

1 SOMMERS SCHWARTZ, PC
Kevin J. Stoops (State Bar No. 332200)
2 kstoops@sommerspc.com
One Town Square, Suite 1700
3 Southfield, MI 48076
Telephone: 248-784-6613
4 Facsimile: 248-936-2143

5 Attorneys for Plaintiffs and Proposed Class and
Collective Members

6 SPENCER FANE LLP
7 John V. Picone III (State Bar No. 187226)
jpicone@spencerfane.com
8 Jennifer S. Coleman (State Bar No. 213210)
jcoleman@spencerfane.com
9 Elaisha Nandrajog (State Bar No. 301798)
enandrajog@spencerfane.com
10 225 West Santa Clara Street
Suite 1500
11 San Jose, California 95113
Telephone: 408.286.5100
12 Facsimile: 408.286.5722

13 Attorneys for Defendant
[24]7.ai, Inc.

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 ADRIANNA JARRETT AND MARY
18 NGETHE, individually and on behalf of all
other similarly situated,

19 Plaintiffs,

20 v.

21 [24]7.AI, INC.,

22 Defendant.

Case No. 23-cv-00677- EMC

**COLLECTIVE AND CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

1 1. This Collective and Class Action Settlement Agreement and Release is entered
2 into between Plaintiffs Adrianna Jarrett and Mary Ngethe, individually and as representatives of
3 the proposed Settlement Class Members described herein, and Defendant [24]7.ai, Inc., subject to
4 the approval of the Court.

5 **DEFINITIONS**

6 2. The following terms used in this Collective and Class Action Settlement
7 Agreement and Release shall have the meanings ascribed to them below:

8 a. “Action” or “Litigation” means the above-captioned lawsuit, *Jarrett et al. v.*
9 *[24].ai, Inc.*, Case number 23-cv-00677- EMC, pending in the United States District Court for the
10 Northern District of California.

11 b. “Agreement” or “Settlement” means the instant Collective and Class Action
12 Settlement Agreement and Release as of the date it is signed by all of the undersigned signatories.

13 c. “Attorneys’ Costs” means the amount, if any, the Court authorizes to be paid
14 to Class Counsel in reimbursement of reasonable litigation expenses Class Counsel incurred in
15 connection with this Action, in an amount up to Forty Thousand Dollars and Zero Cents
16 (\$40,000.00), including in connection with Class Counsel’s pre-filing investigation, their filing of
17 the Action, all related litigation activities, and all post-Settlement compliance procedures.

18 d. “Attorneys’ Fees” means the amount to be awarded to Class Counsel for Class
19 Counsel’s litigation and resolution of the Action. Class Counsel will not seek more than thirty-
20 three and one-third percent (33.33%) of the Gross Settlement Amount as their Attorneys’ Fees,
21 which pending Court approval, represents no more than Three Hundred and Sixty-Six Thousand
22 Six Hundred and Thirty Dollars and Zero Cents (\$366,630.00).

23 e. “Class” and/or “Class Members” means all non-exempt customer service
24 representatives (“CSRs”) engaged by Defendant during the Class Period, as follows: (i) the 848
25 non-exempt CSRs, including the Plaintiffs, who joined this Action by submitting opt-in consent
26 forms (available at Dkt. Nos. 1-3; 1-4; 50-1; 51-1’ 52-1; 53-1; 54-1; 55-1; 56-1; 57-1; 58-1; 59-1;
27 60-1; 61-1; 62-1; 63-1; 64-1; 67-1; 68-1; 70-1; 71-1; 72-1; 73-1; 74-1; 75-1; 76-1) following
28 Court approval of pre-discovery conditional certification in this Action pursuant to 29 U.S.C. §

1 216(b) (“Collective Opt-In(s)”); and (ii) all non-exempt CSRs who were engaged by Defendant
2 during the Class Period (estimated at 3,133 individuals by the Parties) but who did not submit
3 opt-in consent forms during the pre-discovery conditional certification period. (“Rule 23
4 Member(s)”).

5 f. “Class Counsel” means Kevin J. Stoops and Kathryn E. Milz of Sommers
6 Schwartz, PC.

7 g. “Class List” means the following information regarding Class Members that
8 Defendant will in good faith compile from its records and provide to the Settlement
9 Administrator: (i) each such individual’s full name; (ii) last known mailing address to the extent
10 available in Defendant’s electronic business records); (iii) email address to the extent available in
11 Defendant’s electronic business records); (iv) telephone number (to the extent available in
12 Defendant’s electronic business records); and (v) Social Security Number to the extent available
13 in Defendant’s electronic business records). The Class List shall also include the dates each such
14 individual’s engagement began and ended with Defendant during the Class Period. The Class
15 List shall also indicate whether each such individual is a Collective Opt-In.

16 h. “Class Notice” means the form entitled “Collective and Class Action Notice” to
17 be sent to Class Members in substantially the form attached hereto as Exhibit A, or as approved
18 by the Court.

19 i. “Class Period” shall be February 15, 2020 through the date the Court grants
20 Preliminary Approval of this Agreement or 60 calendar days from April 16, 2024 (whichever date
21 is earlier).

22 j. “Court” means the United States District Court for the Northern District of
23 California.

24 k. “Defendant” shall mean and refer to [24]7.ai, Inc.

25 l. “Defendant’s Counsel” shall mean and refer to Jennifer S. Coleman and Elaisha
26 Nandrajog of Spencer Fane LLP.

27 m. “Effective Date” means 1) if there are no objections to the Settlement, the first
28 business day following the last of the following occurrences: (i) the date the Court enters the

1 Final Approval Order and Judgment; (ii) if there is an objection, but no appeal is taken from the
2 Final Approval Order and Judgment, thirty-one (31) calendar days after the Court enters the Final
3 Approval Order and Judgment; or (iii) if an appeal is taken from the Final Approval Order and
4 Judgment, then the date of final resolution of that appeal (including any requests for rehearing
5 and/or petitions for certiorari), resulting in final and complete judicial approval of this Agreement
6 in its entirety, with no further challenge to the Agreement being possible.

7 n. “Final Approval Hearing” means the hearing at which the Court shall consider the
8 motion for final approval of this Agreement and determine whether to fully and finally approve
9 the fairness and reasonableness of this Agreement and enter the Final Approval Order and
10 Judgment.

11 o. “Final Approval Order and Judgment” means the order and judgment entered and
12 filed by the Court, that: (1) ultimately approves this Agreement; (2) awards and orders the
13 payment of all required amounts pursuant to the terms of this Agreement; and (3) enters judgment
14 in connection with the Action. The Final Approval Order and Judgment will constitute a binding
15 and final resolution, have full res judicata effect, and discharge Defendant and Released Parties
16 from liability for any and all claims by Plaintiff and all Settlement Class Members as to all Settled
17 Claims.

18 p. “FLSA” means the Fair Labor Standards Act, as amended, 29 U.S.C. §§
19 201, *et seq.*

20 q. “FLSA Settlement Payment” means the amount payable from the Net Settlement
21 Amount to each Settlement Class Member for resolution of the FLSA claim alleged in the Action,
22 which comprises a portion of the Individual Settlement Payment(s).

23 r. “Gross Settlement Amount” means a total payment of One Million and One
24 Hundred Thousand Dollars and Zero Cents (\$1,100,000.00) payable by Defendant under this
25 Agreement. The Gross Settlement Amount includes all Attorneys’ Fees, Attorney’s Costs,
26 Settlement Administration Costs, Incentive Award(s) to Plaintiffs, all employee taxes for the
27 wage portion of any Individual Settlement Payment(s), and the Net Settlement Amount to Class
28 Members. In no event shall Defendant be required to pay any amounts above the Gross

1 Settlement Amount to effectuate this Agreement, except that Defendant shall pay all employer
2 side taxes separately and in addition to the Gross Settlement Amount. The Settlement
3 Administrator will withhold the employees' share of taxes on settlement payments, as provided
4 below, and Class Members shall remain responsible for paying any additional taxes due on any
5 payments they are issued under the Agreement. No amount of the Gross Settlement Amount
6 will be reverted to Defendant and this Agreement does not require any claims-made process.

7 s. "Incentive Award(s)" means the individual payments to Plaintiffs as approved by
8 the Court, not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) to each Plaintiff, or
9 Ten Thousand Dollars and Zero Cents (\$10,000.00) in total, in recognition of Plaintiffs' efforts
10 and work in prosecuting the Action.

