

# EXHIBIT A

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Settlement Agreement,” “Settlement,” or “Agreement”) is made and entered into on August 21, 2023, by and between: (a) Joseph McAlear (the “Named Plaintiff”) individually and on behalf of the proposed class of individuals he seeks to represent (the “Settlement Class,” defined below), on the one hand; and (b) nCino, Inc. (“nCino”), on the other hand.

**WHEREAS**, the Named Plaintiff is an individual and representative plaintiff in the action captioned *McAlear v. nCino, Inc., et al.*, Case No. 7:21-cv-00047-M (E.D.N.C.) (the “Action”);

**WHEREAS**, on March 12, 2021, the Named Plaintiff filed a Complaint (Dkt. 1) that alleges, among other things, that Live Oak Bancshares, Inc. and Apiture, Inc. entered into an agreement with nCino to restrict hiring in violation of federal and state antitrust laws;

**WHEREAS**, the Named Plaintiff and nCino (collectively the “Settling Parties” or “Parties”) have engaged in substantial arm’s-length negotiations in an effort to resolve all claims that have been, or could have been, asserted in the Action, including through confidential mediation discussions with Jonathan Harkavy, which negotiations resulted in this Settlement Agreement;

**WHEREAS**, the Parties are entering into the Settlement Agreement to eliminate the burdens, distractions, expense, and uncertainty of further litigation;

WHEREAS, in entering into this Settlement Agreement, nCino does not admit and expressly disclaims any wrongdoing or liability; and

**WHEREAS**, based on their analysis of the merits of the claims and the benefits provided to the Class by the Settlement Agreement, including an evaluation of a number

of factors including the substantial risks of continued litigation and the possibility that the litigation if not settled now might not result in any recovery whatsoever for the Class or might result in a recovery that is less favorable to the Class, the Named Plaintiff and “Class Counsel,” defined below, have concluded that it is in the interest of all members of the Settlement Class to resolve finally and completely the Released Claims, defined below, and that the terms of the Settlement Agreement are in the best interests of the Settlement Class and are fair, reasonable, and adequate; and

**NOW, THEREFORE**, in consideration of the promises, agreements, covenants, representations, and warranties set forth herein, and other good and valuable consideration provided for herein, the Settling Parties agree to a full, final, and complete settlement of the Action on the following terms and conditions:

**I. GENERAL TERMS OF THE SETTLEMENT AGREEMENT**

**A. Definitions**

In addition to terms identified and defined elsewhere in this Settlement Agreement, and as used herein, the terms below shall have the following meanings:

1. “Action” or “Litigation” means the lawsuit captioned *McAlear v. nCino, Inc., et al.*, Case No. 7:21-cv-00047-M (E.D.N.C.).
2. “Apiture” means Apiture, Inc., as well as any direct or indirect wholly-owned subsidiary of the same.
3. “Attorneys’ Fees and Expenses” means the amounts approved by the Court for payment to Class Counsel, including attorneys’ fees, costs, and litigation expenses, as described in Section VI.A herein, which amounts are to be paid solely from the Settlement Fund.
4. “Cash Compensation” means salary plus bonus.

5. “Court” means the United States District Court for the Eastern District of North Carolina.

6. “Defendants” means Live Oak Bancshares, Inc., nCino, Inc., and Apiture Inc.

7. “Effective Date” is the effective date of the Settlement Agreement, as defined in Section II.H herein.

8. “Escrow Agent” means Citibank, N.A., which shall enter into an escrow agreement to carry out the tasks more fully detailed in that agreement, including to receive, hold, invest, and disburse the Settlement Fund, subject to the direction of the Notice Administrator. The Settling Parties may replace Citibank, N.A. with another mutually agreeable financial institution.

9. “Final Approval” means the order of the Court granting final approval of the Settlement Agreement pursuant to Federal Rule of Civil Procedure 23(e).

10. “Final Approval Hearing” or “Fairness Hearing” means the hearing at which the Court will consider the Named Plaintiff’s motion for judgment and final approval of the Settlement.

11. “Live Oak” means Defendant Live Oak Bancshares, Inc. and its wholly-owned subsidiary, Live Oak Banking Company.

12. “nCino” means Defendant nCino, Inc., as well as any direct or indirect wholly-owned subsidiary of the same.

13. “nCino’s Counsel” means the law firms of Williams & Connolly LLP, Sidley Austin LLP, and Robinson, Bradshaw & Hinson P.A.

14. “Notice” means a notice of the proposed Settlement, in a form to be agreed upon by the Parties, which will be provided to the Settlement Class.

15. “Notice Administrator” means JND Legal Administration, which will be engaged to provide notice to the Class and administer the Settlement Fund pursuant to Sections II.B and IV below and by order of the Court.

16. “Order and Final Judgment of Dismissal” means the Order which shall be entered by the Court as described in Section II.F herein.

17. “Plan of Allocation” means the formula by which the Settlement Fund shall be distributed to Settlement Class Members as well as the timing and other aspects of the distribution, in a form to be agreed upon by the Parties.

18. “Plan of Notice” means the plan for distributing the Notice to Settlement Class.

19. “Preliminary Approval” means the Court’s Order preliminarily approving the Settlement, the Plan of Notice, the form of Notice, and other related matters, including directing that notice of same be sent to the Class.

