

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHRISTINE BOROVOY, an
individual, and on behalf of classes of
similarly situated individuals,

Plaintiff,

v.

SQUISHABLE.COM, INC., a New
York corporation,

Defendant.

Case No: 1:23-cv-03660

Judge: Hon. Paul A. Crotty

**PLAINTIFF'S UNOPPOSED MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

TABLE OF CONTENTS

- I. INTRODUCTION..... 1**
- II. CASE SUMMARY..... 2**
 - A. The Data Incident..... 2
 - B. Plaintiff’s Complaint..... 2
- III. SUMMARY OF SETTLEMENT 3**
 - A. Settlement Benefits 3
 - 1. Monetary Relief 4
 - 2. Data Security Measures 5
 - 3. Release 6
 - B. The Notice and Claim Process 6
 - 1. Notice..... 6
 - 2. Claims 7
 - 3. Requests for Exclusion and Objections 7
 - C. Fees, Costs, and Service Awards 8
- IV. LEGAL STANDARD 9**
- V. ARGUMENT..... 10**
 - A. The Settlement Class Should be Preliminarily Certified 10
 - B. The Proposed Class is Sufficiently Numerous..... 12
 - C. Questions of Law and Fact Are Common to the Class..... 12
 - D. Plaintiff’s Claims and Defenses are Typical of the Class..... 13
 - E. Plaintiff Will Provide Fair and Adequate Representation of the Class. 13
 - F. Because Common Issues Predominate Over Individualized Ones, Class Treatment is Superior. 14

G.	The Terms of the Settlement are Fair, Reasonable, and Adequate.....	16
1.	The Settlement Warrants Preliminary Approval Under Rule 23(e).....	17
2.	Consideration of the <i>Grinnell</i> Factors Favors Preliminary Approval.....	22
H.	The Proposed Claims Administrator Will Provide Adequate Notice.	24
VI.	CONCLUSION	26

TABLE OF AUTHORITIES

Cases

Achtman v. Kirby, McInerney & Squire, LLP,
464 F.3d 328 (2d Cir. 2006)..... 25

Alcantara v. CNA Mgmt., Inc.,
264 F.R.D. 61 (S.D.N.Y. Dec. 8, 2009)..... 12

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997)..... 11, 14, 15

Baksh et al. v. IvyRehab Network, Inc.
No. 7:20-CV-01845 (S.D.N.Y.)..... 20

Beckman v. KeyBank, N.A.,
293 F.R.D. 467, 481- 83 (S.D.N.Y. 2013)..... 21

Bolanos v. Norwegian Cruise Lines Ltd.,
212 F.R.D. 144, 156 (S.D.N.Y. 2022) 13, 14

Bourlas v. Davis Law Assocs.,
237 F.R.D. 345 (E.D.N.Y. Aug. 30, 2006) 17

Charron v. Pinnacle Group N.Y. LLC,
874 F. Supp. 2d 179 (S.D.N.Y. 2012)..... 25

City of Detroit v. Grinnell Corp.,
495 F.2d 448 (2d Cir. 1974)..... 17, 22

Cohen v. J.P. Morgan Chase & Co.,
262 F.R.D. 153 (E.D.N.Y Sept. 24, 2009)..... 9, 11, 14, 17

Consol. Rail Corp. v. Town of Hyde Park,
 47 F.3d 473 (2d Cir.1995)..... 12

D’Amato v. Deutsche Bank,
 236 F.3d 78 (2d Cir. 2007)..... 18

Denney v. Deutsche Bank AG,
 443 F.3d 253 (2d Cir. 2006)..... 11

Fox v. Cheminova,
 213 F.R.D. 113 (E.D.N.Y. Feb. 28, 2003) 14

Frank v. Eastman Kodak Co.,
 228 F.R.D. at 185 (W.D.N.Y. 2005)..... 23, 24

Freeland v. AT & T Corp.,
 238 F.R.D. 130 (S.D.N.Y. Aug. 17, 2006) 12

Hammond v. The Bank of N.Y. Mellon Corp.,
 No. 08 Civ. 6060 (RMB)(RLE), 2010 WL 2643307 (S.D.N.Y. June 25, 2010)..... 20

Hapka v. CareCentrix, Inc.,
 Case No. 2:16-cv-02372, 2018 WL 1871449 (D. Kan. Feb. 15, 2018)..... 15

In re Agent Orange” Prod. Liab. Litig., 818 F.2d 145 (2d Cir. 1987) 14

In re Anthem, Inc. Data Breach Litig.,
 327 F.R.D. 299 (N.D. Cal. Aug. 15, 2018)..... 15

In re Austrian & German Bank Holocaust Litig.,
 80 F. Supp. 2d 164 (S.D.N.Y. 2000)..... 19, 24

In re Flag Telecom Holdings, Ltd. Securities Litig.,
 574 F.3d 29 (2d Cir. 2009)..... 13

In re GSE Bonds Antitrust Litig.,
414 F. Supp. 3d 686 (S.D.N.Y. 2019)..... 19

In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.,
293 F.R.D. 21 (D. Me. 2013)..... 21

In re Initial Pub. Offering Sec. Litig.,
260 F.R.D. 81 (S.D.N.Y. June 10, 2009)..... 17

In re Interpublic Sec. Litig.,
No. 02 Civ. 6527, 2004 WL 2397190 (S.D.N.Y. Oct. 26, 2004) 23

In re Ira Haupt & Co.,
304 F. Supp. 917 (S.D.N.Y. 1969) 23

In re Luxottica Group S.p.A. Sec. Litig.,
233 F.R.D. 306 (E.D.N.Y. 2006) 10

In re Nissan Motor Corp. Antitrust Litig.,
552 F.2d 1088 (5th Cir. 1977) 25

In re Painwebber Ltd. P’ships Litig.,
171 F.R.D. 104 (S.D.N.Y. 1997) 23

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.,
330 F.R.D. 11 (E.D. N.Y. Jan. 28, 2019)..... 16

In re Polaroid ERISA Litig.,
2007 WL 2116398 (S.D.N.Y. July 19, 2007)..... 21

In re The Home Depot, Inc., Customer Data Sec. Breach Litig.,
Case No. 1:14-md-02583-TWT, 2016 WL 6902351 (N.D. Ga. Aug. 23, 2016)..... 15

Jackson v. Bloomberg, L.P.,
 298 F.R.D. 152 (S.D.N.Y. Mar. 19, 2014)..... 12

Johnson v. Rausch, Sturm, Israel, Enerson & Hornik, LLP,
 333 F.R.D. 314 (S.D.N.Y. 2019) 22

Jones v. Amalgamated Warbasse Houses, Inc.
 97 F.R.D. 355 (S.D.N.Y.1982) 18

Lizondro-Garcia v. Kefi LLC,
 300 F.R.D. 169, 175 (S.D. N.Y. 2014) 12

Marisol A. v. Giuliani,
 126 F.3d 372 (2d Cir.1997)..... 11, 12, 13, 14

Rutledge et al v. Saint Francis Healthcare System,
 No. 1:20-cv-00013-SPC (E.D. Mo.) 20

Strougo ex rel. BrazilianEquity Fund, Inc. v. Bassini,
 258 F. Supp. 2d 254 (S.D.N.Y. 2003)..... 21

Velez v. Majik Cleaning Serv., Inc.,
 No. 03 Civ. 8698, 2007 WL 7232783 (S.D.N.Y. June 25, 2007)..... 23

Wal-Mart Stores, Inc. v. Dukes,
 564 U.S. 338 (2011)..... 12

Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.,
 396 F.3d 96 (2d Cir.2005)..... 25

Willix v. Healthfirst, Inc.,
 No. 07-cv-1143, 2011 WL 754862 (E.D.N.Y. Feb. 18, 2011)..... 18

Rules

Federal Rule of Civil Procedure 23(a) 10, 12
Federal Rule of Civil Procedure 23(b) 10
Federal Rule of Civil Procedure 23(c) 24
Federal Rule of Civil Procedure 23(e) 10, 16, 19, 24

Treatises

Manual for Complex Litigation, (3d ed. 1995) 17

Plaintiff Christine Borovoy (“Plaintiff”) submits this Unopposed Memorandum in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.¹

I. INTRODUCTION

Defendant Squishable.com, Inc. (“Defendant” or “Squishable”) was the victim of a data incident that occurred from approximately May 26, 2022, to October 12, 2022, in which an unauthorized third party inserted unapproved code into Squishable’s website which allowed the third party to view and potentially capture the personally identifiable information (“PII”) of approximately 15,000 individuals. This class action arises out of Defendant’s alleged failure to safeguard the PII that it collected and maintained from Plaintiff and Class Members. Defendant denies all liability and wrongdoing.

After extensive arms’ length negotiations, the parties have reached a settlement that is fair, adequate, and reasonable. In exchange for a narrowly tailored release, limited to claims that were based upon the specific facts alleged in this case, Defendant has agreed to pay up to \$500,000 to compensate valid claims submitted by Class Members, any court-approved attorneys’ fees, costs and expenses, and court-approved Service Awards to the Plaintiff. Settlement Agreement, ¶¶ 2.2, 2.5. (“SA”).² Plaintiff strongly believes the settlement is favorable to the Settlement Class. See Declaration of Kiley L. Grombacher, (“Grombacher Decl.” or “Decl.”) ¶ 11.

Pursuant to Rule 23(e), Plaintiff moves the Court for an order certifying the class for settlement purposes, preliminarily approving the settlement agreement, and approving the content and manner of the proposed notice. Accordingly, based on the following memorandum, the Grombacher

¹ Counsel for Defendant have been apprised of the content of this Motion and have stated that the Motion is unopposed.