11 t. "Individual Settlement Payment(s)" means the net payment of each Settlement
12 Class Member's *pro rata* share of the Net Settlement Amount, after reduction of taxes and
13 withholding, with respect to the wage portion of the *pro rata* share.

14 u. "Net Settlement Amount" means the Gross Settlement Amount less: (i) the
15 Incentive Award(s), as approved by the Court; (ii) the Attorneys' Fees, as approved by the Court;
16 (iii) Attorneys' Costs Award, as approved by the Court; and (iv) Settlement Administrator Costs,
17 as approved by the Court.

18 v. "Objection(s)" means an objection to the Settlement that a Rule 23 Member
19 submits in writing to the Settlement Administrator. Each Objection must: (i) contain the name and
20 case number of the Action; (ii) contain the full name, address, and telephone number of the
21 objecting Rule 23 Member; (iii) be signed by the Rule 23 Member; (iv) contain a written
22 statement of all grounds for the Objection accompanied by any legal support for such Objection;
23 (v) contain copies of any papers, briefs, or other documents upon which the Objection is based;
24 and (vi) be emailed, postmarked or fax stamped on or before the Objection Period (as defined
25 below) and returned to the Settlement Administrator at the email address, mailing address and/or
26 fax number specified in the Class Notice. If a Rule 23 Member submits both an Objection and an
27 Opt Out Request, he or she will be excluded from the Settlement and the Objection will not be
28 considered.

1 w. "Objection Period" means the day that is forty-five (45) calendar days after
2 the Class Notice is mailed to Class Members via First-Class U.S. Mail and/or emailed (if email
3 addresses are known and available) and is the deadline to submit an Opt Out Request (as defined
4 herein), Objection (as defined herein) and/or Workweeks Dispute (as defined herein). Any Class
5 Members who have their Class Notice(s) remailed will have an additional fourteen calendar (14)
6 days beyond the Objection Period to file an Opt Out Request, Objection and/or Workweek
7 Dispute.

8 x. "Opt Out Request" means a request by a Rule 23 Member to be excluded
9 from the Settlement. Each "Opt Out Request" must: (i) contain the name and case number of the
10 Action; (ii) contain the full name, address, and telephone number of the Rule 23 Member
11 requesting exclusion from the Settlement; (iii) be signed by the Rule 23 Member; (iv) contain a
12 clear written statement indicating that the Rule 23 Member seeks exclusion from the Settlement;
13 and (v) be emailed, postmarked or fax stamped on or before the Objection Period and returned to
14 the Settlement Administrator at the email address, mailing address or fax number specified in the
15 Class Notice.

16 y. "Parties" shall collectively mean and refer to Plaintiffs (*i.e.*, Adrianna Jarrett and
17 Mary Ngethe and Defendant (*i.e.*, [24]7.ai, Inc.).

18 z. "Plaintiffs" shall mean and refer to Adrianna Jarrett and Mary Ngethe.

19 aa. "Preliminary Approval Order" is the Order entered and filed by the Court that
20 preliminarily approves the terms and conditions of this Agreement, including approval of the
21 Parties' Agreement that specifies the content of the Class Notice and manner in which Class
22 Notice will be provided to the Class and responded to by the Class.

23 bb. "Qualified Settlement Fund" shall mean an account established by the Settlement
24 Administrator for Defendant's payment of the Gross Settlement Amount.

25 cc. "Released Parties" shall mean Defendant [24].ai, Inc. and each of its parent
26 companies, subsidiaries, affiliates, assigns, predecessors, successors, owners (whether managers,
27 partners, shareholders), directors, employees (current and former), board members and agents.

28 dd. "Rule 23 Settlement Payment" means the amount payable from the Net

1 Settlement Amount to each Settlement Class Member for resolution of the Rule 23 Claims, which
2 comprises a portion of the Individual Settlement Payment(s).

3 ee. “Settlement Administrator” shall mean Atticus Administration, LLC, a neutral
4 third party administrator mutually chosen by the Parties and approved by the Court.

5 ff. “Settlement Administration Costs” shall mean the amount to be paid to the
6 Settlement Administrator for the costs of administering this Settlement, not to exceed Forty
7 Thousand Dollars and Zero Cents (\$40,000.00).

8 gg. “Settled FLSA Claims” means any and all claims, actions, demands, causes of
9 action, suits, debts, obligations, damages, rights or liabilities, of any nature and description
10 whatsoever, whether known or unknown, that arise during the Class Period and that are based on
11 or are reasonably related to claims for unpaid wages (including but not limited to claims for
12 regular wages, overtime, and gap time) under the FLSA. Settled FLSA Claims exclude claims
13 that are: (i) not based on or reasonably related to the claims asserted in the Action; and/or (ii)
14 expressly non-waivable under the law, including claims for retaliation, wrongful termination,
15 unemployment, disability, worker’s compensation; and/or (iii) outside of the Class Period.

16 hh. “Settled Rule 23 Class Claims” means any and all claims, actions, demands,
17 causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and
18 description whatsoever, whether known or unknown, that arise during the Class Period and that
19 are based on or are reasonably related to claims under applicable state and common law wage
20 theories (including but not limited to claims for breach of contract and/or unjust enrichment).
21 Settled Rule 23 Class Claims exclude claims that are: (i) not based on or reasonably related to the
22 claims asserted in the Action; and/or (ii) expressly non-waivable under the law, including claims
23 for retaliation, wrongful termination, unemployment, disability, worker’s compensation; and/or
24 (iii) outside of the Class Period.

25 ii. “Settlement Class Member(s)” means: (i) the Collective Opt-Ins (*i.e.*, the
26 848 non-exempt CSRs, including Plaintiffs, who joined this Action by submitting opt-in consent
27 forms (available at Dkt. Nos. 1-3; 1-4; 50-1; 51-1’ 52-1; 53-1; 54-1; 55-1; 56-1; 57-1; 58-1; 59-1;
28 60-1; 61-1; 62-1; 63-1; 64-1; 67-1; 68-1; 70-1; 71-1; 72-1; 73-1; 74-1; 75-1; 76-1) following

1 Court approval of pre-discovery conditional certification in this Action pursuant to 29 U.S.C. §
2 216(b)); and (ii) the 3,133 non-exempt CSRs who were engaged by Defendant during the Class
3 Period who do not timely file Opt Out Requests and consent to the terms of the Settlement by
4 negotiating checks in the gross amount of their Individual Settlement Payments.

5 jj. “Workweek” shall mean any calendar week (*i.e.*, a week beginning on Sunday
6 and ending on Saturday) in which a Class Member was engaged with Defendant for at least one
7 day. The Parties agree that, for purposes of determining a Class Member’s Workweeks under this
8 Agreement, Workweeks may be calculated by Defendant and/or the Settlement Administrator
9 based on the number of days between a Class Member’s: (i) start of engagement with Defendant
10 or the start of the applicable Class Period (whichever is later); and (ii) end of engagement with
11 Defendant, or, in the absence of such subsequent end date, the end date of April 16, 2024, based
12 on a 360-day year (using Microsoft Excel’s DAYS360 or similar function which returns the
13 number of days between two dates) and dividing the result by 7 and then rounding that number up
14 to the nearest whole number.

15 **RECITALS**

16 3. On February 15, 2023, Plaintiffs, represented by Class Counsel, filed a nationwide
17 collective and class action complaint against Defendant in the U.S. District Court for the Northern
18 District of California on behalf of themselves and similarly situated non-exempt individuals
19 engaged by Defendant captioned *Jarrett et al v. [24]7.ai, Inc.*, Case No. 23-cv-00677-EMC. On
20 April 18, 2023, Plaintiffs filed an amended complaint. In their suit, Plaintiffs allege individual,
21 collective and class claims through three counts: (i) violation of 29 U.S.C. 201 *et seq.* (*i.e.*, the
22 Federal Fair Labor Standards Act’s (“FLSA”) overtime provisions), alleged on a collective basis;
23 (ii) nationwide breach of contract, derivative of the claim for failure to pay overtime under the
24 FLSA, alleged on a class-wide basis under Federal Rule of Civil Procedure (“FRCP”) 23; and (iii)
25 nationwide unjust enrichment, also derivative of the FLSA claim and alleged under FRCP 23.