20. “Protective Order” means a stipulated protective order the Parties anticipate entering into in the Action.

21. “Released Claims” means those claims specified in Section V.

22. “Released Parties” means nCino, Inc., and all of its respective current and former parents, subsidiaries, divisions, stockholders, insurers, agents, employees, trustees, officers, directors, attorneys, affiliates and governing bodies (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing).

23. “Releasor” shall mean the Named Plaintiff and each Settlement Class Member, each of their respective current and former heirs, executors, administrators, and assigns; and anyone claiming by or through any of the foregoing.

24. “Settlement,” “Agreement,” and “Settlement Agreement” each mean the instant settlement terms agreed to by the Settling Parties as reflected in this Settlement Agreement.

25. “Settlement Class” or “Class” means all natural persons employed by Live Oak, Apiture, or nCino in North Carolina at any time from January 27, 2017 through March 31, 2021 (the “Class Period”). Excluded from the Settlement Class are: members of the boards of directors, C-suite, executive level managers, and any and all judges and justices and chambers’ staff assigned to adjudicate any aspect of this litigation.

26. “Settlement Class Counsel” or “Class Counsel” means the law firms of Lief Cabraser Heimann & Bernstein, LLP and Elliot Morgan Parsonage, PLLC.

27. “Settlement Class Member” or “Class Member” means any person who meets the “Settlement Class” definition above and who has not timely and properly opted out of the Settlement.

28. “Settlement Fund” is the account set up by the Escrow Agent into which nCino’s Settlement Payment is paid.

29. “Settlement Payment” means two million one hundred ninety thousand dollars (\$2,190,000) that nCino shall pay or cause to be paid as described in Section III.A to be held, invested, administered, and disbursed pursuant to this Settlement Agreement.

30. “Settling Parties” or “Parties” means the Named Plaintiff Joseph McAlear, on the one hand, and nCino, on the other.

**B. Cooperation to Effectuate the Settlement**

The Named Plaintiff and nCino agree to cooperate to the extent reasonably necessary in order to effectuate this Settlement, including after it has received Final Approval, as set forth in Section III.B.

**II. COURT APPROVAL OF SETTLEMENT AND CLASS NOTICE**

**A. Retention of Notice Administrator**

Class Counsel has retained the Notice Administrator, which shall be responsible for the notice administration process, calculation of payments to Class Members based on the Plan of Allocation approved by the Court, distributions to Class Members, withholding and paying applicable taxes, and other duties as provided herein. The Notice Administrator has signed and is bound by the Protective Order in the Action. The fees and expenses of the Notice Administrator shall be paid exclusively out of the Settlement Fund. Prior to the Effective Date, expenses incurred by the Notice Administrator relating to this Settlement and approved by the Court shall be paid solely from the Settlement Fund, as set forth in Section III.A., upon invoice to Class Counsel. In no event shall nCino or the Released Parties be jointly or separately responsible for fees or expenses of the Notice Administrator.

**B. Preliminary Approval and Notice of Settlement**

1. No later than fourteen (14) days after the execution date of this Settlement, the Named Plaintiff, by and through Settlement Class Counsel, shall file with the Court a motion for Preliminary Approval of the Settlement and Exhibits, which will include the Settlement Agreement, a proposed Preliminary Approval Order, a proposed Notice, a proposed Plan of Allocation, and a proposed Plan of Notice. nCino shall have the right to review and comment on these documents, and Class Counsel shall provide nCino with

reasonable time to conduct such review. Class Counsel shall consider any such comments in good faith, and shall not unreasonably reject such comments.

2. nCino will provide, or cause to be provided, timely notice of such submission pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b).

3. In the event that the Court preliminarily approves the Settlement, Class Counsel shall, in accordance with Rule 23(c)(2) of the Federal Rules of Civil Procedure, direct the Notice Administrator approved by the Court to provide the Class with Notice no later than thirty (30) days after receiving the information necessary to effectuate Notice from all Defendants. Class Counsel shall provide nCino with four (4) business days notice before Notice is disseminated to the Class.

4. If the Court denies the motion for Preliminary Approval without leave to file a revised motion for Preliminary Approval, and appellate review is not sought or is denied, the case will proceed as if no settlement had been attempted, and the Settling Parties shall be returned to their respective procedural postures, i.e., *status quo* as of August 21, 2023, so that the Settling Parties may take such litigation steps that the Named Plaintiff or nCino otherwise would have been able to take absent the pendency of this Settlement Agreement.

5. After the date of Preliminary Approval, the Notice Administrator shall create and maintain a case-specific website to contain the Notice, Settlement Agreement, and other relevant case documents. nCino shall have the right to review and comment on the content of the website, and Class Counsel shall provide nCino with reasonable time to

conduct such review. Class Counsel shall consider any such comments in good faith, and shall not unreasonably reject such comments.

6. For purposes of effectuating notice, within fourteen (14) days after the date of Preliminary Approval, nCino will provide the Notice Administrator a list of current or most-recently known names, addresses, email addresses, social security numbers, and individual total Cash Compensation during the class period for all current or former employees who meet the criteria for the Settlement Class, to the extent that information exists within nCino's records and has not been provided already to the Notice Administrator. The Notice Administrator shall ensure that this information is kept confidential except to the extent the Notice Administrator must use such information to carry out its obligations under this Settlement Agreement.