² The Settlement Agreement (“SA”) in its entirety is attached as Exhibit 1 to the Declaration of Kiley L. Grombacher (“Grombacher Decl.”) filed herewith. Capitalized terms shall have the same meaning as assigned to them in the Settlement Agreement.

Declaration and its attached exhibits filed herewith, Plaintiff respectfully requests that the Court preliminarily approve the Parties' Settlement Agreement and issue the proposed order attached to the Declaration of Kiley L. Grombacher in Support of Plaintiff's Motion for Preliminary Approval, filed herewith as Exhibit 1.

II. CASE SUMMARY

A. The Data Incident

Defendant is a consumer goods retailer located in New York. In the ordinary course of doing business, Defendant collects certain PII from customers such as: name, address, payment card information, and email address. Grombacher Decl., ¶ 13. Defendant's Privacy Notice, posted on their website, provides that "Personal Information," including contact and payment information, will be protected by "commercially reasonable efforts."³

From approximately May 26, 2022, to October 12, 2022, Squishable was the victim of a data incident in which an unauthorized third party gained access to Squishable's network and computer systems and potentially accessed the PII of Plaintiff and the Class Members (hereinafter, the "Data Incident"). Grombacher Decl., ¶ 12. As a result, Squishable notified approximately 15,961 individuals that their PII was potentially impacted by the Data Incident. *Id.*, ¶ 15.

B. Plaintiff's Complaint

On or about May 1, 2023, Plaintiff Christine Borovoy, through her counsel, filed a class action lawsuit based on the Data Incident against Squishable in this Court, which is the operative complaint in this litigation. Grombacher Decl., ¶ 17. Plaintiff alleges claims of negligence, unjust enrichment, breach of express contract, breach of implied contract, invasion of privacy, and violations of Illinois'

³ <https://www.squishable.com/PRPO.html>.

Consumer Fraud and Deceptive Business Practices Act. *Id.* Plaintiff seeks equitable relief enjoining Defendant from engaging in the wrongful conduct complained of and compelling Defendant to utilize appropriate methods and policies with respect to consumer data collection, storage, and safety. *Id.*, ¶ 20. Further, by her complaint, Plaintiff seeks an award of actual, nominal, consequently and punitive damages as well as attorneys’ fees and costs, and any such further relief as may be deemed just and proper. *Id.*, ¶ 22.

Soon after Plaintiff filed her Class Action Complaint, the Parties, by and through their respective counsel, began discussing the possibility for early resolution. Grombacher Decl., ¶ 23. The Parties agreed that an early resolution was warranted. Over the next few months, the Parties engaged in extensive arm’s length settlement negotiations. *Id.*, ¶ 26. Negotiations included a significant exchange of information, allowing both Parties to evaluate the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses. *Id.*, ¶ 27. On November 10, 2023, the parties engaged in a full-day mediation session with a qualified, neutral third-party mediator selected from the Court’s Mediation Program by agreement of the parties, Christopher McDonald, Esq. The parties reached a settlement in principle at the mediation, and over the next few weeks, the Parties diligently negotiated, drafted, and finalized the settlement agreement, notice forms, and came to an agreement on a claims process and administrator. *Id.*, ¶ 28. The Settlement Agreement (“SA”) was finalized by the Parties on March 1, 2024, and is attached in full as Exhibit 1 to the Declaration of Kiley L. Grombacher, filed herewith. It is the opinion of Plaintiff and proposed settlement class counsel, based on their experience and investigation, that the Settlement Agreement presents a favorable result for the Class. *Id.*, ¶ 31.

III. SUMMARY OF SETTLEMENT

A. Settlement Benefits

Under the proposed Settlement, Class Members shall have an opportunity to submit a claim

for reimbursement of ordinary losses, lost-time, extraordinary losses, and a cash payment to California Subclass Members due to the California Consumer Privacy Act (“CCPA”) claim available to them as California residents. Furthermore, under the Settlement Agreement, Defendant has implemented certain cybersecurity enhancements. The Settlement provides for relief for a Class defined as:

“all natural persons residing in the United States who were sent a Notice Letter notifying them that their Private Information may have been compromised in the Data Incident.”

SA, ¶ 1.7. The Class is estimated to include approximately 15,961 individuals.

The Settlement Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. *Id.*

1. Monetary Relief

Under the terms of the Settlement Agreement, Squishable will pay at most \$500,000, which will be used to make payments to Class Members and to pay the costs of Notice, Settlement Administration, attorneys’ fees and expenses, and Service Award to Plaintiff. SA., ¶¶ 2.2, 2.5.

Settlement Class Members can submit a claim for Ordinary Losses, which provides for up to \$200.00 per person reimbursement of documented ordinary losses, demonstrably incurred, more likely than not, as a result of the Data Incident, including, but not limited to: (i) unreimbursed fees or other charges from Class Members’ bank or credit card company incurred as a result of the Data Incident; (ii) unreimbursed fees relating to Class Members’ account being frozen or unavailable incurred as a result of the Data Incident; (iii) unreimbursed fees or other charges relating to the

reissuance of Class Members' credit or debit card incurred as a result of the Data Incident; and (iv) other unreimbursed incidental telephone, internet, mileage, or postage expenses directly related to and incurred as a result of the Data Incident. SA, ¶ 2.1(a). Class Members can also submit a claim for documented Extraordinary Losses which will provide reimbursement of up to \$2,500 per person for actual, documented, and unreimbursed monetary loss incurred on or after October 12, 2022, more likely than not caused by the Data Breach, and not already covered by one or more of the normal reimbursement categories. *Id.*, ¶ 2.1(c).

Additionally, Class Members can submit a claim for compensation for up to four (4) hours of lost time spent addressing issues related to the Data Incident, calculated at the rate of \$15.00 per hour. SA, ¶ 2.1(b). To make a claim for lost time the Class Member must include an attestation that the time claimed was actually spent as a result of the Data Incident. *Id.* Claims for lost time are subject to and included within the cap of \$200 for ordinary losses. *Id.*

Lastly, California Subclass Members are defined as:

“All persons residing in the State of California whose PII was involved in the Data Incident.”

SA, p. 1. California Subclass Members may submit a claim for a \$100 cash payment due to the CCPA claim available to them as California residents. The CCPA Payment is in addition to the other payments provided by the Settlement.

2. Data Security Measures

In addition to the monetary relief provided, Squishable has represented that it has either undertaken or will undertake certain reasonable steps to further secure its systems and environments. SA, ¶ 2.3. Defendant has agreed to provide further information to the Plaintiff and Class Counsel, if requested, on a confidential and sealed basis regarding the already undertaken enhancements or planned future enhancements and the estimated value of those changes, provided that Plaintiff, with

prior approval from the Court, may file such information regarding the undertaken or planned enhancement steps under seal with the Court in accordance with the orders and instructions of the Court. *Id.*

3. Release

The release is tailored to the claims that have been plead or could have been plead in this case. SA, ¶ 1.25, 6.1. Class Members who do not exclude themselves from the Settlement Agreement will release all claims, whether known or unknown, against Released Persons, based on, relating to, concerning or arising out of the alleged Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. *Id.* ¶ 1.25.

B. The Notice and Claim Process

1. Notice

The Parties agreed to use KCC (“Settlement Administrator”) as the Settlement Administrator SA, ¶ 1.30. The cost of notice and all other costs of Settlement Administration will be paid for out of the overall \$500,000 cap. *Id.* ¶ 2.5. The notice plan provides for individual notice to Class Members via email or US mail, to the postal address that Squishable has on record for each Class Member. *Id.*, ¶ 3.2(d).

The Settlement Administrator will establish a settlement website and will maintain and update the website during the claim period, with the Long Notice, and Claim Form, the Preliminary Approval Order, Settlement Agreement, and other relevant case documents. SA, ¶ 3.2(c). Class Members will be able to submit Claim Forms through the website. *Id.* The Settlement Administrator will also make a toll-free help line to provide Class Members with additional information about the Settlement and will establish a P.O. Box to which Class Members can submit claims. *Id.*, 3.2(f)

2. Claims

The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object. Grombacher Decl. ¶ 47. Class Members will have no less than ninety (90) days after the Short Notice is issued to complete and submit their Claim Form to the Settlement Administrator, either by mail or online. SA, ¶ 1.6. The Claim Form is written in plain language to facilitate Class Members' ease in completing it. *Id.* ¶ 1.5; SA, Ex. A. The Settlement Administrator will be responsible for reviewing the Claim Forms and determine if they are complete and valid. *Id.* ¶ 2.4. Should a claim be incomplete or lacking sufficient documentation, the Settlement Administrator may reach out the claimant for supplementation. *Id.* ¶ 2.4.1.

3. Requests for Exclusion and Objections

Settlement Class Members will have ninety (90) days following the Notice Commencement Date to object to or to submit a request for exclusion from the Settlement. SA, ¶ 1.19, 1.20. Similar to the timing of the claims process, the timing with regard to objections and requests for exclusion is structured to give Class Members sufficient time to access and review the Settlement documents—including Plaintiff's Motion for Attorneys' Fees, Costs, and Service Awards, which will be filed fourteen (14) days prior to the deadline for Class Members to object or exclude themselves from the Settlement. *Id.*, ¶ 7.3.

To be excluded from the Settlement, Class Members must make their request in writing, and must clearly manifest their intent to be excluded from the class. SA, ¶ 4.1. Any Member of the Class who elects to be excluded shall not (i) be bound by any order or the Judgment; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement. *Id.*, ¶ 4.2.