26 4. Defendant filed an answer to the amended complaint on May 2, 2023.

27 5. On April 18, 2023, Plaintiffs also filed a notice of pre-discovery motion for
28 conditional certification and court-authorized notice pursuant to 29 U.S.C. § 216(b). The Parties

1 thereafter stipulated to circulation of a jointly drafted conditional certification notice on June 28,
2 2023, which the Court approved on July 7, 2023. Plaintiffs withdrew their pending pre-discovery
3 motion on July 11, 2023.

4 6. The Parties retained Atticus Administration to circulate the Court approved notice.
5 Notice was administered to 3,978 individuals engaged by Defendant as CSRs dating back to
6 February 15, 2020. At the conclusion of the opt-in period on November 10, 2023, 848
7 individuals had filed notices of consent to join the case.

8 7. Defendant denies all material allegations set forth in the Action and has asserted
9 numerous affirmative defenses in the case. Notwithstanding its denials of all material allegations,
10 and in the interest of avoiding further litigation, Defendant desires to fully and finally settle the
11 Action and all Settled Claims.

12 8. Class Counsel diligently investigated the claims against Defendant, including any
13 and all applicable defenses under the applicable law. The investigation included, inter alia, the
14 exchange of information, data, and documents, and review of Defendant's employment and
15 operations policies, practices, and procedures.

16 9. On April 16, 2024, the Parties participated in mediation with Michael E. Dickstein,
17 Esq., a respected mediator of complex wage and hour class and collective actions, and reached
18 the settlement that is memorialized herein. The Parties agree that the terms and conditions of this
19 Agreement are the result of lengthy, intensive arms-length negotiations, and the Settlement is the
20 result of an informed and detailed analysis of Defendant's potential liability and exposure in
21 relation to the costs and risks associated with continued litigation. Based on the facts developed
22 during discovery and at mediation and relating to the information and documents produced, as
23 well as Class Counsel's own independent investigation and evaluation, Class Counsel believes
24 that the settlement with Defendant for the consideration and on the terms set forth in this
25 Settlement Agreement is fair, reasonable, and adequate and is in the best interest of all Class
26 Members, in light of all known facts and circumstances, including the risk of significant delay
27 and uncertainty associated with litigation and various defenses asserted by Defendant.

28 10. The Parties expressly acknowledge that this Settlement Agreement is entered into

1 solely for the purpose of compromising significantly disputed claims and that nothing herein is an
2 admission of liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is
3 not approved, it will be of no force or effect, and the Parties shall be returned to their original
4 respective positions.

5 **TERMS AND CONDITIONS OF SETTLEMENT**

6 NOW THEREFORE, in consideration of the recitals listed above and the promises and
7 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency
8 of the consideration and undertakings set forth herein, Plaintiffs, individually on behalf of
9 themselves and on behalf of the Class Members, on the one hand, and Defendant, on the other
10 hand, agree that the Action shall be, and are, finally and fully compromised and settled on the
11 following terms and conditions.

12 11. Release of Settled FLSA Claims and Settled Rule 23 Class Claims by Settlement
13 Class Members. As of the Effective Date and full funding of the Gross Settlement Amount, all
14 Settlement Class Members shall be deemed to have fully, finally, and forever released, settled,
15 compromised, relinquished, and discharged any and all Settled FLSA Claims and Settled Rule 23
16 Class Claims during the Class Period against any and all Released Parties. Defendant shall be
17 entitled to a release of Settled FLSA Claims and Settled Rule 23 Class Claims which occurred
18 during the Class Period only during such time that the Settlement Class Member was classified as
19 non-exempt. The Parties agree for settlement purposes only that, because the Class Members are
20 so numerous, it is impossible or impracticable to have each Class Member execute this
21 Agreement. Accordingly, the Class Notice will advise all Class Members of the binding nature of
22 the Settlement as to Settlement Class Members, and such notice shall have the same force and
23 effect as if the Agreement were executed by each Class Member.

24 12. General Release of Claims by Plaintiffs. As of the Effective Date and full funding
25 of the Gross Settlement Amount, in addition to all other releases set forth in this Agreement, and
26 except as to claims specifically excluded, the Plaintiffs make the additional following release. The
27 Plaintiffs release the Released Parties from all claims, actions, demands, causes of action, suits,
28 debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known

1 or unknown, anticipated or unanticipated, asserted or that might have been asserted, whether in
2 tort, contract, or for violation of any state or federal statute, rule, or regulation that could be or are
3 asserted based upon any theory or facts whatsoever, arising at any time up to and including the
4 date of the execution of this Settlement Agreement. The release set forth in this Paragraph shall
5 be referred to as the “General Release.” The Plaintiffs agree not to sue or otherwise make a claim
6 against any of the Released Parties that is in any way related to the General Release to the
7 maximum extent permitted by law. The General Release includes any unknown claims the
8 Plaintiffs do not know or suspect to exist in their favor at the time of the General Release, which,
9 if known by either, might have affected his respective settlement with, and release of, the
10 Released Parties by the Plaintiffs or might have affected their decisions not to object to this
11 Settlement or the General Release. With respect to this General Release, the Plaintiffs stipulate
12 and agree that they shall be deemed to have, and by operation of the Final Judgment shall have,
13 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights
14 and benefits of Section 1542 of the California Civil Code, which states:

15 **A general release does not extend to claims that the creditor or releasing**
16 **party does not know or suspect to exist in his or her favor at the time of**
17 **executing the release and that, if known by him or her, would have**
18 **materially affected his or her settlement with the debtor or released party.**

19 This General Release shall not affect or bar any claims that the Plaintiffs may have that
20 are not waivable under the law, including claims under the National Labor Relations Act, and the
21 right to receive benefits under any retirement plan or to elect COBRA continuation of health
22 insurance benefits. Nor shall the General Release preclude the Plaintiffs from filing a charge with
23 any applicable administrative agency. The Plaintiffs understand and agree, however, that by way
24 of the General Release, they individually release any right to recover monetary damages in an
25 action brought by an administrative agency.

26 13. Allocation of Net Settlement Amount. The Net Settlement Amount shall be split
27 into two buckets: 1) the “FLSA Settlement Payment” bucket, which shall consist of 74% of the
28 Net Settlement Amount; and 2) the “Rule 23 Settlement Payment” bucket, which shall consist of

1 24% of the Net Settlement Amount.

2 14. Issuance of Settlement Checks. The Settlement Administrator shall issue each
3 Settlement Class Member one check for their “FLSA Settlement Payment” and one check for
4 their “Rule 23 Settlement Payment.”

5 15. Release Language on FLSA Claim Settlement Checks. The Settlement
6 Administrator shall include the following release language on the back of each FLSA claim
7 settlement check, as appropriate:

8 a. For Collective Opt-Ins: “This check is your FLSA settlement payment in
9 connection with the court-approved collective and class action Settlement in the case entitled
10 *Jarrett et al v. [24]7.ai, Inc.*, Case No. 23-cv-00677-EMC, pending in the United States District
11 Court, Northern District of California (the “Action”). You previously submitted a consent to join
12 form and affirmatively joined the action as a FLSA opt-in. By signing or cashing your check, you
13 acknowledge that you are participating in the Settlement and that you are releasing the Settled
14 FLSA Claims against the Released Parties (as those terms are defined in the Class Notice).”