7. Subject to Court approval, disbursements for any payments and expenses incurred in connection with the costs of notice and administration of the Settlement Fund by the Notice Administrator shall be made from the Escrow Account as set forth in Section III.A upon written notice to the Escrow Agent by Class Counsel of such payments and expenses.

**C. Objections**

Unless the Court provides otherwise, objections to the Settlement, if any, must be submitted in writing, and must include a detailed description of the basis of the objection. Objections must be filed with the Court, with copies served on Class Counsel and nCino's Counsel, postmarked on or before a date certain to be specified on the Notice, which shall be thirty (30) days after the Notice was initially sent to the Settlement Class. No one may appear at the Final Approval Hearing for the purpose of objecting to the Settlement without first having filed and served his or her objection(s) in writing

postmarked on or before thirty (30) days after the notice was initially provided. Under no circumstances shall the Settling Parties, Class Counsel, or nCino's Counsel solicit or encourage any individual to object to the Settlement.

**D. Certification of Settlement Class**

The Parties to this Agreement hereby stipulate for purposes of settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the Settlement Class shall be certified for settlement purposes as to nCino. Such stipulation shall not constitute any admission or acknowledgement by nCino that certification of a class for trial or for any other purpose is appropriate. nCino reserves all rights to oppose class certification in the event the Settlement is not approved. Class Counsel shall file with the Court a motion for certification of the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) concurrently with the motion for Preliminary Approval.

**E. Opt-Out Period**

1. Class Members who are entitled, and wish, to opt out of the Class must complete and timely submit to the Notice Administrator a request for exclusion. To be effective, such requests for exclusion must state the Class Member's full legal name and address, the approximate dates of his or her employment with any of Live Oak, Apiture or nCino, and include a statement that the Class Member wants to be excluded from the Settlement.

2. All requests for exclusion must be signed and dated by the Class Member or his or her legal representative, and must be: (1) mailed to the Notice Administrator via First Class United States Mail and postmarked by a date certain to be specified on the Notice, which shall be thirty (30) calendar days after the Notice Administrator makes the

initial mailing of the Notice; or (2) received by the Notice Administrator by that date, provided, however, that if the Class Member mails the request for exclusion pursuant to option (1), it shall be effective only if received by the Notice Administrator on or before ten (10) calendar days after the end of the Opt-Out Period. The end of the “Opt-Out Period” shall be thirty (30) calendar days after the Notice Administrator makes the initial mailing.

3. A request for exclusion that does not comply with all of the provisions set forth in the applicable Notice will be invalid, and the person(s) serving such an invalid request shall be deemed Settlement Class Member(s) and shall be bound by the Settlement Agreement upon final approval.

4. Within seven (7) calendar days after the end of the Opt-Out Period, the Notice Administrator shall provide to all counsel for the Settling Parties all requests for exclusion that are timely received and shall prepare a summary of the opt outs to be filed with the Court, which shall include the total number of individuals who have opted out.

5. Individuals who opt out are not entitled to any monetary award under the Settlement and cannot object to the Settlement. With respect to any member of the Settlement Class who requests exclusion, nCino reserves all legal rights and defenses.

6. Settling Parties, Class Counsel, and nCino’s Counsel shall not solicit or encourage any individual to opt out of the Class.

**F. Final Approval**

1. The Final Approval Hearing shall be noticed for no earlier than one hundred (100) days from the date of Preliminary Approval to allow nCino sufficient time to complete the applicable obligations under the Class Action Fairness Act and also no

earlier than seventy (70) days from the date on which the Notice Administrator sent the Notice to the Settlement Class.

2. Prior to the Final Approval Hearing, on the date set by the Court, the Named Plaintiff, through Settlement Class Counsel, shall submit a motion for final approval by the Court of the Settlement between the Settling Parties and the entry of an Order granting Final Approval of the Settlement that:

- a. finds the Settlement and its terms to be fair, reasonable and adequate within the meaning of Rule 23(e) of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;
- b. finds that the Notice given constitutes due, adequate and sufficient notice, and meets the requirements of due process and any applicable laws;
- c. provides for service payments from the Settlement Fund to the Named Plaintiff in addition to whatever monies he shall receive from the Settlement Fund pursuant to the Court-approved Plan of Allocation;
- d. provides for payment of Attorneys' Fees and Expenses from the Settlement Fund;
- e. sets forth the method for allocating the Settlement Fund;
- f. approves the release of claims specified herein as binding and effective as to all Settlement Class Members permanently barring and enjoining all Settlement Class Members from asserting any Released Claims;
- g. and reserves exclusive and continuing jurisdiction over the Settlement, and the administration, consummation and interpretation of this Settlement Agreement.

3. nCino shall have the right to review and comment on the motion for final approval, and Class Counsel shall provide nCino with reasonable time to conduct such review. Class Counsel shall consider any such comments in good faith, and shall not unreasonably reject such comments.

4. If so required by the Court in connection with approval of the Settlement, the Settling Parties agree to accept non-material or procedural changes to this Settlement Agreement. However, the Settling Parties are not obligated to accept any substantive change to their respective obligations.