Any Settlement Class Member who wishes to object shall file notice of his/her intention to do so with the Court and concurrently mail notice to Class Counsel, counsel for Defendants, and the Claims Administrator. SA, ¶ 5.1. The objection to the Settlement Agreement must include: (i) the objector's full name and address; (ii) the case name and docket number; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Incident, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. *Id.*

C. Fees, Costs, and Service Awards

The Settlement Agreement calls for a reasonable service award to Plaintiff in the amount of \$1,500. SA, ¶¶ 1.28, 7.3. The Service Award is meant to compensate Plaintiff for her efforts on behalf of the Class, including maintaining contact with counsel, assisting in the investigation of the case, reviewing the Complaint, remaining available for consultation during the settlement negotiations, reviewing the Settlement Agreement, and answering counsel's questions. Grombacher Decl., ¶ 51.

After agreeing to the terms of the settlement, counsel for Plaintiff negotiated with Squishable regarding their attorneys' fees. Counsel and Squishable were unable to reach an agreed upon amount for the attorneys' fees payment. Rather than allow such a disagreement to delay the payments to the class members by continuing such negotiations, Squishable agreed to pay the fee amount awarded by

the Court, but it reserved the right to object to any fee request that exceeds \$80,000. SA, ¶ 7.2. Plaintiff contends that \$80,000 represents just 16% of the value of the settlement, far below what is typically awarded in data breach cases, while Defendant contends an award of up to \$80,000 would be reasonable under the circumstances presented here. *See Reynolds v. Marymount Manhattan Coll.*, No. 1:22-CV-06846-LGS, 2023 U.S. Dist. LEXIS 191993, at *3 (S.D.N.Y. Oct. 23, 2023) (holding that “[e]mpirical evidence indicates that the median percentage of the settlement amount awarded as attorneys’ fees in” matters similar to data breach cases is 29%). As such, Class Counsel intend to seek attorneys’ fees and costs that are closer to those typically awarded in these cases of between 25% and 30% of the value of the settlement, that is to say between \$125,000 and \$150,000. SA ¶ 7.2. Any costs and fees awarded are to be paid out of the \$500,000 cap as outlined in the Settlement Agreement. *Id.* ¶ 7.4.

Class Counsel will submit a separate motion seeking attorneys’ fees, costs, expenses, and Plaintiff’s Service Award before filing the Motion for Final Approval, and before Class Members’ deadline to exclude themselves from, or object to, the Settlement Agreement. SA, ¶¶ 7.2, 7.3. Defendant continues to reserve its right to oppose this motion.

IV. LEGAL STANDARD

Federal courts strongly encourage settlements, particularly in class actions and other complex matters where inherent costs, delays, and risks of continued litigation might otherwise outweigh any potential benefit the individual Plaintiff—or the class—could hope to obtain. *See Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157 (E.D.N.Y. Sept. 24, 2009) (“There is a strong judicial policy in favor of settlement, particularly in the class action context. The compromise of complex litigation is encouraged by the courts and favored by public policy.” (internal quotations omitted)). “Class action suits readily lend themselves to compromise because of the difficulties of proof, the

uncertainties of the outcome, and the typical length of the litigation. There is a strong public interest in quieting any litigation; this is ‘particularly true in class actions.’” *In re Luxottica Group S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006).

Plaintiff brings this motion pursuant to Federal Rule of Civil Procedure 23(e), under which a class action may not be settled without approval of the Court. Under the current iteration of Rule 23(e), in weighing a grant of preliminary approval district courts must determine whether “giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” The Settlement Agreement here warrants preliminary approval so that persons in the Class can be notified of the Settlement and provided an opportunity to voice exclusion or objection.

V. ARGUMENT

A. The Settlement Class Should be Preliminarily Certified

Plaintiff here seeks to certify, for settlement purposes, a class defined as: “all natural persons residing in the United States who were sent a Notice Letter notifying them that their Private Information may have been compromised in the Data Incident.” SA, ¶ 1.7. The Class is estimated to include approximately 15,000 individuals. *Id.*, p. 1. Additionally, Plaintiff also seeks to certify a California Subclass, for settlement purposes, defined as: “All persons residing in the State of California whose PII was involved in the Data Incident.” SA, p. 1. Rule 23(a) sets out four specific prerequisites to class certification: (1) the class must be so numerous that joinder is impracticable; (2) there must be questions of law and fact common to the class; (3) the claims or defenses of the class representatives must be typical of those of the class; and (4) the representative parties must fairly and adequately protect the interests of the class. Further, under Rule 23(b)(3), the Court must find that common questions of law or fact predominate over questions affecting only individual members, and

that a class action is superior to other available methods for adjudication of the controversy.

In determining whether to preliminarily approve a class action settlement, courts must first determine that the settlement class, as defined by the parties, is certifiable under the standards of Rule 23(a) and (b). “Before certification is proper for any purpose—settlement, litigation, or otherwise—a court must ensure that the requirements of Rule 23(a) and (b) have been met.” *Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006) (concluding in part that “the District Court conducted a Rule 23(a) and (b) analysis that was properly independent of its Rule 23(e) fairness review”).

Because a court evaluating certification of a class action that settled is considering certification only in the context of settlement, the court’s evaluation is somewhat different than in a case that has not yet settled. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In some ways, the court’s review of certification of a settlement-only class is lessened: as no trial is anticipated in a settlement-only class case, the case management issues inherent in the ascertainable class determination need not be confronted. *See id.* Other certification issues however, such as “those designed to protect absentees by blocking unwarranted or overbroad class definitions” require heightened scrutiny in the settlement-only class context “for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.” *Id.* In this Circuit, courts have found that “[i]n deciding certification, courts must take a liberal rather than restrictive approach in determining whether the Plaintiffs satisfies these requirements and may exercise broad discretion in weighing the propriety of a putative class.” *Cohen*, 262 F.R.D. at 158, (internal quotations omitted); *see also Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir.1997) (“Rule 23 is given a liberal rather than restrictive construction, and courts are to adopt a standard of flexibility” in deciding whether to grant certification.). Because the Class meets all requirements for certification under Rule 23, this Court should grant Plaintiff’s request.

B. The Proposed Class is Sufficiently Numerous.

Numerosity requires “the class [be] so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1). While there is no numerical requirement for satisfying the numerosity requirement, forty class members generally satisfies the numerosity requirement. *Alcantara v. CNA Mgmt., Inc.*, 264 F.R.D. 61, 64 (S.D.N.Y. Dec. 8, 2009); *see also Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir.1995). Here, the Parties have identified approximately 15,961 individuals who are a part of the Class. Grombacher Decl., ¶ 35. The large number of persons in the Class clearly renders joinder impracticable. As such, the numerosity requirement is easily satisfied.

C. Questions of Law and Fact Are Common to the Class.

Commonality requires Plaintiff to demonstrate “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The threshold for meeting this prong is not high— commonality does not require that every question be common to every member of the class, but rather that the questions linking class members are substantially related to the resolution of the litigation and capable of generating common answers even where the individuals are not identically situated. *Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 175 (S.D. N.Y. 2014) (*citing Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). A plaintiff may meet the commonality requirement where the individual circumstances of class members differ, but “their injuries derive from a unitary course of conduct by a single system.” *Marisol A.*, 126 F.3d at 377 (per curiam). “Even a single common legal or factual question will suffice.” *Jackson v. Bloomberg, L.P.*, 298 F.R.D. 152, 162, (S.D.N.Y. Mar. 19, 2014) (*quoting Freeland v. AT & T Corp.*, 238 F.R.D. 130, 140 (S.D.N.Y. Aug. 17, 2006)). Here, the commonality requirement is met because Plaintiff can demonstrate numerous common issues exist. For example, whether Squishable failed to adequately safeguard the records of its customers who entrusted it with their information is a question common across the entire class. Squishable’s data

security safeguards were common across the Class, and those applied to the data of one Class Member did not differ from those applied to another.

Other specific common issues include (but are not limited to):

- Whether Squishable failed to implement reasonable security procedures and practices; and
- Whether Squishable’s conduct rose to the level of negligence.

These common questions, and others alleged by Plaintiff in her Complaint, are central to the causes of action brought here, will generate common answers, and can be addressed on a class-wide basis. Thus, Plaintiff has met the commonality requirement of Rule 23.

D. Plaintiff’s Claims and Defenses are Typical of the Class.

Typicality Rule 23(a)(3) is satisfied where “each class member’s claim arises from the same course of events and each class member makes similar legal arguments[.]” *In re Flag Telecom Holdings, Ltd. Securities Litig.*, 574 F.3d 29, 35 (2d Cir. 2009) (internal quotation omitted). The crux of the typicality requirement is to ensure that “maintenance of a class action is economical and [that] the named Plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected[.]” *Marisol A.*, 126 F.3d at 376.

Here, Plaintiff’s and Class Members’ claims stem from the same event—the Data Incident—and Defendant’s cybersecurity protocols to protect Plaintiff’s and Class Members’ data. Thus, Plaintiff’s claims are typical of the Class Members’ claims and the typicality requirement is satisfied.

E. Plaintiff Will Provide Fair and Adequate Representation of the Class.

A representative plaintiff must be able to provide fair and adequate representation for the class. To satisfy the adequacy of representation requirement, plaintiff must establish that: (1) there is no conflict of interest between the class representative and other members of the class; and (2) the plaintiff’s counsel is qualified, experienced, and generally able to conduct the litigation. *Bolanos v.*

Norwegian Cruise Lines Ltd., 212 F.R.D. 144, 156 (S.D.N.Y. 2022) (quoting *Marisol A.*, 126 F.3d at 378); see also *Amchem*, 521 U.S. at 624.

Here, Plaintiff's interests are aligned with those of the Class in that they seek relief for injuries arising out of the same Data Incident. Plaintiff's and Class Members' data was allegedly compromised in the same manner. Under the terms of the Settlement Agreement, Plaintiff and Class Members will all be eligible for monetary relief within the \$500,000 cap on payments to be made by Defendant. Moreover, their data remaining with Squishable will be safeguarded in the future by the security protections it has or will put into place.