15 b. For Rule 23 Members: “This check is your FLSA settlement payment in
16 connection with the court-approved collective and class action Settlement in the case entitled
17 *Jarrett et al v. [24]7.ai, Inc.*, Case No. 23-cv-00677-EMC, pending in the United States District
18 Court, Northern District of California, (the “Action”). By signing or cashing this check, you are
19 consenting to join the Action and are fully, finally, and forever releasing, settling, compromising,
20 relinquishing, and discharging the Released Parties from any and all claims, actions, demands,
21 causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and
22 description whatsoever, whether known or unknown, that arise during the period of February 15,
23 2020 through the date the Court grants Preliminary Approval of the Settlement or 60 calendar
24 days from April 16, 2024 (whichever date is earlier), and that are based on or are reasonably
25 related to claims for unpaid wages (including but not limited to claims for regular wages,
26 overtime, and gap time) under the FLSA. By signing or cashing your check, you acknowledge
27 that you have read the Class Notice, that you consent to join the Action as a FLSA opt-in and
28 participate in the Settlement, and that you are releasing the Settled FLSA Claims against the

1 Released Parties (as those terms are defined in the Class Notice).”

2 16. Release Language on Rule 23 Settlement Checks. The Settlement Administrator
3 shall include the following release language on the back of each Rule 23 Settlement check: “This
4 check is your Rule 23 settlement payment in connection with the court-approved collective and
5 class action Settlement in the case entitled *Jarrett et al v. [24]7.ai, Inc.*, Case No. 23-cv-00677-
6 EMC, pending in the United States District Court, Northern District of California, (the “Action”).
7 By signing or cashing this check, you are fully, finally, and forever releasing, settling,
8 compromising, relinquishing, and discharging the Released Parties from any and all claims,
9 actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any
10 nature and description whatsoever, whether known or unknown, that arise during the period of
11 February 15, 2020 through the date the Court grants Preliminary Approval of the Settlement or 60
12 calendar days from April 16, 2024 (whichever date is earlier), and that are based on or are
13 reasonably related to claims under applicable state and common law wage theories (including but
14 not limited to claims for breach of contract and/or unjust enrichment). By signing or cashing your
15 check, you acknowledge that you have read the Class Notice, that you consent to participate in
16 the Settlement, and that you are releasing the Settled Rule 23 Class Claims against the Released
17 Parties (as those terms are defined in the Class Notice).”

18 17. Prohibitions Based on Releases. Settlement Class Members, including Plaintiffs, to
19 the fullest extent allowed by law, are prohibited from asserting any claims released by them in
20 this Settlement, and from commencing, joining in, prosecuting, or voluntarily assisting in a
21 lawsuit or adversarial proceeding against the Released Parties, based on claims released by them
22 in this Settlement. Excluded from this prohibition are any instances where any individual is
23 legally compelled to testify through service of a subpoena or other legal process.

24 18. Calculation of Settlement Payments. The Gross Settlement Amount shall be
25 apportioned as follows:

26 a. Attorneys’ Fees. Class Counsel will apply to the Court for an award of attorneys’
27 fees up to thirty-three and one-third percent (33.33%) of the Gross Settlement Amount (*i.e.*, no
28 more than Three Hundred and Sixty-Six Thousand Six Hundred and Thirty Dollars and Zero

1 Cents (\$366,630.00)). The Attorneys' Fees shall be paid from and be deducted from the Gross
2 Settlement Amount subject to Court approval, and Defendant will not oppose such application. In
3 the event the Court approves an amount of attorneys' fees that is less than the amount provided
4 herein, the unawarded amount shall become part of the Net Settlement Amount for distribution to
5 Settlement Class Members. Any reduction by the Court shall not constitute grounds for
6 revocation or cancellation of this Agreement by Plaintiffs, or grounds for an appeal of the Court's
7 Order approving Attorneys' Fees.

8 b. Attorneys' Costs. Class Counsel shall request approval of an amount not to
9 exceed Forty Thousand Dollars and Zero Cents (\$40,000.00) for reimbursement of litigation costs
10 and expenses incurred in the Action, which will be paid and deducted from the Gross Settlement
11 Amount subject to Court approval. Defendant will not oppose such application. Any unawarded
12 Attorneys' Costs shall become part of the Net Settlement Amount for distribution to Settlement
13 Class Members. Any reduction by the Court shall not constitute grounds for revocation or
14 cancellation of this Agreement by Plaintiffs, or grounds for an appeal of the Court's Order
15 approving attorneys' costs. Attorneys' Fees as specified in the preceding paragraph and
16 Attorneys' Costs as specified in this paragraph shall cover all claimed and unclaimed Attorneys'
17 Fees, Attorneys' Costs, and other amounts payable or awardable against Defendant for Class
18 Counsel's work, effort, or involvement in the Action and in carrying out the Agreement and
19 includes any and all work, effort, or involvement to carry out the terms of the Agreement and as
20 may be potentially or actually necessary or advisable to defend the Settlement through appeal, or
21 collateral attack or in any other forum or proceeding. These specified Attorneys' Fees and
22 Attorneys' Costs shall be the sole payment for attorneys' fees and costs and, otherwise, the
23 Parties and Class Members and their counsel shall bear their own fees and costs in connection
24 with the Action.

25 c. Settlement Administration Costs. Class Counsel will also apply to the Court for
26 approval of costs of settlement administration in an amount currently estimated to be up to Forty
27 Thousand Dollars and Zero Cents (\$40,000.00), which the Parties agree will be paid and deducted
28 from the Gross Settlement Amount subject to Court approval. These costs will include, inter alia

1 printing, distributing, and tracking Class Notices and other documents for the Settlement,
2 calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS
3 Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary
4 reports and declarations, and other duties and responsibilities set forth herein to process this
5 Settlement, and as requested by the Parties. To the extent actual Settlement Administration Costs
6 are greater than the estimated amount stated herein, such excess amount will be deducted from
7 the Gross Settlement Amount, subject to Court approval. Any unawarded amount shall become
8 part of the Net Settlement Amount for distribution to Settlement Class Members. Class Counsel
9 will specify the amount sought for such costs in Plaintiffs' motion for final approval of the
10 Settlement. Plaintiffs, Class Counsel, Defendant, and Defendant's Counsel shall not bear any
11 responsibility for errors or omissions in the calculation or distribution of payments or the
12 development of the list of recipients of payments provided for under the Settlement.

13 d. Plaintiffs' Incentive Award(s). In recognition of their efforts and work in
14 prosecuting the Action, Defendant agrees not to oppose or impede any application or
15 motion for Incentive Awards to Plaintiffs in an amount not to exceed Five Thousand Dollars
16 and Zero Cents (\$5,000.00) each— i.e., a total amount of Ten Thousand Dollars and Zero
17 Cents (\$10,000.00)—to be paid and deducted from the Gross Settlement Amount, subject to
18 Court approval. The Settlement Administrator will issue an IRS Form 1099 to Plaintiffs for the
19 Incentive Awards, and Plaintiffs shall be solely and legally responsible for correctly
20 characterizing this compensation for tax purposes and for paying any taxes on the amounts
21 received. Any unawarded amount shall become part of the Net Settlement Amount for
22 distribution to Settlement Class Members. Any reduction by the Court shall not constitute
23 grounds for revocation or cancellation of this Agreement by Plaintiffs, or grounds for an appeal of
24 the Court's Order approving Plaintiffs' Incentive Awards. In no event shall the Gross Settlement
25 Amount be increased in the event the Court awards higher Incentive Awards to the Plaintiffs.

26 e. Calculating Individual Settlement Payments to Settlement Class Members.
27 After splitting the Net Settlement Amount into two buckets (1) the "FLSA Settlement Payment"
28 bucket, which shall consist of 74% of the Net Settlement Amount; and 2) the "Rule 23 Settlement

1 Payment” bucket, which shall consist of 24% of the Net Settlement Amount), Individual FLSA
2 and Rule 23 Settlement Payments to the Settlement Class Members will be calculated from the
3 amounts in each bucket as follows:

4 i. The Settlement Administrator will use the number of Workweek(s)
5 worked by Settlement Class Members during the Class Period, which will be determined based on
6 the information in the Class List Defendant will provide to the Settlement Administrator;

7 ii. Each of the Settlement Class Members is eligible to receive a *pro rata*
8 share of the FLSA Settlement Payment bucket and the Rule 23 Settlement Payment bucket based
9 on their share of the total number of Workweeks during the Class Period.

10 iii. The value of a single Workweek during the Class Period shall be
11 determined by dividing the FLSA Settlement Payment bucket and the Rule 23 Settlement
12 Payment bucket by the total number of Workweeks during the
13 Class Period worked by all Settlement Class Members. Each Settlement Class Member shall be
14 allocated a gross payment equal to their individual Workweeks during the Class Period multiplied
15 by the value of a single Workweek during the Class Period. As noted below, however, no
16 Settlement Class Member will receive a net payment (following taxes and withholding) that is
17 less than Twenty Dollars and Zero Cents (\$20.00).

18 iv. The Parties agree that under no circumstances shall Defendant be
19 obligated to pay any amounts under this Agreement to any Class Member other than the
20 Individual Settlement Payments to Settlement Class Members that is provided for under this
21 Agreement.

22 v. The Parties acknowledge and agree that the formulas used to calculate
23 Individual Settlement Payments do not imply that all of the elements of damages covered by the
24 release are not being taken into account.