**G. Rescission**

1. If the Court does not grant Final Approval to this Agreement or certify the Settlement Class or if such approval or certification is modified or set aside on appeal, or if the Court does not enter final judgment, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, then nCino and the Named Plaintiff shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) business days of the action giving rise to such option. If this Agreement is rescinded, within ten (10) business days of the later of the written notice of rescission to Class Counsel and the Escrow Agent and nCino's written instructions to the Escrow Agent, the Settlement Fund and any accrued interest, less only the cost of notice and settlement administration authorized by and actually and reasonably incurred pursuant to this Agreement and Court Order, shall be transferred to nCino, pursuant to nCino's instructions.

2. In no way shall the Named Plaintiff, the Settlement Class, or Settlement Class Counsel have the right to rescind, cancel, or terminate this Settlement Agreement if

the Court fails or refuses to grant any requested attorney's fees, any costs, or any awards to the Named Plaintiff, the Settlement Class, or Settlement Class Counsel.

3. nCino shall have the unilateral option to withdraw from the Settlement Agreement if the "Opt Out Threshold" is met. The Opt Out Threshold is met if: (1) total Cash Compensation paid to individuals who timely and validly opt out of the Settlement exceeds 10% of the total Cash Compensation paid to all members of the Settlement Class; or (2) the headcount of individuals who timely and validly opt out of the Settlement exceeds 10% of the headcount of all members of the Settlement Class.

4. For purposes of assessing and estimating the Opt Out Threshold, the Notice Administrator shall, at least twenty-eight (28) days before the Fairness Hearing, provide the Settling Parties (a) with a calculation of (i) total Cash Compensation paid to the Settlement Class, and (ii) total Cash Compensation paid to individuals that timely and validly opted out of the Settlement; and (b) back-up data sufficient for a Settling Party to independently verify the accuracy of the foregoing calculations. It is the Settling Parties' intention to use the best reasonably available information in making these calculations, but not to let the imprecision or incompleteness of such data stand in the way of making such calculations. The burden of proof, or disproof, is shared equally between the Settling Parties such that the Settling Parties equally bear the consequences of any imperfections or incompleteness of the available data.

5. To exercise its option to terminate the Settlement Agreement, nCino's counsel must provide Class Counsel with written notice no later than twenty-one (21) days prior to the Fairness Hearing.

6. If the Agreement does not become final, the Parties specifically agree that nCino's stipulation to a Settlement Class shall not be used or relied upon in support of certification of a litigation class.

**H. Effective Date of the Settlement**

On the date the Parties execute this Agreement, the Parties shall be bound by its terms and this Agreement shall not be rescinded except as set forth in this Agreement.

The Settlement shall become final and effective upon the occurrence of all of the following ("Effective Date"):

1. The Settlement receives Final Approval by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
2. As provided for in Section II.F herein, entry is made of the Order and Final Judgment of Dismissal; and
3. Completion of any appeal(s) from the Court's Order and Final Judgment of Dismissal and/or Order Granting Final Approval of the Settlement (including any such order on remand from a decision of an appeals court). It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above stated times. No Party shall cite any modification or reversal on appeal of any amount of the fees and costs awarded by the Court from the Settlement Fund, or the amount of any service award to the Named Plaintiff, by itself as a reason to prevent this Settlement from becoming final and effective if all other aspects of the final judgment have been affirmed. If no appeal is filed from the Court's order finally approving the Settlement under Rule 23(e) of the Federal Rules of Civil Procedure, the Effective Date shall be the date on which the time for any such appeals has lapsed.

### **III. CONSIDERATION FOR SETTLEMENT**

#### **A. Monetary Settlement Fund**

1. nCino shall pay or cause to be paid the Settlement Payment into the Settlement Fund as consideration for the Settlement in accordance with the following paragraphs. No part of the Settlement Payment shall constitute, nor shall it be construed or treated as constituting, a payment for treble damages, fines, penalties, forfeitures, or punitive recoveries.

2. The Settlement Payment reflects nCino's and the Released Parties' total obligation to the Settlement Class, including but not limited to (i) all claims by Settlement Class Members, (ii) all fees and costs of Class Counsel as ordered by the Court, (iii) all costs of Notice, claims administration, and taxes, and (iv) a service award payment to the Named Plaintiff as ordered by the Court. Under no circumstances shall nCino or the Released Parties be required to pay more than the Settlement Payment.

3. nCino shall remit (or cause to be remitted) the Settlement Payment into the Escrow Account within thirty (30) days following the later of (i) Preliminary Approval of the Settlement or (ii) the date nCino is provided with the account number, account name and wire transfer information for the Escrow Account.

4. The Escrow Agent shall place the Settlement Fund in an escrow account (the "Escrow Account") created by order of the Court intended to constitute a "qualified settlement fund" ("QSF") within the meaning of Section 1.468B-1 of the Treasury Regulations ("Treasury Regulations") promulgated under the U.S. Internal Revenue Code of 1986, as amended (the "Code"). The Escrow Account shall be administered under the Court's continuing supervision and control. The Settlement Fund will be invested in instruments secured by the full faith and credit of the United States or an interest bearing

or non-interest bearing deposit obligation of Citibank, N.A. insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits and any interest earned (or negative interest) thereon shall become part of (or paid from) the Settlement Fund. nCino shall be the “transferor” to the QSF within the meaning of Section 1.468B-1(d) (1) of the Treasury Regulations with respect to the Settlement Fund or any other amount transferred to the QSF pursuant to this Settlement Agreement. The Notice Administrator shall be the “administrator” of the QSF within the meaning of Section 1.468B-2(k)(3) of the Treasury Regulations, responsible for causing the filing of all tax returns required to be filed by or with respect to the QSF, paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable information reporting or tax withholding requirements imposed by Section 1.468B-2(l)(2) of the Treasury Regulations or any other applicable law on or with respect to the QSF. nCino and the Notice Administrator shall reasonably cooperate in providing any statements or making any elections or filings necessary or required by applicable law for satisfying the requirements for qualification as a QSF, including any relation-back election within the meaning of Section 1.468B-1(j) of the Treasury Regulations.