Further, counsel for Plaintiff have decades of combined experience as class action litigators and are well suited to advocate on behalf of the class. See Grombacher Decl. ¶¶ 3-11. Moreover, they have put their collective experience to use in negotiating an early-stage settlement that guarantees immediate relief to class members. Thus, the requirements of Rule 23(a) are satisfied.

F. Because Common Issues Predominate Over Individualized Ones, Class Treatment is Superior.

To show that common issues predominate, Plaintiff must demonstrate that common questions of law or fact relating to the class predominate over any individualized issues. *Bolanos*, 212 F.R.D. at 157. This requirement “tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. The predominance requirement is met when the defendant's wrongful acts involve common practices, or when the defendant has a common defense. *Fox v. Cheminova*, 213 F.R.D. 113, 130 (E.D.N.Y. Feb. 28, 2003) (citing *In re Agent Orange*” *Prod. Liab. Litig.*, 818 F.2d 145, 166-167 (2d Cir. 1987)). Commonality is regularly met in cases where the focus is on the conduct of a defendant rather than that of individual plaintiff, making it particularly susceptible to common, generalized proof. *Cohen.*, 262 F.R.D. at 159.

In this case, the key predominating questions are whether Defendant had a duty to exercise

reasonable care in safeguarding, securing, and protecting the personal information of Plaintiff and the Class, and whether Defendant breached that duty. The common questions that arise from Squishable’s conduct predominate over any individualized issues. Other courts have recognized that the types of common issues arising from data breaches predominate over any individualized issues. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 312–315 (N.D. Cal. Aug. 15, 2018) (finding predominance was satisfied because “Plaintiffs’ case for liability depend[ed], first and foremost, on whether [the defendant] used reasonable data security to protect Plaintiffs’ personal information,” such that “the claims rise or fall on whether [the defendant] properly secured the stolen personal information,” and that these issues predominated over potential individual issues); *see also Hapka v. CareCentrix, Inc.*, Case No. 2:16-cv-02372, 2018 WL 1871449, at *2 (D. Kan. Feb. 15, 2018) (finding predominance was satisfied in a data breach case, stating “[t]he many common questions of fact and law that arise from the E-mail Security Incident and [Defendant’s] alleged conduct predominate over any individualized issues”); *In re The Home Depot, Inc., Customer Data Sec. Breach Litig.*, Case No. 1:14-md-02583-TWT, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016) (finding common predominating questions included whether Home Depot failed to reasonably protect class members’ personal and financial information, whether it had a legal duty to do so, and whether it failed to timely notify class members of the data breach); *In re Heartland*, 851 F. Supp. 2d at 1059 (finding predominance satisfied in data breach case despite variations in state laws at issue, concluding such variations went only to trial management, which was inapplicable for settlement class).

Because the class is being certified for settlement, there are no issues with manageability. *Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only certification, a district court need not inquire whether the case, if tried, would present ... management problems[.]”). The resolution of 15,000 claims in one action is superior to individual lawsuits. Class certification—and

class resolution—furthers judicial efficiency and conservation of resources by avoiding individually litigating thousands of individual data breach cases arising out of the same Data Incident.

The common questions of fact and law arising from Defendant’s conduct predominate over any individualized issues, a class action is the superior vehicle to resolve these issues, and the requirements of Rule 23(b)(3) are met. Accordingly, the classes should be certified for settlement.

G. The Terms of the Settlement are Fair, Reasonable, and Adequate

After determining that certification of the Settlement Class is appropriate, the court must determine whether the Settlement Agreement itself is worthy of preliminary approval and of providing notice. Under the current iteration of the Rule, notice is only justified where the parties can show that the court will “likely” be able to approve the proposed settlement. Fed. R. Civ. P. 23(e)(1)(i). Thus, consideration on preliminary approval requires an initial assessment of the factors to be considered on final approval: “(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate . . .; and (D) the proposal treats class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(A)-(D). In determining whether the relief is adequate, Courts consider: “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 28 (E.D. N.Y. Jan. 28, 2019); Fed. R. Civ. P. 23(e)(2)(C)(i)-(iv).

Before the 2018 revisions to Rule 23(e), the Second Circuit had developed its own list of factors for consideration, finding preliminary approval of a proposed class action settlement is warranted where it is the result of “serious, informed, non-collusive (“arm’s length”) negotiations,

where there are no grounds to doubt its fairness and no other obvious deficiencies. . . and where the settlement appears to fall within the range of possible approval.” *See Cohen*, 262 F.R.D. at 157; *In re Nasdaq Antitrust Litig.*, 176 F.R.D. at 102; *Bourlas v. Davis Law Assocs.*, 237 F.R.D. 345, 354 (E.D.N.Y. Aug. 30, 2006); *see also* Manual for Complex Litigation, § 30.41 (3d ed. 1995). In making this determination, Second Circuit Courts considered nine *Grinnell* factors:

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

In re Initial Pub. Offering Sec. Litig., 260 F.R.D. 81, 88 (S.D.N.Y. June 10, 2009) (*citing City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) (abrogated on other grounds)).

In reviewing the Settlement for substantive fairness, reasonableness, and adequacy, Plaintiff will examine the Settlement for satisfaction of both the Rule 23 factors, as well as the *Grinnell* factors historically considered by Second Circuit Courts in order to demonstrate that the Settlement falls well within the “range of possible approval,” is “likely” to be granted final approval and warrants preliminary approval so that notice can issue to the class.

1. The Settlement Warrants Preliminary Approval Under Rule 23(e).

a. Plaintiff and Proposed Class Counsel have adequately represented the Class

Under Rule 23(e)(2)(A), the first factor to be considered is whether the class representatives and Class Counsel have adequately represented the class, including the nature and amount of discovery undertaken in the litigation. *See* Fed. R. Civ. P. 23(e)(2)(A), 2018 Advisory Committee Notes. Here, Plaintiff has maintained contact with counsel, assisted in the investigation of the case, reviewed the Complaint, remained available for consultation throughout settlement negotiations,

reviewed the Settlement Agreement, and answered counsel's many questions. Grombacher Decl., ¶ 51. Plaintiff does not have any conflicts with the proposed class and have adequately represented Settlement Class Members in the litigation.

Proposed Class Counsel has also adequately represented the class. As discussed *supra* at Section V.E, Co-Lead Counsel has extensive experience in class action litigation generally, and data breach cases in particular. See Grombacher Decl., ¶ 3-11. In negotiating the Settlement, Co-Lead Counsel was thus well positioned and able to benefit from years of experience and familiarity with the factual and legal bases for this case.

Although formal discovery had not been completed, such discovery is not required for a settlement to be adequate. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 87 (2d Cir. 2007) (finding "although no formal discovery had taken place, the parties had engaged in an extensive exchange of documents and other information"); *Willix v. Healthfirst, Inc.*, No. 07-cv-1143, 2011 WL 754862 at *4 (E.D.N.Y. Feb. 18, 2011). ("The pertinent question is whether counsel had an adequate appreciation of the merits of the case before negotiating" (internal quotations omitted)). "In fact, informal discovery designed to develop a settlement's factual predicate is encouraged because it expedites the negotiation process and limits costs which could potentially reduce the value of the settlement." *Castagna*, 2011 WL 2208614, at *6 (citing *Jones v. Amalgamated Warbasse Houses, Inc.*, 97 F.R.D. 355, 360 (S.D.N.Y.1982)) ("In view of the way this speeds the negotiation process, informal 'discovery' is to be encouraged").

Here, proposed Class Counsel carried out a thorough investigation of the claims, and settlement negotiations included a significant exchange of information, allowing both Parties to evaluate the strengths and weaknesses of Plaintiff's claims and Defendant's defenses. Grombacher Decl. ¶¶ 16, 31. Accordingly, Plaintiff and Class Counsel here have adequately represented the Class,

and this factor weighs in favor of preliminary approval.

b. The Settlement was negotiated at arms' length and is absent of any collusion.

Rule 23(e)(2)(B) requires procedural fairness, as evidenced by the fact that “the proposal was negotiated at arm’s length.” If a class settlement is reached through arm's-length negotiations between experienced, capable counsel knowledgeable in complex class litigation, “the Settlement will enjoy a presumption of fairness.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 693 (S.D.N.Y. 2019).

Here, both Parties were represented by experienced counsel, and the settlement was only reached after months of arm’s length negotiations. The court need look no further than the fact that the parties were unable to reach a mutually agreeable figure for the attorneys’ fees to understand that the negotiations were both contentious and at arms’ length. Thus, there is no evidence of collusion. Accordingly, this factor weighs in favor of preliminary approval.

c. The relief provided for the class is more than adequate.

Fed. R. Civ. P. 23(e)(2)(c) requires examination of the relief provided by the Settlement. The instant Settlement negotiated by Class Counsel on behalf of the class provides for significant relief. Valued at up to a total of \$500,000, the Settlement provides for up to \$2,800 per Class Member in monetary relief, including reimbursement of ordinary losses, out-of-pocket costs, and compensation for lost time, and if they are a member of the California Subclass, a CCPA payment, as well as payment of a Service Award, attorneys’ fees and costs to the extent approved by the Court, and administration costs, up to the agreed \$500,000 cap. Additionally, Squishable has undertaken specific data security enhancements ensuring Plaintiff’s and Class Member’s data is better protected in the future.

