 related matters arising after the bar date. The requested extension will provide Debtor sufficient
9 flexibility for a potential 30-day extension of the plan and disclosure statement filing deadline.

10 20. Maintaining exclusivity for an additional 90 days will facilitate moving the case
11 forward toward a fair and equitable resolution. A 90-day extension will advance the plan filing
12 and plan acceptance exclusivity periods to May 8, 2018 and July 7, 2018, respectively.

13 21. The within request to extend exclusivity constitutes the Debtor's first such request.
14 The Debtor will be similarly seeking approval of stipulations for 90-day extensions of the
15 Debtor's time to assume or reject its real estate leases. Fundamental plan-related terms cannot be
16 determined until claims are filed, reviewed and reconciled for plan treatment. In addition, Debtor
17 anticipates filing a motion to approve a settlement with REEP to resolve that \$1 million claim
18 pursuant to FRBP 9019. The requested 90-day extension should be sufficient to allow the Debtor
19 to address these fundamental case contingencies.

20 22. Although this is not a "mega case," the Debtor's Chapter 11 case clearly involves
21 complicated "case aspects" that create complexity with respect to advancing the case through a
22 chapter 11 plan now. The Debtor must conclude its negotiations with REEP toward eliminating a
23 potential \$1 million claim in the case and address Medley's substantial claims once filed.

24 23. Ascertaining a fixed and final schedule of claims to be addressed under the
25 Debtor's anticipated plan of reorganization is a fundamental aspect of plan preparation and will
26 determine the term of any plan that is designed to pay allowed claims in full. The requested
27 exclusivity extension will presumably provide the Debtor with sufficient time to conclude its lease
28 negotiations and related matters involving the landlords, to reconcile claims after the bar date has

1 passed, to file any objections to claims, and to draft and propose its chapter 11 plan. The
2 requested extension of exclusivity is reasonable in view of these complicated aspects of the
3 Debtor's Chapter 11 case.

4 24. The Chapter 11 case has not been pending long relative to the contingencies
5 creating complexity in this particular case. The initial 120-days of Debtor's case has been
6 consumed by business obligations related to preserving and maintain customer and employee
7 relationships impacted by the chapter 11 filing and concurrently fully closing and transitioning
8 operations from its Empire facility without disrupting workflow. From a legal standpoint, the
9 Debtor filed and stabilized its case ultimately obtaining approval of the DIP Financing facility and
10 addressing numerous case compliance matters.

11 25. The Debtor is not proceeding in bad faith. The facts of the Debtor's case strongly
12 point to the contrary conclusion, i.e., that the Debtor is proceeding in good faith, making all
13 required disclosures and demonstrating its transparency and desire to facilitate a resolution which
14 will inure to the benefit of all its general unsecured creditors. Avoiding liquidations is a
15 fundamental purpose underlying chapter 11. The Debtor's case fulfills the primary purposes of
16 chapter 11 and clearly was filed in good faith as Debtor is acting to avoid liquidation and the
17 negative impact thereof on approximately 250 jobs, numerous suppliers and the economy. Such
18 good faith will continue into the Debtor's plan proposal, which will be developed over the
19 extended exclusivity period.

20 26. The Debtor is operating profitably post-petition. *See*, ECF # 53, 83 (MORs 1 and
21 2) and ECF # 96 (cash flow projections supporting DIP loan). The Debtor has timely paid its post-
22 petition expenses.

23 27. The Debtor has a reasonable prospect for filing a viable plan. The Debtor's cash
24 flow projections reflect the Debtor's ability to generate revenues to support a plan. The Debtor
25 will need to strategically determine how best to maximize value for the estate through negotiated
26 resolutions with some or all its substantial creditors, which may include sale or abandonment of
27 certain personal property assets. Debtor has retained GlassRatner Advisory & Capital Group,
28 LLC as financial consultant and expert witness to support Debtor's plan formulation efforts. All

1 this complex strategic planning is in process and requires additional time to reasonably conclude
2 in the best interests of the estate.