5. nCino and nCino’s Counsel shall have no responsibility to make any tax filings related to the Settlement Fund or to pay any taxes or tax expenses with respect thereto. In the event federal or state income tax liability is finally assessed against and paid by nCino as a result of any income earned on the funds in the Escrow Account, nCino shall be entitled to reimbursement of such payment from the funds in the Escrow Account after approval of the Court and whether or not Final Approval has occurred, but nCino shall be entitled to reimbursement only if: (1) in advance of paying such taxes,

nCino takes reasonable measures to coordinate with Class Counsel to have the taxes paid by the Escrow Account instead of being paid by nCino, and (2) there are available funds in the Escrow Account at the time of nCino's reimbursement request.

6. nCino, nCino's Counsel, and the Released Parties shall have no liability, obligation or responsibility with respect to the investment, disbursement, distribution, or other administration or oversight of the Settlement Fund or QSF and shall have no liability, obligation or responsibility with respect to any liability, obligation or responsibility of the Escrow Agent or Notice Administrator, including but not limited to liabilities, obligations or responsibilities arising in connection with the investment, disbursement or other administrations of the Settlement Fund and QSF.

7. The Settlement Fund and any payments to Class Members shall not be considered compensation under the terms of any benefits plan or for any purpose except for tax purposes to the extent contemplated by Section IV.B. Any taxes due as a result of income earned or payments made by the Settlement Fund shall be imposed upon and paid from the Settlement Fund provided, however, that in no event shall the failure to withhold sufficient funds to pay such taxes be a basis to shift any such tax obligations to nCino or otherwise increase the Settlement Payment. Interest earned by the Settlement Fund (less any tax imposed upon such interest) shall be for the benefit of the Class Members, less Attorneys' Fees and Expenses approved by the Court, any Court-approved service award to the Named Plaintiff, and payment of any and all administrative or other Court-approved expenses associated with the Action or the Settlement. nCino, the Released Parties, and nCino's Counsel shall have no liability, obligation or responsibility for any

such taxes, attorneys' fees and expenses, interest, service award or administrative or other expenses or for any reporting requirements relating thereto.

8. nCino's payment of the Settlement Payment to the Escrow Agent shall constitute full and complete satisfaction of nCino's obligations under this Section III.A. Following nCino's transfer of the Settlement Payment, nCino, the Released Parties, and nCino's Counsel shall have no liabilities, obligations or responsibilities with respect to the payment, disbursement, disposition or distribution of the Settlement Fund. Class Members shall look solely to the Settlement Fund for settlement and satisfaction against the Released Parties of the Released Claims, Attorneys' Fees and Expenses of Class Counsel ordered by the Court, any service award to the Named Plaintiff ordered by the court, and any administrative or other costs and expenses arising out of or related to the Action or the Settlement. Class Members shall not under any circumstances be entitled to any further payment from nCino, nCino's Counsel, or the Released Parties with respect to the Released Claims, the Action or the Settlement. In the event that the Settlement Agreement becomes final and effective, payment of the Settlement Payment shall fully satisfy any and all Released Claims. Except as provided by Order of the Court, no Class Member shall have any interest in the Settlement Fund or any portion thereof.

9. The Settlement Fund held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as the Settlement Fund shall be distributed pursuant to this Agreement or further order(s) of Court.

**B. nCino's Representations Regarding Its Employment Practices**

1. nCino represents that its employment practices comply with applicable antitrust laws and that it will not enter into, maintain or enforce any agreement with any other employer that violates the antitrust laws.

**IV. DISTRIBUTION OF SETTLEMENT FUND**

**A. Monetary Award to Class Members**

1. Within a reasonable time period after the Effective Date, and after all objections, collateral challenges or appeals relating to the Settlement have been fully and finally resolved, the Notice Administrator shall render a determination as to the monetary award that should be paid to each eligible Class Member from the Settlement Fund based on the methodology set forth in the Plan of Allocation as approved by the Court. To the extent that such calculations require information from any other Defendant, nCino shall have no obligation to assist the Named Plaintiff or Class Counsel in obtaining such information from such other Defendant.

2. The Notice Administrator's determination as to the monetary award that should be paid to each Class Member shall be final and not subject to review by, or appeal to, any court, mediator, arbitrator or other judicial body, including without limitation this Court. As shall be reflected in the Final Approval Order, Class Counsel, nCino, and nCino's Counsel shall have no responsibility, and may not be held liable, for any determination reached by the Notice Administrator. This Notice Administrator will work with Class Counsel to ensure that Class Member questions will be addressed appropriately.

3. For purposes of efficient administration of the Settlement Fund, and subject to court approval, Settlement Fund payments to Class Members shall be allocated one-third to wages and two-thirds to interest.