25 19. Taxation of Settlement Proceeds.

26 a. The Parties agree that the individual FLSA Settlement Payment and Rule 23
27 Settlement Payment (collectively, Individual Settlement Payment(s)) shall be allocated as
28 follows: (i) fifty percent (50%) of each Settlement Class Member’s Individual Settlement

1 Payments will be allocated to settlement of wage claims (the “Wage Portions”); and (ii) the
2 remaining fifty percent (50%) will be allocated to liquidated damages, penalties and interest. The
3 Settlement Administrator will withhold the Settlement Class Members’ share of taxes and
4 withholdings with respect to the wages portion of the Individual Settlement Payments, and issue
5 checks to Settlement Class Members for the net of their individual FLSA Settlement Payment and
6 Rule 23 Settlement Payment, provided that no Settlement Class Member will receive an
7 Individual Settlement Payment of less than Twenty Dollars and Zero Cents (\$20.00). The Wage
8 Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The portion
9 allocated to liquidated damages, penalties and interest (i.e., Non-Wage Portions) are not subject to
10 wage withholdings and will be reported on IRS 1099 Forms (if required). Settlement Class
11 Members assume full responsibility and liability for any employee taxes owed on their Individual
12 Settlement Payments. As noted, Defendant will pay the employer share of taxes separately and in
13 addition to the Gross Settlement Amount.

14 b. The Settlement Administrator shall calculate, withhold from the individual FLSA
15 Settlement Payment and Rule 23 Settlement Payment, and remit to applicable governmental
16 agencies sufficient amounts, if any, as may be owed by Settlement Class Members for applicable
17 employee taxes. The Settlement Administrator will issue appropriate tax forms, as required, to
18 each such Settlement Class Member consistent with the above allocations.

19 c. All Parties represent that they have not received, and shall not rely on, advice or
20 representations from other Parties or their agents regarding the tax treatment of payments under
21 federal, state, or local law. In this regard, Defendant makes no representations regarding the
22 taxability of the individual FLSA Settlement Payment and Rule 23 Settlement Payment or any
23 other payments made under this Agreement.

24 d. Class Counsel will be issued an IRS Form 1099 for the Attorneys’ Fees and
25 Attorneys’ Costs awarded by the Court.

26 e. Plaintiffs will be issued an IRS Form 1099 for any Incentive Awards approved by
27 the Court. The Incentive Awards payable to Plaintiffs shall be in addition to the Individual
28 Settlement Payments they will each receive.

1 20. No Credit Toward Benefit Plans. All payments made under this Agreement shall
2 not be utilized to calculate any additional benefits under any benefit plans to which any
3 Settlement Class Members may be eligible, including, but not limited to: (i) profit-sharing plans;
4 (ii) bonus plans; (iii) 401(k) plans; (iv) stock purchase plans; (v) vacation plans; (vi) sick leave
5 plans; (vii) PTO plans; and (viii) any other benefit plan. Rather, it is the Parties' intention that this
6 Agreement will not affect any rights, contributions, or amounts to which any Settlement Class
7 Members may be entitled under any benefit plans.

8 21. Preliminary Approval of Settlement. Upon execution of this Settlement
9 Agreement, Plaintiffs shall promptly, but not later than thirty (30) calendar days, obtain a hearing
10 date for Plaintiffs' motion for preliminary approval of the Settlement in the Action, and submit
11 this Settlement Agreement to the Court in support of said motion. Defendant agrees not to oppose
12 the motion for preliminary approval of the Settlement consistent with this Settlement Agreement.
13 Said motion shall apply to the Court for the entry of an order ("Preliminary Approval Order"),
14 which shall be mutually agreed upon by the Parties, seeking the following:

15 a. Conditionally certifying the Class pursuant to 29 U.S.C. § 216(b) and Fed R. Civ.
16 P. 23(a) and 23(b)(3) for settlement purposes only;

17 b. Preliminarily approving this Agreement and the settlement terms;

18 c. Preliminarily approving the appointment of Plaintiffs as representatives of the
19 Class for settlement purposes;

20 d. Preliminarily appointing Class Counsel as counsel for the Class;

21 e. Appointing and approving the Settlement Administrator, to comply with the
22 duties and obligations as required by this Agreement;

23 f. Approving the form and content of the Class Notice mutually agreed upon by the
24 Parties and directing its mailing to the Class by U.S. Mail and/or its emailing (where email
25 addresses are known and available);

26 g. Scheduling the Final Approval Hearing for consideration of whether the
27 Settlement should be finally approved as fair, reasonable, and adequate; and

28 h. Approving the manner and method for Class Members to object to or opt out of

1 the Settlement as contained herein and within the Class Notice.

2 Class Counsel shall provide Defendant with at least three (3) business days to review and
3 provide comments on the motions for preliminary and final approval of the Settlement before the
4 motions and supporting papers are filed with the Court. A request by the Court for supplemental
5 briefing, or a preliminary denial pending additional briefing, shall not be deemed a denial of
6 preliminary approval or final approval. To the extent the Court requests further or supplemental
7 briefing, the Parties will work in good faith to address the Court's concerns and questions.

8 22. Notice Procedure.

9 a. Class List. Within fourteen (14) calendar days after notice of entry
10 of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator and
11 Class Counsel with the Class List. The Settlement Administrator and Class Counsel will each
12 keep the Class List confidential and shall not provide it to anyone absent express written approval
13 from Defendant. The Settlement Administrator and Class Counsel shall use the information
14 contained in the Class List only for the purpose of assisting with the administration of the
15 Settlement, including fielding questions from Settlement Class Members. Class Counsel shall
16 provide the Settlement Administrator with updated addresses or contact information for the
17 Collective Opt-Ins in their possession. Class Counsel and the Settlement Administrator will take
18 adequate safeguards to protect confidential or private information in the Class List and will each
19 return or certify the destruction of the information upon completion of the Settlement
20 Administration process.

21 b. Updating Addressed Prior to Notice. Prior to mailing the Class Notice, the
22 Settlement Administrator will update the addresses for the Class Members using skip trace or
23 other available public or proprietary systems. To the extent this process yields a different address
24 from the one supplied by Defendant, the Settlement Administrator will replace the address
25 supplied by Defendant with the updated address and will treat the updated address as the new
26 mailing address for purposes of this Agreement and for subsequent mailings.

27 c. Notice Process. Within fourteen (14) calendar days following receipt of the Class
28 List, the Settlement Administrator shall prepare and send to Class Members the approved Class

1 Notice. The Settlement Administrator shall deliver the Class Notice by First-Class U.S. Mail to
2 each Class Member's last known mailing address and via email (if email addresses are known and
3 available). The Settlement Administrator will provide notice to Class Counsel and Defendant's
4 Counsel once the notice process referenced above is completed.

5 d. Opt Out Request(s). Any Rule 23 Member may exclude themselves from
6 the Settlement. Any such Opt Out Request must be submitted to the Settlement Administrator in
7 writing on or before the Objection Period. Opt Out Requests do not apply to the Collective Opt-
8 Ins, since they have already provided notices of consent to join the Action.

9 e. Objection(s). Any Rule 23 Member may object to the Settlement by submitting an
10 Objection to the Settlement Administrator or may also present their objection orally at the Final
11 Approval Hearing, irrespective of whether they submit an Objection. The Parties shall be
12 permitted to file responses to any Objections prior to the Final Approval Hearing and/or to
13 respond to or address the Objection at the Final Approval Hearing. At no time shall any of the
14 Parties or their counsel seek to solicit or otherwise encourage Rule 23 Members to submit any
15 Objections to the Settlement or appeal from the Final Approval Order and Judgment. Class
16 Counsel shall not represent any Rule 23 Members with respect to any such Objections. Within
17 two (2) business days after receipt of an Objection, the Settlement Administrator shall serve the
18 Objection on the Parties, and at least sixteen (16) court days before the Final Approval Hearing,
19 the Settlement Administrator shall submit all Objections received by the Settlement Administrator
20 to the Court. The Court may consider any Opt Out Requests, and/or Objections submitted at or
21 before the Final Approval Hearing. Objections do not apply to the Collective Opt-Ins, since they
22 have already provided notices of consent to join the Action.