The Settlement terms are consistent with, and in fact better than, agreements in other similar

data breach cases, in the Southern District of New York and across the country. *See e.g., Baksh et al. v. IvyRehab Network, Inc.* No. 7:20-CV-01845 (S.D.N.Y.) (providing up to \$75 per class member out of pocket expenses incurred related to the data breach and \$20 reimbursement for lost time, with payments capped at \$75,000 in aggregate; credit monitoring for claimants; and equitable relief in the form of data security enhancements); *Rutledge et al v. Saint Francis Healthcare System*, No. 1:20-cv-00013-SPC (E.D. Mo.) (data breach settlement providing up to \$280 in value to Class Members in the form of: reimbursement up to \$180 of out of pocket expenses and time spent dealing with the data breach; credit monitoring services valued at \$100; and data security enhancements).

As the relief provided is well within the range of possible approval when considered in light of the Rule 23(e)(2)(c)(i)-(iv) factors, preliminary approval should be granted.

i. The costs, risks, and delay of trial and appeal are great.

The relief provided for by the Settlement Agreement is significant, especially in light of the costs, risks, and delay of further litigation. The Settlement Agreement guarantees Class Members the opportunity to make a claim for up to \$2,800 each. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain. While Plaintiff strongly believes in the merits of the case, she also understands that Defendant will assert a number of potentially case-dispositive defenses. Proceeding with litigation would open up Plaintiff to the risk inherent in trying to achieve and maintain class certification and prove liability—both factors considered under the test for final approval established by *Grinnell*.

Moreover, due at least in part to their cutting-edge nature and the rapidly evolving law, data breach cases like this one generally face substantial hurdles—even just to make it past the pleading stage. *See Hammond v. The Bank of N.Y. Mellon Corp.*, No. 08 Civ. 6060 (RMB)(RLE), 2010 WL 2643307, at *1 (S.D.N.Y. June 25, 2010) (collecting data breach cases dismissed at the Rule 12(b)(6)

or Rule 56 stage). Class certification is another hurdle that would have to be met—and one that has been denied in other data breach cases. *See, e.g., In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 293 F.R.D. 21 (D. Me. 2013).

Plaintiff disputes the defenses it anticipates Squishable will likely assert—but it is obvious that her success at trial is far from certain. Through the Settlement, Plaintiff and Class Members gain significant benefits without having to face further risk of not receiving any relief at all.

- ii. The proposed method of distributing relief, including the method of processing class-member claims, is objective, efficient, and fair.

As described in Section III.B, *supra*, the Settlement Administrator will assess claims and distribute relief. Grombacher Decl. ¶ 47. Class Members will have ninety (90) days from distribution of notice to complete and submit a claim form. *Id.* The Settlement Administrator will be responsible for evaluating the claims and the evidence submitted, requesting additional documentation and/or information where the claim form is insufficient, and awarding funds. *Id.* The procedure provided for by the Settlement Agreement is objective, efficient, and fair.

- iii. The attorneys' fees, costs and service awards that Plaintiff will request this Court approve are reasonable.

By separate motion, Plaintiff will seek Court approval of attorneys' fees and costs in the maximum amount of \$150,000 (approximately 30% of \$500,000 cap) and a service award for Plaintiff in the amount of \$1,500. These requests are well within the range of those regularly accepted by Second Circuit courts. *See Strougo ex rel. BrazilianEquity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (finding 33% in attorneys' fees alone to be reasonable)(collecting cases); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481- 83 (S.D.N.Y. 2013) (granting an award of \$5,000 to \$7,500 to Plaintiffs); *In re Polaroid ERISA Litig.*, 2007 WL 2116398, at *3 (S.D.N.Y. July 19, 2007) (granting award of \$10,000 to named plaintiffs). While Plaintiff will fully brief her request by

separate motion prior to Class Members' deadline to object to or exclude themselves from the Settlement, the attorneys' fees, costs, and service awards sought clearly fall within the range of possible approval. As mentioned, Squishable continues to reserve the right to object to any fee and cost request that exceeds \$80,000. SA, ¶ 7.2.

iv. No additional agreement related to the settlement exist.

No additional agreements require identification or examination under Rule 23(e)(3).

d. The Settlement Treats Class Members Equitably to Each Other.

Under the terms of the Settlement, the Class Members will be treated equitably to each other. Every Settlement Class Member has the opportunity to submit a claim for up to \$2,800 in monetary compensation. Accordingly, and because the Settlement Agreement meets all of the required criteria under Rule 23 (e), preliminary approval should be granted.

2. Consideration of the *Grinnell* Factors Favors Preliminary Approval.

Prior to the revisions to Rule 23, the Second Circuit relied on the nine factors set forth in *City of Detroit v. Grinnell Corp.* to guide its assessment of whether a class action settlement should be approved. *See* 495 F.2d 448, 463 (2d Cir. 1974) (abrogated on other grounds). While preliminary approval requires only an initial evaluation and Rule 23 has been since amended, the factors remain instructive and have been used by Second Circuit courts in evaluating settlements even after 2018. *See Johnson v. Rausch, Sturm, Israel, Enerson & Hornik, LLP*, 333 F.R.D. 314, 320 (S.D.N.Y. 2019) (considering both the Rule 23 and *Grinnell* factors on motion for preliminary approval).

First, the complexity, expense, and likely duration of the litigation support preliminary approval. As discussed *supra*, at Section V(G)(1)(c)(i), continued litigation will be complex, long, and expensive. Plaintiff would likely need to prevail on a motion to dismiss and/or summary judgment and both gain and maintain class certification through trial. Additionally, the amount of data expert

analysis and testimony needed to bring this case to trial would increase costs significantly, as well as add to the length of time needed to resolve the matter. Thus, this factor weighs in favor of approval.

Second, the reaction of class members is not yet apparent. While Plaintiff has reviewed and approved the Settlement Agreement, other Class Members have not yet had the same opportunity. As such, this factor is appropriately examined after Notice has issued to the Class and Class Members have had the opportunity to make a claim, exclude themselves, or object to the Settlement.

Third, the stage of the proceedings and the amount of discovery completed supports settlement approval. While the case is early in litigation, the Parties' exchanged information sufficient to allow both Parties to assess the claims and defenses at issue. Early settlement where the Parties are adequately informed, is to be commended. *Castagna*, 2011 WL 2208614, at *6 (commending negotiating early settlement and avoiding hundreds of hours of legal fees); *In re Interpublic Sec. Litig.*, No. 02 Civ. 6527, 2004 WL 2397190, *12 (S.D.N.Y. Oct. 26, 2004) (early settlements should be encouraged when warranted). As discussed above at Section V(B), the Parties had more than enough information to evaluate the claims and defenses at issue. As such, this factor favors approval.

Fourth, Fifth, and Sixth, the risks of establishing liability, damages, and maintaining a class through trial weigh in favor of Settlement Approval. Although Plaintiff firmly believes in the merits of the case, litigating in such an evolving area of law involves significant risk. "Litigation inherently involves risks." *In re Painwebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997). "If settlement has any purpose at all, it is to avoid a trial on the merits because of the uncertainty of the outcome." *Id.* (quoting *In re Ira Haupt & Co.*, 304 F. Supp. 917, 934 (S.D.N.Y. 1969)); see also *Velez v. Majik Cleaning Serv., Inc.*, No. 03 Civ. 8698, 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007) (noting "there are always risks in proceeding to trial and these risks are compounded by virtue of the nature of class action litigation.") (citing *Frank v. Eastman Kodak Co.*, 228 F.R.D. at 185 (W.D.N.Y.

2005)). While Plaintiff remains confident in the strength of her claims, additional litigation leaves open the risk that she will be unable to establish liability, prove causation and damages, and gain and maintain certification through trial. Thus, these factors weigh in favor of Settlement approval.

Seventh, the ability of Defendant to withstand a greater judgment is not at issue here. Even if Squishable could withstand a greater judgment, its ability to do so, “standing alone, does not suggest that the settlement is unfair.” *Eastman Kodak Co.*, 228 F.R.D. at 186 (quoting *In re Austrian*, 80 F. Supp. 2d at 178 n.9). Thus, this factor is neutral.

Eighth and Ninth, the Settlement provides substantial relief to the Settlement Class, especially in light of all the risks of litigation. The Settlement provides Class Members an opportunity to receive up to \$2,800 per person in monetary relief, subject to a \$500,000 overall cap on payments to be made by Defendant, along with the benefit of data security measures implemented by Defendant. The value achieved through the Settlement Agreement is guaranteed, where chances of prevailing on the merits are uncertain. Again, while Plaintiff strongly believes in the merits of this case, she also understands that Defendant will assert a number of potentially case-dispositive defenses. Proceeding with litigation would open Plaintiff up to the risks inherent in trying to achieve and maintain class certification and prove liability and damages. Through the Settlement, the Class Members gain significant benefits without facing further risk of receiving no relief at all.

The *Grinnell* factors favor approving the Settlement—and certainly at least support preliminary approval. As such, the Court should grant Plaintiff’s motion and allow notice to issue.

H. The Proposed Claims Administrator Will Provide Adequate Notice.

Rule 23(e)(1) requires the Court to “direct reasonable notice to all class members who would be bound by” a proposed Settlement. For classes like this one, certified under Rule 23(b)(3), parties must provide “the best notice that is practicable under the circumstances, including individual notice

to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2)(B) permits notice to be sent by “U.S. Mail, electronic mail, or other appropriate means.” The Notice Plan negotiated here is the best practicable. The Notice plan calls for Notice to issue via email or U.S. mail to the addresses Squishable has in its possession. Grombacher Decl., ¶ 44.