4. The Notice Administrator shall reserve \$35,000 from the Settlement Fund to resolve any Class Member disputes or payment issues (“Dispute Fund”) that arise within 180 days of the first date on which distribution of the Settlement Fund is made to Class Members.

5. The total amount of all monetary awards paid to Class Members, as determined by the Notice Administrator, shall not exceed the net amount of the Settlement Fund after all costs, expenses, service award, attorneys’ fees and costs, and taxes have been paid, and the Dispute Fund has been reserved or fully utilized, provided, however, that in no event shall the failure to withhold sufficient funds to pay such taxes be a basis to shift any such tax obligations to nCino or the Released Parties or otherwise increase the Settlement Payment.

6. In the event monies remain as residue in the Settlement Fund following all distribution efforts approved by the Court and payment of all costs, expenses, service award, Attorneys’ Fees and Expenses, and taxes (including, for example, residue resulting from Class Members’ failure to negotiate checks or the Dispute Fund not having been fully utilized) (“Residue”), the Notice Administrator will determine whether there are sufficient funds remaining to issue an additional distribution to Class Members consistent with the Plan of Allocation. This process will continue until the Notice Administrator determines that there are no longer sufficient funds remaining to issue another distribution to Class Members (in no event may the Notice Administrator so

determine if there is \$200,000 or more remaining in the Settlement Fund). The remainder, if any, will be distributed cy pres to Step Up Wilmington, or through such other disposition as the Court deems appropriate.

**B. Payment of Federal, State and Local Taxes**

1. Payments to the Named Plaintiff and other Class Members from the Escrow Account will be subject to applicable tax withholding and reporting requirements and shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and applicable FICA and Medicare taxes.

2. The Notice Administrator, as administrator of the QSF, and on behalf of the QSF, is expected to and shall carry out all the duties and obligations of the QSF in accordance with the Code and Treasury Regulations and all other applicable law, including the income tax reporting obligations of the QSF and in respect of all reporting, withholding and employment taxes and all information reporting requirements with respect thereto.

3. The Notice Administrator, as administrator of the QSF, shall report that portion of the Settlement Fund payable as wages by the QSF to each eligible Class Member and to the United States Internal Revenue Service (“IRS”) and to other appropriate taxing authorities (each of the IRS and any such other taxing authority, a “Taxing Authority,” and collectively, “Taxing Authorities”) on an IRS Form W-2, or any other applicable form. Such amounts shall be subject to applicable employment taxes and withholding taxes, including without limitation FICA, FUTA, Medicare and any state and local taxes, including without limitation SUTA, as determined by the Claims Administrator as administrator of the QSF making such payments.

4. The Notice Administrator shall pay from the QSF the employee's and employer's shares of all applicable U.S. federal, state, and local taxes, including without limitation the employer's share of FICA, FUTA, Medicare and any state and local taxes, including without limitation SUTA, required to be paid by an employee or employer on amounts treated as wages (all such U.S. federal, state and local taxes, collectively the ("Payroll Taxes"). The Named Plaintiff, Class Counsel, Class Members, and the Notice Administrator shall not seek payment for Payroll Taxes from nCino or the Released Parties.

5. If any portion of the Settlement Fund payable by the QSF to each eligible Class Member is determined to be treated as other than wages, the Notice Administrator, as administrator of the QSF, shall report that portion to the Class Member, and all applicable Taxing Authorities, to the extent required by law, under the Class Member's name and U.S. federal taxpayer identification number on IRS Forms 1099, 1042-S, or other applicable forms, and such payments shall be made without deduction for taxes and withholdings, except as required by law, as determined by the Notice Administrator, as administrator of the QSF making such payments.

6. The Notice Administrator shall be responsible to satisfy from the Settlement Fund any and all federal, state and local employment and withholding taxes, including, without limitation, federal, state and local income tax withholding, and any U.S. federal taxes including without limitation FICA, FUTA, and Medicare and any state employment taxes including without limitation SUTA. The Notice Administrator shall promptly provide to nCino the information and documentation (including copies of applicable IRS and state forms) reasonably requested by nCino with respect to the

payment or remittance of such employment and withholding taxes. The Notice Administrator shall satisfy all federal, state, local, and other reporting requirements (including without limitation any applicable reporting with respect to attorneys' fees and other costs subject to reporting), and any and all taxes, together with interest and penalties imposed thereon, and other obligations with respect to the payments or distributions from the Settlement Fund not otherwise addressed herein.

7. The Notice Administrator shall be responsible for procuring any required tax forms from Class Members prior to making any such payments or distributions.

8. For avoidance of doubt, nCino, the Released Parties, nCino's Counsel, the Named Plaintiff, and Class Counsel shall have no liability, obligation or responsibility whatsoever for tax obligations arising from payments to any Class Member, or based on the activities and income of the QSF. In addition, nCino, nCino's Counsel, and the Released Parties shall have no liability, obligation or responsibility whatsoever for tax obligations arising from payments to the Named Plaintiff or Class Counsel. The QSF shall be solely responsible for its tax obligations. Each Class Member shall be solely responsible for his/her tax obligations. Class Counsel shall be solely responsible for its tax obligations.