23 f. Workweeks Disputes. Settlement Class Members will have the right to challenge
24 the number of Workweeks allocated to them. Class Members shall have until the Objection
25 Period to submit to the Settlement Administrator their dispute in writing ("Workweek Dispute")
26 at the address indicated on the Class Notice. Each Workweeks Dispute must: (i) contain the name
27 and case number of the Action; (ii) contain the full name, address, and telephone number of the
28 Class Member; (iii) be signed by the Class Member; (iv) clearly state that the Class Member

1 disputes of the number of Workweeks credited to them and what they contends are the correct
2 numbers to be credited to them; (v) attach any documentation that they have to support the
3 dispute; and (vi) be emailed, postmarked or fax stamped on or before the Objection Period and
4 returned to the Settlement Administrator at the email address, mailing address or fax number
5 specified in the Class Notice. The Settlement Administrator will inform Class Counsel and
6 Defendant's Counsel in writing of any timely submitted Workweeks Disputes. Defendant shall
7 have the right to respond to any Workweek Dispute submitted by any Class Members within ten
8 (10) business days of being informed of a timely submitted Workweek Dispute, and shall
9 cooperate in providing the Settlement Administrator with information to determine all such
10 Workweek Disputes. The Settlement Administrator will determine all such Workweek Disputes
11 following Defendant's opportunity to respond. Subject to Court approval, Workweek Disputes
12 will be resolved without hearing by the Settlement Administrator, who will make a decision based
13 on Defendant's records and any documents or other information presented by the Class Member
14 making the Workweek Dispute, Class Counsel, or Defendant.

15 g. Settlement Administrator Follow-up Efforts. If a Class Notice is returned by the
16 Post Office as undeliverable, but with a forwarding address, on or before the Objection Period,
17 then, the Settlement Administrator shall re-mail it by First-Class U.S. mail. If a Class Member
18 personally provides an updated address to the Settlement Administrator on or before the
19 Objection Period, then, the Settlement Administrator shall re-mail said Class Member's Class
20 Notice by First-Class U.S. mail to the updated address provided by the Class Member. If a Class
21 Notice is returned by the Post Office as undeliverable, without a forwarding address, on or before
22 the Objection Period, then, the Settlement Administrator shall conduct a search of the National
23 Change of Address database and, if an alternate address that is likely to be more current is
24 located, proceed to re-mail the Class Notice by First-Class U.S. mail to the alternate address.

25 h. Documenting Communications. The Settlement Administrator shall date stamp
26 documents it receives, including Opt Out Requests, Objections, Workweek Disputes, and any
27 correspondences and documents from Class Members.

28 i. Settlement Administrator Declaration. At least sixteen (16) court days before the

1 Final Approval Hearing, the Settlement Administrator shall prepare, subject to the Parties' input
2 and approval, a declaration setting forth the due diligence and proof of e-mailing/postal mailing
3 of the Class Notice, the results of the Settlement Administrator's e-mailings/postal mailings,
4 including tracing and re-mailing efforts, and the Class Members' responses to those re-mailing
5 efforts, and provide additional information deemed necessary to approve the settlement.

6 j. Settlement Administrator Written Reports. Each week after initially mailing the
7 Class Notices and prior to the Objection Period, the Settlement Administrator shall provide the
8 Parties with a report listing the number of Class Members that submitted Opt Out Requests,
9 Objections, and/or Workweek Disputes. Within seven (7) calendar days after the Objection
10 Period, the Settlement Administrator will provide a final report listing the number of Class
11 Members who submitted Opt Out Requests, Objections, and/or Workweeks Disputes.

12 k. Settlement Administrator Calculations of Individual FLSA Settlement Payment
13 and Rule 23 Settlement Payment. Within seven (7) calendar days after resolving all Workweek
14 Disputes made by Settlement Class Members, and following entry of the Final Approval Order
15 and Judgment, the Settlement Administrator shall provide to the Parties a report showing its
16 calculation of all amounts that must be funded by Defendant under the Settlement, including but
17 not limited to, calculations of the individual FLSA Settlement Payment and Rule 23 Settlement
18 Payment to be made to Settlement Class Members. After receiving the Settlement Administrator's
19 report, Class Counsel and Defendant's Counsel shall review the same to determine if the
20 calculation of payments is consistent with this Agreement and the Court's orders and shall notify
21 the Settlement Administrator if either counsel does not believe the calculation is consistent with
22 the Agreement and/or the Court's orders. After receipt of comments from counsel, the Settlement
23 Administrator shall finalize its calculations of payments, at least five (5) calendar days prior to
24 the distribution of such payments and shall provide Class Counsel and Defendant's Counsel with
25 a final report listing the amount of all payments to be made to each Settlement Class Member
26 from the Net Settlement Amount. The Settlement Administrator will also provide information that
27 is requested and approved by both Parties regarding its duties and other aspects of the Settlement,
28 and that is necessary to carry out the terms of the Settlement.

1 ///

2 23. Requirements for Recovery of Individual Settlement Payments.

3 a. Class Members. No claim form is necessary for Class Members (*i.e.*, Collective
4 Opts-Ins and/or Rule 23 Members) to participate in the Settlement. Unless a Rule 23 Member
5 submits a valid and timely Opt Out Request, that Rule 23 Member will be a Settlement Class
6 Member, bound by the Final Approval Order and Judgment, and will receive Individual
7 Settlement Payment(s). The Collective Opt-Ins are all Settlement Class Members by virtue of
8 having submitted notices of consent to join the Action, and will also be bound by the Final
9 Approval Order and Judgment and will receive their Individual Settlement Payment(s).

10 b. Late Submissions. The Settlement Administrator shall not accept as timely any
11 Opt Out Request, Objection, or Workweek Dispute emailed, postmarked or fax stamped after the
12 Objection Period. It shall be presumed that, if an Opt Out Request, Objection, or Workweek
13 Dispute is not emailed, postmarked or fax stamped on or before the Objection Period, the Class
14 Member did not return the Opt Out Request, Objection, or Workweek Dispute in a timely
15 manner. However, the Court may consider any Opt Outs, and/or Objections submitted at or before
16 the Final Approval Hearing.

17 c. Opt-Out Procedure. A Rule 23 Member will not be entitled to opt out of the Class
18 Settlement established by this Agreement unless he or she submits to the Settlement
19 Administrator a timely and valid Opt Out Request.

20 i. The Settlement Administrator shall not have the authority to extend the
21 deadline for Rule 23 Members to submit an Opt Out Request absent agreement by both Parties.

22 ii. In the event any Opt Out Request is timely submitted but does not
23 contain sufficient information to be valid, the Settlement Administrator shall provide the Rule 23
24 Member, within seven (7) calendar days of receipt of such Opt Out Request, a letter requesting
25 the information that was not provided and giving the Rule 23 Member fourteen (14) calendar days
26 from the mailing of such cure letter to respond. Any invalid submission that is not timely cured
27 will be considered null and void.

28 iii. Rule 23 Members shall be permitted to rescind in writing their Opt Out

1 Request by submitting a written rescission statement to the Settlement Administrator no later than
2 the calendar day before the Final Approval Hearing.

3 iv. If more than ten percent (10%) of the Settlement Class Members timely
4 opt out of the Settlement, Defendant shall have the sole and absolute discretion to withdraw from
5 this Agreement within fourteen (14) calendar days after the Objection Period and written notice
6 from the Settlement Administrator of the final opt out rate. Defendant shall provide written notice
7 of such withdrawal to Class Counsel. In the event that Defendant elects to so withdraw, the
8 withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a
9 condition of Settlement, and the Agreement shall become null and void and have no further force
10 or effect, and Defendant will be responsible for any and all Settlement Administration Costs
11 incurred as of the date Defendant exercises the sole right referenced herein.

12 24. Final Approval Hearing and Final Approval Order and Judgment.

13 a. Entry of Final Judgment. At the Final Approval Hearing, Plaintiff will request,
14 and Defendant will join in said request, that the Court enter a jointly-agreed upon Final Approval
15 Order and Judgment.

16 b. Final Approval Motion. After the Objection Period, Plaintiffs will draft and file a
17 motion for final approval in conformity with any requirements from the Court and will take any
18 other actions necessary to request the entry of a Final Approval Order and Judgment in
19 accordance with this Agreement. In conjunction with the motion for final approval and
20 requesting an award of Attorneys' Fees, Attorneys' Costs, and Incentive Awards, Class Counsel
21 shall file a declaration from the Settlement Administrator confirming that the Class Notice was
22 mailed to all Class Members as required by this Agreement, as well as any additional information
23 Class Counsel, with the input and approval of Defendant, deems appropriate to provide to the
24 Court.