3 28. The Debtor is earnestly working both to maintain satisfactory relationships and to
4 make progress with its key creditors and customers. Debtor negotiated and concluded the DIP
5 Financing facility with Austin. Debtor negotiated and resolved executory contract issues with
6 AFCO, ADP, LEAFS and HWay. Debtor is continuing negotiations toward resolution of a
7 substantial almost \$1 million claim with REEP. To date, the Debtor has remained current on its
8 post-petition obligations. The Debtor has cooperated with responding to general creditor inquiries
9 and is properly administering its chapter 11 estate. The Debtor has also retained a financial
10 consultant to assist the Debtor in developing its plan.

11 29. Medley remains an adversarial party having opposed most of Debtor's requests for
12 relief and having recently moved for an unspecified form of adequate protection. Nonetheless, I
13 contacted Medley's business representative to open a line of communication. While this contact
14 has not yet brought consensus, Debtor remains willing to negotiate with Medley as matters
15 develop within the bankruptcy case. Debtor anticipates further negotiations with Medley during
16 the requested extension period.

17 30. The Debtor is seeking a 90-day extension of exclusivity consistently with its
18 concurrently pending request for approval of stipulations for 90-day extensions of the Debtor's
19 time to assume or reject its real estate leases. The instant extension as requested by this Motion
20 seeks to retain exclusivity and the *status quo*, and thereby avoid the cost and expense of competing
21 plans while fundamental case contingencies are in the process of being addressed and resolved.

22 31. No committee was appointed in this case. Nonetheless, the Debtor has remained
23 current with respect to all its United States Trustee ("UST") reporting requirements and the filing
24 of its UST Monthly Operating Reports. The Debtor has responded affirmatively to all requests for
25 information or documentation received from general creditors. The Debtor is, therefore, duly
26 meeting all its disclosure requirements and is not depriving the creditors of any material or
27 relevant information.
28

32. The Debtor is making good faith progress toward proposing a confirmable chapter 11 plan of reorganization. The Debtor's case is in good standing before the Court and with respect to its compliance with the UST Guidelines and all other compliance UST and Bankruptcy Court requirements. Maintaining exclusivity for an additional 90 days will facilitate moving the case forward toward a fair and equitable resolution.

33. For these reasons, on behalf of the Debtor, I respectfully request an order approving the extensions of the Debtor's plan filing and plan acceptance exclusivity periods sought pursuant to 11 U.S.C. § 1121(d) for 90 days each.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 11th day of January 2018 at Los Angeles, California.

Haig S. Bagerdjian

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
22287 Mulholland Hwy., #318
Calabasas, CA 91302

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION FOR** (*specify name of motion*)
ORDER GRANTING 90-DAY EXTENSION OF EXCLUSIVITY PERIODS;

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 01/11/2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 01/11/2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Judge Brand, US Bankruptcy Court, 255 E Temple Street, Suite 1382, Los Angeles, CA 90012

Attached list of 20 largest unsecured creditors and secured creditors not otherwise receiving NEF notice.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

01/11/2018
Date

Lewis R. Landau
Printed Name

/s/ Lewis R. Landau
Signature

ADDITIONAL SERVICE INFORMATION (if needed):

NEF Service List (category I):

William S Brody on behalf of Creditor Austin Financial Services, Inc.
wbrody@buchalter.com, dbodkin@buchalter.com; IFS_filing@buchalter.com

Sara Chenetz on behalf of Interested Party Sara L. Chenetz
schenetz@perkinscoie.com, dlax@perkinscoie.com; cmallahi@perkinscoie.com

Peter A Davidson on behalf of Interested Party Courtesy NEF
pdavidson@ecjlaw.com, lpekrul@ecjlaw.com

Brian T Harvey on behalf of Creditor Austin Financial Services, Inc.
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Lewis R Landau on behalf of Debtor Point.360, a California Corporation
Lew@Landaunet.com

Alvin Mar on behalf of U.S. Trustee United States Trustee (LA)
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Shane J Moses on behalf of Interested Party Courtesy NEF
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Ronald A Spinner on behalf of Creditor Softitler dba Deluxe Localization Sfera
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Arvin Tseng on behalf of Creditor TROY / GOULD PC
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United States Trustee (LA)
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Latonia Williams on behalf of Creditor UnitedHealthcare Insurance Company
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~~Judy Eastin~~
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~~William Gould~~ NEF
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California Physicians' Service
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WILCON
 Glenn Nieves
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 Jeremy Stewart
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 U.S. Bank Equipment Finance
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~~William Brody~~ NEF
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