9. The Named Plaintiff, individually and on behalf of the Class, and Class Counsel and each of them represent and agree that they have not received and/or relied upon any advice and/or representations from nCino or nCino's Counsel as to taxes, including the taxability of the payments received pursuant to this Agreement. Class Counsel represent that neither the Named Plaintiff nor Class Counsel provided any advice as to the taxability of payments received pursuant to this Agreement.

**V. RELEASE**

1. Upon the Effective Date, the Releasors shall release, acquit, forever discharge and covenant not to sue the Released Parties for all claims, demands, judgment, actions, suits, and/or causes of action, damages, judgments, losses, and rights of action of every nature or description, whether class or individual, whether federal or state, known or unknown, asserted or unasserted, regardless of legal theory, arising in any way from or in any way related to the facts, activities, or circumstances alleged in the Action or any other purported restraint on competition for employment or compensation of, or affecting, the Settlement Class, among or between Live Oak, Apiture, and/or nCino, whether or not alleged in the Action up to the Effective Date of the Settlement Agreement (“Released Claims”). For the avoidance of doubt, this agreement shall not be construed to release any claims by any Live Oak, Apiture, or nCino employees unrelated to the facts, activities, or circumstances alleged in the Action, that allege (a) nCino breached a contract to pay compensation owed to that employee pursuant to that contract, or (b) a non-compete agreement between nCino and that employee is unenforceable. Each Releasor hereby covenants and agrees that he, she, or it shall not hereafter assert a claim or otherwise seek to establish liability against any Released Party for the Released Claims.

2. For the avoidance of doubt, each Releasor shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,

WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Releasor shall further be deemed to have, and shall have, waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the Released Claims. Nevertheless, each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Settlement becoming final, the Released Claims, whether any Released Claim is known or unknown, suspected or unsuspected, contingent or non-contingent, concealed or hidden, and also forever waives and relinquishes any and all rights and benefits existing under any law or principle of law in any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above.

**VI. ATTORNEYS' FEES AND EXPENSES**

**A. Attorneys' Fees and Expenses**

1. Prior to the deadline for objections to the Settlement pursuant to Section III.E., Class Counsel may apply to the Court for an award of Attorneys' Fees and Expenses incurred on behalf of the Class. All Attorneys' Fees and Expenses and any interest due to any counsel (to the extent any interest is awarded) shall be payable solely out of the Settlement Fund in such amounts as the Court orders. nCino shall have no liability or responsibility for attorneys' fees, costs, expenses, or interest thereon.

2. All Attorneys' Fees and Expenses shall be payable solely out of the Settlement Fund and may be deducted from the Settlement Fund prior to the distribution

to Class Members, after entry of an order by the Court approving any Attorneys' Fees and Expenses. The undersigned Class Counsel may withdraw from the Escrow Account and allocate amongst Class Counsel the Attorneys' Fees and Expenses so awarded.

3. nCino shall not oppose Class Counsel's request for Attorneys' Fees and Expenses or comment on the request unless directed to do so by the Court.

**VII. CLASS REPRESENTATIVE SERVICE AWARD**

1. At the Fairness Hearing, Class Counsel shall seek Court approval for a service award to the Named Plaintiff to compensate him for his contributions to this Action. The proposed service award shall be in addition to any monetary award to the Named Plaintiff under the Plan of Allocation, and is subject to Court approval. Such service award shall be paid by the Notice Administrator solely out of the Settlement Fund upon Court approval.

2. nCino agrees to take no position on such a service award to the Named Plaintiff. Any service award to the Named Plaintiff shall not be considered compensation under the terms of any benefits plan or for any purpose except to the extent required for tax purposes. The receipt of a service payment shall not affect the amount of any contribution to or level of benefits under any benefit plan.

**VIII. OTHER CONDITIONS**

**A. Settlement Does Not Become Effective**

In the event that the Settlement Agreement is terminated, is not finally approved (following the exhaustion of any appellate review) or does not become effective for any reason, judgment is not entered in accordance with this Agreement, or such judgment does not become final, then (a) this Settlement Agreement shall be null and void and of no force and effect, and (b) any release pursuant to Section V herein shall be of no force

or effect. In such event, the case will proceed as if no settlement has been attempted, and the Settling Parties shall be returned to their respective procedural postures, i.e., *status quo* as of August 21, 2023, so that the Settling Parties may take such litigation steps that the Settling Parties otherwise would have been able to take absent the pendency of this Settlement. However, any reversal, vacation, or modification on appeal of (1) any amount of the fees and expenses awarded by the Court to Class Counsel, or (2) any determination by the Court to award less than the amount requested in attorneys' fees and costs or service award to the Named Plaintiff, shall not give rise to any right of termination or otherwise serve as a basis for termination of this Settlement Agreement.

**B. No Admission and Preservation of Rights**

The Settling Parties expressly reserve all of their rights, contentions and defenses if this Settlement does not become final and effective in accordance with the terms of this Settlement Agreement. Whether or not Preliminary Approval is granted, Final Judgment is entered or this Settlement Agreement is terminated, the Parties expressly agree that this Settlement Agreement and its contents, and any and all statements, negotiations, documents and discussions associated with it, are not and shall not be deemed or construed to be an admission of liability by any Party. The Settling Parties further acknowledge and agree that the negotiations and discussions that led to this Settlement are fully protected from disclosure by Federal Rule of Evidence 408.