25 c. Final Approval Order and Judgment. The Parties shall take all reasonable efforts
26 to secure entry of the Final Approval Order and Judgment. A request by the Court for
27 supplemental briefing, or a preliminary denial pending additional briefing, shall not be deemed a
28 denial of final approval of the Settlement. To the extent the Court requests further or

1 supplemental briefing, the Parties will work in good faith to address the Court's concerns and
2 questions. Said Final Approval Order and Judgment will provide for, in substantial part, the
3 following:

- 4 i. Certify the Class pursuant to 29 U.S.C. § 216(b) and Fed R. Civ.
5 P. 23(a) and 23(b)(3) for settlement purposes only;
- 6 ii. Find dissemination of the Settlement Notice and Collective Notice was
7 accomplished as directed and met the requirements of due process;
- 8 iii. Approve the Settlement as final and its terms as fair, reasonable and
9 adequate;
- 10 iv. Approve payment of Incentive Awards to the Plaintiffs;
- 11 v. Approve Class Counsel's application for an award of Attorneys' Fees and
12 Attorneys' Costs;
- 13 vi. Approve Settlement Administration Costs;
- 14 vii. Direct Defendant to transfer the Gross Settlement Amount into the
15 Qualified Settlement Fund, as provided for under this Settlement;
- 16 viii. Direct that the Action be dismissed finally, fully, forever and with
17 prejudice and, with respect to each Settlement Class Member, in full and final; and
- 18 ix. Enter judgment in this Action, while maintaining continuing
19 jurisdiction to implement the Settlement.

20 25. Payment of Settlement. Defendant will deposit the Gross Settlement Amount into
21 the Qualified Settlement Fund within thirty (30) calendar days of the Effective Date.

22 a. The Parties agree that the Gross Settlement Amount will qualify as a settlement
23 fund pursuant to the requirements of Section 468(B)(g) of the Internal Revenue Code
24 of 1986, as amended, and Section 1.468B-1 et seq. of the income tax regulations. Furthermore,
25 the Settlement Administrator is hereby designated as the sole "administrator" of the qualified
26 settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations. As such, all
27 employee taxes imposed on the gross income of that settlement fund and any tax-related expenses
28 arising from any income tax returns or other reporting documents that may be required by the

1 Internal Revenue Service or any state or local taxing body will be paid from the Net Distribution
2 Fund by the Settlement Administrator.

3 b. Defendants shall not have access to the Gross Settlement Amount, or to
4 any earned interest, once those funds are deposited into the interest-bearing Qualified Settlement
5 Fund, except by joint agreement of the parties or by order of the Court. Further, any interest
6 gained on the Gross Settlement Amount in the Qualified Settlement Fund shall be deemed
7 part of the Gross Settlement Amount.

8 c. If the Court denies final approval of the Settlement with prejudice, the Gross
9 Settlement Amount and any interest accrued thereon shall be returned by the Settlement
10 Administrator to Defendants.

11 d. The Settlement Administrator shall be deemed to have timely distributed
12 Individual Settlement Payments if it places said payments in the mail (First-Class U.S.) within
13 fourteen (14) calendar days of Defendant funding the Gross Settlement Amount. If the Settlement
14 Administrator receives notice from Settlement Class Members that they have not received their
15 settlement check due to changes of address or other circumstances, the Settlement Administrator
16 shall make reasonable efforts to ensure the initial payment is cancelled and re-issue the payment
17 to the Settlement Class Member. The Settlement Administrator shall only undertake one re-
18 issuance of a payment upon request of a Settlement Class Member.

19 e. The distribution of Attorneys' Fees, Attorneys' Costs, and the Incentive Awards
20 shall occur no later than fourteen (14) calendar days after the Gross Settlement Amount has been
21 deposited by Defendant. Under no circumstances shall the foregoing payments be made prior to
22 the distribution of payments to Settlement Class Members.

23 f. Individual Settlement Payment checks will be valid for one hundred eighty (180)
24 Calendar days after mailing by the Settlement Administrator. After the one hundred eighty (180)
25 calendar day check validity period, Individual Settlement Payment checks will become cancelled
26 and funds associated with the cancelled checks will be transmitted to *cy pres* designee: Bay Area
27 Legal Aid (or such other *cy pres* designee as ordered by the Court). Settlement Class Members
28 whose Individual Settlement Payment checks are canceled shall, nevertheless, be bound by this

1 Settlement Agreement and the Final Approval Order and Judgment will have claim preclusive
2 effect with respect to them and all Settlement Class Members with respect to the Class
3 Settlement. The Parties agree that this disposition results in no “unpaid residue.” as the entire Net
4 Distribution Fund will be paid out to Settlement Class Members, whether or not they all cash,
5 deposit, or otherwise negotiate the payment checks originally issued to them.

6 g. Upon completion of administration of the Settlement, the Settlement
7 Administrator shall provide written certification of such completion to the Court, Class Counsel,
8 and Defendant’s Counsel.

9 26. Binding Effect of Agreement on Settlement Class Members. Subject to final Court
10 approval, all Settlement Class Members shall be bound by this Agreement and Final Approval
11 Order and Judgment shall be entered in the Action.

12 27. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
13 Action and to avoid the burden, expense, and risk of continued litigation. In entering into this
14 Agreement, Defendant does not admit, and specifically denies, that Defendant has: (i) violated
15 any federal, state, or local law; (ii) violated any regulations or guidelines promulgated pursuant to
16 any statute or any other applicable laws, regulations, or legal requirements; (iii) breached any
17 contract; or (iv) engaged in any other culpable, wrongful or unlawful conduct with respect to its
18 employees or any other person or entity. Neither this Agreement, nor any of its terms or
19 provisions, nor any of the negotiations connected with it or proceedings, payouts, or other events
20 associated with it, shall be construed as an admission or concession by Defendant of any such
21 violation(s) or failure(s) to comply with any applicable law by Defendant or any Released Parties.
22 The Parties intend this Settlement to be contingent upon the Court’s granting preliminary and
23 final approval of this Agreement; and in the event final approval of this Agreement is not
24 obtained, the Parties do not waive, and instead expressly reserve, their respective rights to
25 prosecute and defend the Action as if this Agreement never existed, including but not limited to
26 the ability to bring and/or challenge class or collective action treatment on any grounds.

27 28. Automatic Voiding of Agreement if Settlement Not Finalized. If for any
28 reason the Effective Date does not occur, the Settlement shall be null and void and the orders and

1 judgment to be entered pursuant to this Agreement shall be vacated; and the Parties will be
2 returned to the status quo prior to entering this Agreement with respect to the Action, as if the
3 Parties had never entered into this Agreement. In addition, in such event, the Agreement and all
4 negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights
5 of any and all Parties hereto. Except as necessary in a proceeding to enforce the terms of this
6 Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be
7 offered as evidence in any action or proceeding to establish any liability or admission on the part
8 of Defendant or to establish the existence of any condition constituting a violation of, or a non-
9 compliance with state, federal, local, or other applicable law.

10 29. Stipulation for Class Certification. The Parties stipulate and agree that the
11 requirements of establishing collective action certification under the FLSA pursuant to 29 U.S.C.
12 § 216(b) and class certification pursuant to Fed R. Civ. P. 23(a) and 23(b)(3) are met for
13 settlement purposes only. If, however, the Settlement does not become final for any reason, the
14 Parties' Agreement shall become null and void ab initio and shall have no bearing on, and shall
15 not be admissible in connection with, whether class certification would be appropriate in a non-
16 settlement context.

17 30. Publicity, Confidentiality and Non-Disparagement.

18 a. Class Counsel agrees not to solicit any Class Members to exclude themselves
19 from the Settlement, and further agrees not to initiate, contact, or have any communications with
20 Class Members during the settlement approval process. Nothing will prevent Class Counsel from
21 responding to inquiries from Class Members. Defendant agrees that it shall not discourage any
22 Class Members from participating in the Settlement and shall refer any questions to the
23 Settlement Administrator.

24 b. Prior to filing the motion for preliminary approval and submitting this Agreement
25 to the Court, Class Counsel shall not discuss the terms of the Agreement with any person other
26 than Plaintiffs, Defendant's Counsel, and the Settlement Administrator. Class Counsel also agree
27 that they will not discuss the negotiations leading to Agreement with any person other than
28 Plaintiffs and Defendant's Counsel.