“The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 113–14 (2d Cir.2005). There are no rigid rules for determining whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice merely must “fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.” *Id.* at 114. Second Circuit Courts have explained that a Rule 23 Notice will satisfy due process where it describes the terms of the settlement generally and informs the class about the allocation of attorneys’ fees, and provides specific information regarding the date, time, and place of the final approval hearing. *Charron v. Pinnacle Group N.Y. LLC*, 874 F. Supp. 2d 179, 191 (S.D.N.Y. 2012) (internal citations omitted). The notice must also “contain information that a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the class and be bound by the final judgment.” *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1105 (5th Cir. 1977); *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 338 (2d Cir. 2006).

The substance of the Notice here is designed to be clear and concise and inform Class Members of the general terms of the Settlement, the allocation of attorneys’ fees, and provide specific information regarding the date, time, and place of the final approval hearing. See SA, Exs. A-C. As such, the proposed Notice Plan should be approved.

VI. CONCLUSION

Plaintiff has negotiated a fair, adequate, and reasonable settlement that guarantees Class Members significant relief. The Settlement Agreement is well within the range of reasonable results, and an initial assessment of both Rule 23 and the *Grinnell* factors demonstrates that final approval is likely, and Notice should issue to the class. For these and the above reasons, Plaintiff respectfully requests this Court certify the class for settlement purposes and grant her Motion for Preliminary Approval of Class Action Settlement.

Date: March 1, 2024

Respectfully Submitted,

By, /s/ Kiley L. Grombacher

Mason Barney
SIRI & GLIMSTAD, LLP
745 Fifth Ave, Suite 500
New York, NY 10151
Telephone: 212-532-1091
mbarney@sirillp.com

Marcus J. Bradley
Kiley L. Grombacher
Fernando Valle, Jr.
BRADLEY/GROMBACHER LLP
31365 Oak Crest Dr., Suite 240
Westlake Village, CA 91361
Telephone: 805-270-7100
mbradley@bradleygrombacher.com
kgrombacher@bradleygrombacher.com
fvalle@bradleygrombacher.com

Attorneys for Plaintiff and the Putative Class

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHRISTINE BOROVOY, an individual,
and on behalf of classes of similarly situated
individuals,

Plaintiff,

v.

SQUISHABLE.COM, INC., a New York
corporation,

Defendant.

Case No: 1:23-cv-03660

Judge: Hon. Paul A. Crotty

**DECLARATION OF KILEY L. GROMBACHER IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

I, Kiley L. Grombacher being competent to testify, make the following declaration:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify.

2. I am currently a partner of the law firm Bradley Grombacher, LLP. I am counsel at Bradley Grombacher for the proposed Settlement Class. I submit this declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval"). Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so. A true and correct copy of the Settlement Agreement ("Settlement Agreement") is attached hereto as

Exhibit 1. Included with the Agreement are true and correct copies of following sub-exhibits:

Sub-Exhibit A: Claim Form

Sub-Exhibit B: Long Notice

Sub-Exhibit C: [Proposed] Preliminary Approval Order

Sub-Exhibit D: Short/Postcard Notice

Sub-Exhibit E: [Proposed] Final Order and Judgment

Counsel Qualifications

3. Bradley/Grombacher LLP is a national law firm. Bradley/Grombacher, LLP, has extensive experience litigating wage and hour class and representative actions as well as complex consumer class actions, including data breach matters. Details on the work, experience and accomplishments of the firm can be found at www.bradleygrombacher.com.

4. I have been a member of the State Bar of California since 2006. My involvement in various forms of class action litigation spans more than a decade during which time I have litigated hundreds of class actions.

5. I began my legal career at Arias, Ozzello & Gignac where I specialized in and gained extensive experience litigating consumer cases. Thereafter, I joined Marlin & Saltzman in 2010, where I focused my practice almost exclusively on class, collective and enforcement actions including the reported case, *Faulkinbury v. Boyd & Associates*, which clarified the holding in a seminal case, *Brinker Restaurant Corp. v. Superior Court*, to establish that legality of certain company policies could be determined on a class-wide basis even if the application of the policies varies by individual.

6. I have argued cases before trial courts and courts of appeal. My writings on legal topics pertaining to class and representative actions have appeared in professional publications and I have been called upon to speak at conferences and seminars for professional organizations.

I have also been honored as a Rising Star and/or Super Lawyer in the area of class actions by Los Angeles Magazine for multiple years including the current year.

7. My partner, Mr. Bradley, has practiced since 1994. He has been responsible for all facets of class action and other complex litigation, from pre-filing investigation through trial and appeal. Since approximately May 2000, he has spent the majority of his time representing workers in wage and hour matters. Mr. Bradley's writings on legal topics pertaining to litigating wage and hour class and representative actions have appeared in professional publications and he has also been called upon to speak at conferences and seminars for professional organizations, including a recent presentation titled "Planning for and Executing Trial in Class and Collective Wage & Hour Cases." Mr. Bradley has been honored as a Super Lawyer in the area of class actions by Los Angeles Magazine for multiple years including 2021. He is a member of a number of professional organizations including the Consumer Attorneys of Los Angeles, the Consumer Attorneys of California, the California Employment Lawyers Association, and the American Association of Justice.

8. Myself and Mr. Bradley, at our present firm or at our prior firms, have litigated numerous class actions to favorable settlements including:

- a. *Gutierrez v. State Farm Mutual*, Los Angeles Superior Court (BC236552). Class action seeking overtime compensation for approximately 2,600 insurance claims adjusters employed by State Farm. The class was certified and summary adjudication was granted as to liability in favor of the class. The case settled for \$135 million just prior to trial, with final approval granted with no objections filed.

- b. *Bednar v. Allstate Insurance Company*, Los Angeles Superior Court (BC240813). Class action seeking overtime compensation for approximately 1,200 insurance claims adjusters employed by Allstate. The class was certified and summary adjudication was granted as to liability in favor of the class. The case settled for \$120 million just prior to trial, with final approval granted with no objections filed.
- c. *Roberts v. Coast National Insurance*, Orange County Superior Court (01CC08478). Class action seeking overtime compensation for insurance claims adjusters employed by Coast National Insurance. Certification granted, and then the matter was tried before a binding arbitrator. The case settled during the arbitration for in excess of \$18 million.
- d. *CNA Class Action Litigation*, Los Angeles Superior Court Class (JCCP 4230). Class action seeking overtime compensation for insurance claims adjusters employed by Defendant. Case settled for \$33 million, with final approval granted with no objections filed.
- e. *Dotson v. Royal SunAlliance*, Orange County Superior Court (02CC01787). Class action seeking overtime compensation for insurance claims adjusters employed by Royal SunAlliance. Case settled for \$12.3 million, with final approval granted with no objections filed.
- f. *Parris v. Lowe's Home Improvement*, Los Angeles County Superior Court (BC260702). Class action seeking payment of "off-the-clock" hours worked by all hourly employees of Lowe's Home Improvement stores in the State of California. The class was certified by the Court of Appeal and remanded to the trial court for further proceedings. Shortly thereafter, a \$29.5 million settlement was reached and approved without objection.

- g. *Pardo v. Toyota Motor Sales, et al.* Los Angeles County Superior Court (BC372781). Class action misclassification of workers with claims for overtime and missed meal and rest breaks. The case settled for \$7.75 million and was approved with no objections.
- h. *Smith/Ballard v. Wal-Mart Stores, Inc.* United States District Court for the Northern District of California (Case No. 4:06-cv-05411-SBA). Wage and hour class action seeking unpaid vacation and personal time, unpaid wages, and related penalties on behalf of over 245,000 employees. The action was certified and settled for \$86 million while Defendant's appeal of the certification was pending in the Ninth Circuit Court of Appeals.
- i. *Hoyng v. AON*, Los Angeles County Superior Court (BC377184). Wage and hour class action seeking overtime and related compensation on behalf of Relationship and Account Specialists. The case settled for \$10.5 million which was approved with no objections filed.
- j. *In RE Bank of America Wage and Hour Employment Practices Litigation*, MDL 2138, United States District Court for the District of Kansas. California state and FLSA wage and hour litigation for various violations including unpaid overtime and "off-the-clock" work. Settled for \$73 million.
- k. *Lemus v. H & R Block Litigation*, United States District Court for the Northern District of California (Case No. 3:09-cv-03179-SI) Class certified, and settlement reached prior to trial. Total settlement of \$35 million.
- l. *Harris v. Vector Marketing Corporation*, United States District Court for the Northern District of California (Case No. 3:08-cv-05198-EMC). Class action case on behalf of approximately 70,000 employees misclassified as "trainees."

- m. *Bickley v. Schneider National Trucking*, United States District Court for the Northern District of California (Case No. 4:08-cv-05806-JSW). Wage and hour class action on behalf of approximately 6,000 truck drivers. Settled for \$29.5million.
- n. *Roberts v. TJX*, United States District Court for the Northern District of California (Case No. 13-CV-04731-MEJ). Wage and hour violations on behalf of approximately 82,000 employees. Settled for \$8.5 million.
- o. *Oprychal v. New Your Life Insurance*, United States District Court for the Central District of California (Case No. 2:07-cv-00518-VBF). Class action for the failure to pay commissions pursuant to a compensation plan. Settled for \$10 million.
- p. *Neuvenheim v. Gamestop Corp.*, United States District Court for the Central District of California (Case No. 2:09-cv-06799-ODW). Class action on behalf of nonexempt employees for wage and hour violations.
- q. *Hightower v. JP Morgan Chase*, United States District Court for the Central District of California (Case No. 2:11-cv-01802-PSG). Class action on behalf of nonexempt employees for wage and hour violations. Settled for \$12 million.
- r. *Stern v. AT&T Mobility Corporation f/k/a Cingular Wireless Corporation*, United States District Court Central District of California (Case No. 2:05-CV-08842-CAS). Settlement with total value of the available settlement benefits that could have been claimed equaling \$38,280,748.
- s. *Lozano v. AT&T Wireless Services, Inc.*, United States District Court Central District of California (Case No 2:02-CV-00090-CAS). Settlement with total value of the available settlement benefits that could have been claimed equaling \$42,700,800.