**C. Authority to Settle**

The undersigned represent and warrant each has authority to enter into this Settlement Agreement on behalf of the party indicated below his or her name.

**D. No Assignment**

The Settling Parties represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Action or any related action, and they further represent and warrant that they know of no such assignments or transfers on the part of any Settlement Class Member.

**E. Binding Effect**

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties and the Released Parties. Without limiting the foregoing, each and every covenant and agreement herein by the Named Plaintiff and Class Counsel shall be binding upon all Class Members.

**F. Mistake**

In entering and making this Agreement, the Settling Parties assume the risk of any mistake of fact or law. If the Settling Parties, or any of them, should later discover that any fact they relied upon in entering into this Agreement is not true, or that their understanding of the facts or law was incorrect, the Settling Parties shall not be entitled to seek rescission of this Agreement, or otherwise attack the validity of the Agreement, based on any such mistake. This Agreement is intended to be final and binding upon the Settling Parties regardless of any mistake of fact or law.

**G. Advice of Counsel**

Except as set forth in this Agreement, the Settling Parties represent and warrant that they have not relied upon or been induced by any representation, statement or disclosure of the other Settling Parties or their attorneys or agents, but have relied upon their own knowledge and judgment and upon the advice and representation of their own

counsel in entering into this Agreement. Each Settling Party warrants to the other Settling Parties that it has carefully read this Agreement, knows its contents, and has freely executed it. Each Settling Party, by execution of this Agreement, represents that it has been represented by independent counsel of its choice throughout all negotiations preceding the execution of this Agreement.

**H. Integrated Agreement**

This Settlement Agreement, including exhibits, contain the entire, complete, and integrated statement of each and every term and provision of the Settlement Agreement agreed to by and among the Settling Parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by the undersigned in the representative capacities specified, or others who are authorized to act in such representative capacities.

**I. Headings**

The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

**J. No Drafting Presumption**

All counsel to all Settling Parties hereto have materially participated in the drafting of this Settlement Agreement. No party hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

**K. Consent to Jurisdiction and Choice of Exclusive Forum**

Any and all disputes arising from or related to the Settlement must be brought by nCino, a Released Party, the Named Plaintiff, and/or each member of the Settlement Class, exclusively in the Court. nCino, the Named Plaintiff and each member of the Settlement Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability or interpretation of this Settlement Agreement, including, without limitation, any suit, action, proceeding or dispute relating to the release provisions herein, except that (a) this paragraph shall not prohibit any Released Party from asserting in the forum in which a claim is brought that the release herein is a defense, in whole or in part, to such claim, and (b) in the event that such a defense is asserted in that forum and the Court determines that it cannot bar the claim, this paragraph shall not prohibit the determination of the merits of the defense in that forum.

**L. Enforcement of Settlement**

Nothing in this Settlement Agreement prevents nCino or any Released Party from enforcing or asserting any release herein, subject to the provisions of Section V herein. Notwithstanding any other provision of this Settlement Agreement, this Settlement Agreement and the releases contained herein may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted by the Named Plaintiff or a Settlement Class Member with respect to any Released Claims and may be filed, offered and received into evidence and otherwise used for such defense.

**M. Severability**

In the event any one or more of the provisions of this Settlement Agreement shall for any reason be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision if nCino's Counsel and Settlement Class Counsel mutually agree to proceed as if such illegal, invalid, or unenforceable provision had never been included in the Settlement Agreement.

**N. Execution in Counterparts**

This Settlement Agreement may be executed in counterparts. Facsimile or PDF signatures shall be considered as valid signatures as of the date they bear.

**O. Appeals**

The proposed order and final judgment shall provide that any Class Member that wishes to appeal the Court's Final Approval Order and Final Judgment, which appeal will delay the distribution of the Settlement Fund to the Class, shall post a bond with the Court in an amount to be determined by the Court as a condition of prosecuting such appeal.

**P. Calculation of Time**

To the extent that any timeframe set out in this Settlement Agreement is ambiguous, said ambiguity shall be resolved by applying the conventions contained in Rule 6 of the Federal Rules of Civil Procedure.

**Q. Representations to the Court About Settlement Negotiations**

The Settling Parties confirm, and will so represent to the Court, that these settlement negotiations were arm's-length, that there was no discussion of attorneys' fees prior to or while negotiating the Settlement, and that there are no commitments between

the Settling Parties beyond what is in the Settlement. The Settling Parties agree this Settlement is beneficial to the Settlement Class and will not represent otherwise to the Court.

**R. Choice of Law Provision**

All terms of this Settlement Agreement shall be governed and interpreted according to the substantive laws of the State of North Carolina without regard to its choice of law or conflict of law principles.

IN WITNESS WHEREOF, the Settling Parties hereto through their fully authorized representatives have agreed to this Settlement Agreement.

**ACCEPTED AND AGREED:**

08/21/23 | 3:01 PM PDT

Dated: August \_\_\_\_, 2023

DocuSigned by:

*Anne B. Shaver*

7679DA1E251A41A...  
Anne B. Shaver

LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

*Counsel for Plaintiff Mr. Joseph McAlear and the  
Settlement Class*

Dated: August 21, 2023

*Dane H. Butswinkas*

Dane H. Butswinkas

WILLIAMS & CONNOLLY LLP

*Counsel for nCino, Inc.*