1 c. Plaintiffs acknowledge that they have not, and will not, discuss the terms of the
2 Settlement with any persons other than Class Counsel, their spouse(s), if any, their tax
3 preparer/accountant, and any other legal representative of Plaintiffs, prior to filing the motion
4 for preliminary approval and submission of this Agreement to the Court. Plaintiffs further
5 acknowledge that at no time will they disclose details of the negotiations leading to this
6 Settlement, including information learned during or after mediation.

7 d. To the extent permitted by applicable law and in order to implement the
8 Settlement, Plaintiffs agree that they will not make any defamatory or disparaging statements
9 about Defendant or any Released Party. However, Plaintiffs are not precluded from submitting
10 declarations in support of certification of the Class for purposes of this Settlement and to support
11 their receipt of Incentive Award(s).

12 e. To the extent documents produced, formally or informally, by Defendant during
13 the course of the Action are confidential or otherwise subject to confidentiality, Plaintiffs and
14 Class Counsel agree to maintain the confidentiality of such materials.

15 f. Nothing in this provision will prohibit Class Counsel or Plaintiffs from seeking
16 preliminary approval or final approval of the Settlement, or from making any
17 disclosures as required by law.

18 31. Modification in Writing. Prior to the Court granting preliminary approval of this
19 Agreement, this Agreement may be altered, amended, modified or waived, in whole or in
20 part, only in a writing signed by counsel for the Parties. After the Court has granted preliminary
21 approval of this Agreement, this Agreement may be altered, amended, modified or waived, in
22 whole or in part,
23 only in a writing signed by counsel for the Parties, subject to approval by the Court. Any waiver
24 of any provision of this Agreement shall not constitute a waiver of any other provision of this
25 Agreement unless expressly so indicated.

26 32. Ongoing Cooperation. Plaintiffs and Defendant, and each of their respective
27 counsel, shall cooperate in good faith to execute all documents and perform all acts necessary and
28 proper to effectuate and implement the terms of this Agreement, including but not limited to

1 drafting and submitting the motions for preliminary and final approval, and defending the
2 Agreement and final judgment against objections and appeals. The Parties to this Agreement
3 shall use their best efforts, including all efforts contemplated by this Agreement and any other
4 efforts that may become necessary by order of the Court or otherwise, to effectuate this
5 Agreement and the terms set forth herein.

6 33. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings
7 in the Action, except such proceedings necessary to implement and complete the Agreement.
8 Further, without further order of the Court, the Parties hereto may agree in writing to reasonable
9 extensions of time to carry out any of the provisions of the Agreement.

10 34. Parties' Authority. The signatories hereby represent that they are fully authorized
11 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

12 35. No Prior Assignments. The Parties and their counsel represent, covenant, and
13 warrant that they have not directly or indirectly, assigned, transferred, encumbered, or
14 purported to assign, transfer, or encumber to any person or entity any portion of any liability,
15 claim, demand, action, cause of action, or rights herein released and discharged or herein
16 establish and/or created, except as set forth herein.

17 36. Binding on Successors. This Agreement shall be binding and shall inure to
18 the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs
19 and legal representatives, including the Released Parties.

20 37. Integration/Entire Agreement. This Agreement constitutes the entire Agreement
21 among the Parties, and no oral or written representations, warranties or
22 inducements have been made to any Party concerning this Agreement other than the
23 representations, warranties, and covenants contained and memorialized in such documents. All
24 prior or contemporaneous negotiations, memoranda, agreements, understandings, and
25 representations, whether written or oral, are expressly superseded hereby and are of no further
26 force and effect. Each of the Parties acknowledges that they have not relied on any promise,
27 representation or warranty, express or implied, not contained in this Agreement. No rights
28 hereunder may be waived except in writing.

1 38. Execution in Counterparts. This Agreement may be signed in one or more
2 counterparts. A photographic, scanned, electronic, or facsimile copy of signatures shall be treated
3 as an original signature for all purposes. All executed copies of this Agreement, and photocopies
4 thereof (including facsimile or email copies of the signature pages), shall have the same force and
5 effect and shall be as legally binding and enforceable as the original.

6 39. Captions. The captions and section numbers in this Agreement are inserted for the
7 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
8 provisions of this Agreement.

9 40. Computation of Time. For purposes of this Agreement, if the prescribed time
10 period in which to complete any required or permitted action expires on a Saturday, Sunday, or
11 legal holiday (as defined by Fed. R. Civ. P. 6(a)(6)), such time period shall be continued to the
12 following business day. The term "days" shall mean calendar days unless otherwise noted.

13 41. Governing Law. This Agreement shall be interpreted, construed, enforced, and
14 administered in accordance with the laws of the State of California, without regard to otherwise
15 applicable principles of conflicts of laws.

16 42. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the
17 interpretation, implementation, and enforcement of the terms of this Agreement and all orders and
18 judgments entered in connection therewith, and the Parties and their Counsel submit to the
19 jurisdiction of the Court for this purpose.

20 43. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
21 and conditions of this Agreement. Accordingly, this Agreement shall not be construed more
22 strictly against one Party than another merely by virtue of the fact that it may have been
23 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
24 negotiations between the Parties, all Parties have contributed to the preparation of this
25 Agreement.


26 44. Resolution of Disputes. The Parties agree to refer any disputes related to
27 the drafting of the Agreement to the mediator (Michael E. Dickstein).

28 45. Representation by Counsel. The Parties acknowledge that they have been

1 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
2 and that this Agreement has been executed with the consent and advice of counsel.

3 **IT IS SO AGREED:**

4 05/27/2024
5 Dated: _____, 2024

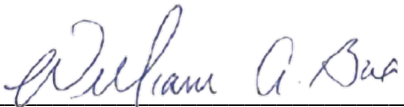


Plaintiff Adrianna Jarrett

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7
8 Dated: _____, 2024

Plaintiff Mary Ngethe

9
10
11 Dated: May 22 _____, 2024



Full Name: William A. Bose

Title: SVP Legal & Acting General Counsel

For Defendant [24]7.ai, Inc.

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15
16
17 **APPROVED AS TO FORM:**

18
19 Dated: May _____, 2024

SOMMERS SCHWARTZ, PC

Kevin J. Stoops
Attorneys for Plaintiffs and Proposed Class
and Collective Members

1 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
2 and that this Agreement has been executed with the consent and advice of counsel.

3 **IT IS SO AGREED:**

4
5 Dated: _____, 2024


Plaintiff Adrianna Jarrett

6
7
8 Dated: 05/29/2024, 2024



Plaintiff Mary Ngethe

9
10
11 Dated: May 22, 2024



Full Name: William A. Bose

Title: SVP Legal & Acting General Counsel

For Defendant [24]7.ai, Inc.

12
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16
17 **APPROVED AS TO FORM:**

18
19 Dated: May _____, 2024

SOMMERS SCHWARTZ, PC

Kevin J. Stoops
Attorneys for Plaintiffs and Proposed Class
and Collective Members

1 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
2 and that this Agreement has been executed with the consent and advice of counsel.

3 **IT IS SO AGREED:**


4
5 Dated: _____, 2024

6 Plaintiff Adrianna Jarrett

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9 Dated: _____, 2024

10 Plaintiff Mary Ngethe

11 Dated: May 22, 2024



12 Full Name: William A. Bose

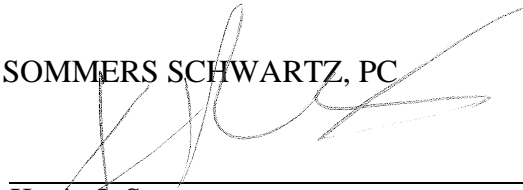
13 Title: SVP Legal & Acting General Counsel

14 For Defendant [24]7.ai, Inc.

15
16
17 **APPROVED AS TO FORM:**

18
19 Dated: May 31, 2024

SOMMERS SCHWARTZ, PC



21 Kevin J. Stoops
22 Attorneys for Plaintiffs and Proposed Class
23 and Collective Members
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Dated: May 22, 2024

SPENCER FANE LLP



Jennifer S. Coleman
Elaisha Nandrajog
SPENCER FANE LLP
Attorneys for Defendant [24]7.ai, Inc.