9. Bradley Grombacher attorneys also participating in other data breach and privacy litigation, which includes: *Newman v. AudienceView Ticketing Corp. et al.*, Case No. 1:23-cv-03764 (S.D. N.Y. 2023); *In Re: Blackhawk Network Data Breach Litigation*, Case No. 3:22-cv-07084 (N.D. Cal. 2022); and *In Re: Independent Living Systems Data Breach Litigation*, Case No. 1:23-cv-21060 (S.D. Fla. 2023).

10. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiff’s settlement leverage, as well as the needs of Plaintiff and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals.

11. In the sections that follow, I will detail the hard-fought negotiations that resulted in the Agreement now before the Court for preliminary approval. As described below, the Settlement provides significant relief to Members of the Settlement Classes, and I strongly believe that it is favorable for the Settlement Class. It is, in the opinion of the undersigned, fair, reasonable, adequate, and in the best interests of the Settlement Class Members, and is worthy of preliminary approval.

Initial Investigation and Communications

12. From approximately May 26, 2022, to October 12, 2022, Squishable was the victim of a data incident in which an unauthorized third party gained access to Squishable’s network and computer systems and potentially accessed the PII of Plaintiff and the Class Members (hereinafter, the “Data Incident”). As a result, Squishable notified approximately 15,961 individuals that their PII was potentially impacted by the Data Incident.

13. Plaintiff alleged the following facts in Plaintiff' Consolidated Class Action Complaint:

- a. Defendant is a consumer goods retailer located in New York;¹
- b. In the ordinary course of doing business, Defendant collects certain PII from customers such as: name, address, payment card information, and email address;²
- c. In the course of collecting PII from consumers, including Plaintiff, Defendant promises to provide confidentiality and security for personal information, including by promulgating and placing privacy policies on its website;³
- d. Defendant began notifying consumers and state Attorneys General about a data breach that occurred from approximately May 26, 2022, to October 12, 2022, on or about March 2, 2023;⁴
- e. According to the Notice of Data Breach letters and letters sent to state Attorneys General, Squishable's website allowed a "third party to view and ... capture information that was entered on [their] checkout page as customers made purchases."⁵

14. Defendant reported its forensic investigation and internal investigation efforts confirmed that Plaintiff and Class Members' PII, including but not limited to such as: name, address, payment card information, and email address was present and potentially stolen by the unauthorized person at the time of the Data Incident.⁶

¹ Class Action Complaint ("Compl."), at Doc. 1, ¶16.

² Compl. ¶ 1.

³ Compl. ¶¶ 22-27.

⁴ Compl. ¶ 3.

⁵ Compl. ¶ 30.

⁶ Compl. ¶¶ 30-32.

15. Squishable notified 15,961 individuals that their PII had been impacted by the Data Incident.

16. After receiving notice that her PII had been impacted by the Data Incident, Plaintiff retained Counsel. After an internal investigation, Plaintiff filed a complaint in this matter on May 1, 2023.

Procedural Posture

17. On May 1, 2023, Plaintiff Christine Borovy filed a class action complaint in the Southern District of New York, alleging six causes of action:⁷

- a. Negligence;
- b. Unjust enrichment;
- c. Breach of express contract;
- d. Breach of implied contract;
- e. Invasion of privacy; and
- f. Violation of Illinois' Consumer Fraud and Deceptive Business Practices Act, 805 Ill. Comp. Stat. 505/1 et seq.⁸

18. The Complaint sought certification of a national class and an Illinois state subclass.⁹

19. Plaintiff alleges that the Data Incident put her at risk of imminent, immediate and continuing risk of harm from fraud and identity theft. She also alleges that they, and other Class

⁷ Compl., Doc. 1.

⁸ Compl. ¶¶ 116-202.

⁹ Compl. ¶¶ 100-101.

Members, have been forced to spend time dealing with the effects of the Data Incident.¹⁰

20. Plaintiff sought equitable relief enjoining Defendant from engaging in the wrongful conduct complained of and compelling Defendant to utilize appropriate methods and policies with respect to consumer data collection, storage, and safety.¹¹

21. Plaintiff further sought an order requiring Defendant to provide credit monitoring services or funds for the purchase of credit monitoring services to herself and the rest of the class.¹²

22. Finally, Plaintiff sought an award of actual, compensatory, and statutory damages as well as attorneys' fees and costs, and any such further relief as may be deemed just and proper.¹³

23. Soon after Plaintiff filed her Complaint, the Parties, by and through their respective counsel, began discussing the possibility for early resolution.

24. The Parties agreed that an early resolution of the above-captioned litigation (the "Litigation") was warranted.

25. On October 4, 2023, the Parties jointly requested the Court refer the Litigation to Court's Mediation Program pursuant to Local Civil Rule 83.9(e)(3) and adjournment of all present and anticipated deadlines. On October 5, 2023, the Court granted the Parties' request, and the Litigation was referred to Mediation and all present and anticipated deadlines were adjourned until December 4, 2023.

¹⁰ Compl. ¶¶ 78-98.

¹¹ Compl., p. 38.

¹² Compl. ¶ 14.

¹³ Compl. p. 40.

26. Over the next few weeks, the Parties, through their respective counsel, engaged in extensive arm's length settlement negotiations.

27. Negotiations included a significant exchange of information, allowing both Parties to evaluate the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, and mediation with an experienced mediator.

28. On November 10, 2023, the parties engaged in a full-day mediation session with a qualified, neutral third-party mediator selected from the Court's Mediation Program by agreement of the parties, Christopher McDonald, Esq. The parties reached a settlement in principle at the mediation, and over the next few weeks, the Parties diligently negotiated, drafted, and finalized the settlement agreement, notice forms, and came to an agreement on a claims process and administrator.

29. In late February, the Parties reached an agreement as to the material terms of the Settlement at mediation.

30. The Settlement Agreement ("Agreement.") was finalized by the Parties March 1, 2024, and is hereto as **Exhibit 1**.

31. It is my opinion, and the opinion of the other proposed settlement class counsel, based on our experience and investigation, that the Settlement Agreement presents a favorable result for the Class.

Settlement Benefits

32. The Nationwide Class is defined as: "All persons residing in the United States whose PII was involved in the Data Incident."

33. Additionally, the California Subclass is defined as: "All persons residing in the State of California whose PII was involved in the Data Incident." Agreement, p. 1.

34. The Settlement Class specifically excludes: (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge. Agreement, ¶ 1.7.

35. The Settlement Class consists of approximately 15,961 individuals.

36. The Settlement negotiated on behalf of the Class provides for three separate forms of relief: (1) monetary relief; and (2) equitable relief in the form of information security enhancements.

Monetary Relief

37. The monetary relief provided for by the Settlement Agreement consists of up to \$2,800 per Settlement Class Member including: (a) reimbursement of ordinary losses, lost-time, and extraordinary losses; and (b) a cash payment to California Subclass Members due the California Consumer Privacy Act (“CCPA”) claim available to them as California residents. Agreement, ¶ 2.1.

38. Settlement Class Members can submit a claim for Ordinary Losses, which provides for up to \$200.00 per person reimbursement of documented ordinary losses, demonstrably incurred, more likely than not, as a result of the Data Incident, including, but not limited to: (i) unreimbursed fees or other charges from Class Members’ bank or credit card company incurred as a result of the Data Incident; (ii) unreimbursed fees relating to Class Members’ account being frozen or unavailable incurred as a result of the Data Incident; (iii) unreimbursed fees or other charges relating to the reissuance of Class Members’ credit or debit card incurred as a result of the Data Incident; and (iv) other unreimbursed incidental telephone,

internet, mileage, or postage expenses directly related to and incurred as a result of the Data Incident. Agreement, ¶ 2.1(a). Class Members can also submit a claim for documented Extraordinary Losses which will provide reimbursement of up to \$2,500 per person for actual, documented, and unreimbursed monetary loss incurred on or after October 12, 2022, more likely than not caused by the Data Breach, and not already covered by one or more of the normal reimbursement categories. Agreement, ¶ 2.1(c).

39. Settlement Class Members can also submit a claim for compensation for up to four (4) hours of lost time spent addressing issues related to the Data Incident, calculated at the rate of \$15.00 per hour. Agreement, ¶ 2.1(b). To make a claim for lost time the Class Member must only include an attestation that the time claimed was actually spent as a result of the Data Incident. *Id.* Claims for lost time are subject to and included within the cap of \$200 for ordinary losses. *Id.*

40. California Subclass Members may submit a claim for a \$100 cash payment due to the CCPA claim available to them as California residents. The CCPA Payment is in addition to the other payments provided by the Settlement. Agreement, ¶ 2.1(d).

Data Security Measures

41. In addition to the monetary relief provided, Squishable has represented that it has either undertaken or will undertake certain reasonable steps to further secure its systems and environments. Agreement, ¶ 2.3. Defendant has agreed to provide further information to the Plaintiff and Class Counsel, if requested, on a confidential and sealed basis regarding the already undertaken enhancements or planned future enhancements and the estimated value of those changes, provided that Plaintiff, with prior approval from the Court, may file such information regarding the undertaken or planned enhancement steps under seal with the Court in accordance

with the orders and instructions of the Court. *Id.*

Release

42. The release is tailored to the claims that have been plead or could have been plead in this case. Agreement, ¶ 1.25, 6.1.

43. Class Members who do not exclude themselves from the Settlement Agreement will release all claims, whether known or unknown, against Released Persons, based on, relating to, concerning or arising out of the alleged Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Agreement, ¶ 1.25.

Notice

44. The Parties agreed to use KCC (“Settlement Administrator”) as the Settlement Administrator. Agreement, ¶ 1.30. The cost of notice and all other costs of Settlement Administration will be paid for out of the overall \$500,000 cap. *Id.* ¶ 2.5. The notice plan provides for individual notice to Class Members via email or US mail, to the postal address that Squishable has on record for each Class Member. *Id.*, ¶ 3.2(d).

45. The Settlement Administrator will establish a settlement website and will maintain and update the website during the claim period, with the Long Notice, and Claim Form, the Preliminary Approval Order, Settlement Agreement, and other relevant case documents. Agreement, ¶ 3.2(c). Class Members will be able to submit Claim Forms through the website. *Id.* The Settlement Administrator will also make a toll-free help line to provide Class Members with additional information about the Settlement and will establish a P.O. Box to which Class Members can submit claims. *Id.*, 3.2(f).

46. Within thirty (30) days of the date the Preliminary Approval Order is entered, the Claims Administrator will begin to provide notice to the Class by sending the Short Notice by the means specified in the Agreement to each of the approximately 15,961 Settlement Class Members. Agreement, ¶ 3.2(d).

Claims Process

47. The timing of the claims process is structured to ensure that all Class Members have adequate time to review the terms of the Settlement Agreement, compile documents supporting their claim, and decide whether they would like to opt-out or object. Class Members will have no less than ninety (90) days after the Short Notice is issued to complete and submit their Claim Form to the Settlement Administrator, either by mail or online. Agreement, ¶ 1.6. The Claim Form is written in plain language to facilitate Class Members' ease in completing it. Agreement, ¶ 1.5; Agreement, Ex. A. The Settlement Administrator will be responsible for reviewing the Claim Forms and determine if they are complete and valid. *Id.* ¶ 2.4. Should a claim be incomplete or lacking sufficient documentation, the Settlement Administrator may reach out the claimant for supplementation. *Id.* ¶ 2.4.1.

Requests for Exclusion and Objections

48. Settlement Class Members will have ninety (90) days following the Notice Commencement Date to object to or to submit a request for exclusion from the Settlement. Agreement, ¶ 1.19, 1.20. Similar to the timing of the claims process, the timing with regard to objections and requests for exclusion is structured to give Class Members sufficient time to access and review the Settlement documents—including Plaintiff's Motion for Attorneys' Fees, Costs, and Service Awards, which will be filed fourteen (14) days prior to the deadline for Class Members to object or exclude themselves from the Settlement. Agreement, ¶ 7.3.

49. To be excluded from the Settlement, Class Members must make their request in writing, and must clearly manifest their intent to be excluded from the class. Agreement, ¶ 4.1. Any Member of the Class who elects to be excluded shall not (i) be bound by any order or the Judgment; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement. *Id.*, ¶ 4.2.

50. Any Settlement Class Member who wishes to object shall file notice of his/her intention to do so with the Court and concurrently mail notice to Class Counsel, counsel for Defendants, and the Claims Administrator. Agreement, ¶ 5.1. The objection to the Settlement Agreement must include: (i) the objector's full name and address; (ii) the case name and docket number; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Incident, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. *Id.*

Fees, Costs, and Service Awards

51. The Settlement Agreement calls for a reasonable service award to Plaintiff in the amount of \$1,500. Agreement, ¶¶ 1.28, 7.3. The Service Award is meant to compensate Plaintiff for her efforts on behalf of the Class, including maintaining contact with counsel, assisting in the

investigation of the case, reviewing the Complaint, remaining available for consultation during the settlement negotiations, reviewing the Settlement Agreement, and answering counsel's questions.

52. After agreeing to the terms of the settlement, counsel for Plaintiff negotiated with Squishable regarding their attorneys' fees. Counsel and Squishable were unable to reach an agreed upon amount for the attorneys' fees payment. Rather than allow such a disagreement to delay the payments to the class members by continuing such negotiations, Squishable agreed to pay the fee amount awarded by the Court, but it reserved the right to object to any fee request that exceeds \$80,000. Agreement, ¶ 7.2. However, Plaintiff contends that \$80,000 represents just 16% of the value of the settlement, far below what is typically awarded in data breach cases, while Defendant contends an award of up to \$80,000 would be reasonable under the circumstances presented here. See *Reynolds v. Marymount Manhattan Coll.*, No. 1:22-CV-06846-LGS, 2023 U.S. Dist. LEXIS 191993, at *3 (S.D.N.Y. Oct. 23, 2023) (holding that "[e]mpirical evidence indicates that the median percentage of the settlement amount awarded as attorneys' fees in" matters similar to data breach cases is 29%). As such, Class Counsel intend to seek attorneys' fees and costs that are closer to those typically awarded in these cases of between 25% and 30% of the value of the settlement, that is to say between \$125,000 and \$150,000. Agreement ¶ 7.2. Any costs and fees awarded are to be paid out of the \$500,000 cap as outlined in the Settlement Agreement. Agreement. ¶ 7.4.

53. Class Counsel will submit a separate motion seeking attorneys' fees, costs, expenses, and Plaintiff's Service Award before filing the Motion for Final Approval, and before Class Members' deadline to exclude themselves from, or object to, the Settlement Agreement. Agreement, ¶¶ 7.2, 7.3. Defendant continues to reserve its right to oppose this motion.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Westlake Village, California on this 1st day of March, 2024.

Respectfully Submitted,

By, /s/ Kiley L. Grombacher

Kiley L. Grombacher

Attorneys for Plaintiff and the Putative Class

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and between the following Parties: Christine Borovoy (“Plaintiff”) and Squishable.com, Inc., (“Squishable” or “Defendant”) (collectively Plaintiff and Defendant will be referred to as the “Parties”). The Settlement Agreement is subject to Court approval and is intended by the Parties to resolve, discharge, and settle the Released Claims and this Litigation (as defined below), upon and subject to the terms and conditions set forth below.

INTRODUCTION

This is a nationwide class action arising from a data breach that occurred from approximately May 26, 2022 to October 12, 2022 involving the personally identifiable information (“PII” or “Private Information”) of approximately 15,000 individuals (the “Data Incident”). The Nationwide Class is defined as:

All persons residing in the United States whose PII was involved in the Data Incident.

Additionally, the California Subclass is defined as:

All persons residing in the State of California whose PII was involved in the Data Incident.

I. PROCEDURAL BACKGROUND

The case arises from the alleged compromise of PII as a result of the Data Incident. Plaintiff, Class Members, and California Subclass Members include current and former customers of Defendant and its affiliated and acquired entities, their customers, dependents, and other individuals affiliated with Defendant whose PII was involved in the Data Incident. In response to the Data Incident, Defendant sent a Notice Letter (“Notice Letter”) to each involved individual providing a description of the type of PII involved, which for any particular individual may have included: unencrypted and unredacted name, address, email address, and payment card

information, including financial account number or credit/debit card number (in combination with security code, access code, password or PIN for the account).

II. MEDIATION

Recognizing the risk and expenses of prolonged litigation, the Parties agreed to pursue informal discovery and mediation. After Defendant produced information requested by Plaintiff, and following several rounds of bilateral negotiations, on November 10, 2023, the Parties engaged in a full-day mediation session with a qualified, neutral third-party mediator selected from the Court's Mediation Program by agreement of the Parties, Christopher McDonald, Esq. The result of such mediation is the agreed resolution and class-wide settlement as memorialized in this Settlement Agreement.

Pursuant to the terms identified below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Defendant and the Released Persons (as defined below) relating to the Data Incident and/or this Litigation, by or on behalf of Plaintiff, Class Members and California Subclass Members (as defined below).

III. CONFIRMATORY DISCOVERY

Before entering into this Settlement Agreement, and in response to informal discovery requests for settlement purposes from Plaintiff, Defendant produced information requested by Plaintiff including information as to the size of the Nationwide Class and the California Subclass, remedial measures undertaken by Defendant and relevant insurance information.

IV. PLAINTIFF'S CLAIMS AND BENEFITS OF SETTLING

Plaintiff and proposed Class Counsel believe the claims asserted in the Litigation, as set forth in their Complaint against Defendant, have merit. Plaintiff and proposed Class Counsel

recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Defendant through motion practice, discovery, class certification, trial, and potential appeals. Plaintiff and proposed Class Counsel have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Proposed Class Counsel are highly experienced in class action litigation and, in particular, data breach and privacy litigation, and have previously served as lead counsel in other data breach class actions through final approval. Plaintiff and proposed Class Counsel have determined that the Settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class Members.

V. DENIAL OF WRONGDOING AND LIABILITY

Defendant denies each and all of the claims and contentions alleged against it in the Complaint. Defendant denies all charges of wrongdoing or liability as alleged, or which could be alleged. Nonetheless, Defendant has concluded that further conduct of litigation would be protracted and expensive, and that it is desirable that this matter be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Defendant has considered the uncertainty and risks inherent in any litigation and in this matter. Defendant has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

VI. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff, individually and on behalf of the Class Members, Proposed Class Counsel, as set forth in the signature block below, and Defendant that, subject to the approval of the Court, the Released Claims (as defined below) shall be finally and fully compromised, settled, and released, and the

Litigation shall be dismissed with prejudice as to the Settling Parties and the Class Members, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

As used in the Settlement Agreement, the following terms have the meanings specified below:

1.1 “Administration Fees” shall mean the fees, costs and other expenses incurred for Settlement Administration, as defined below.

1.2 “Agreement” or “Settlement Agreement” means this agreement.

1.3 “CCPA Payment” means the cash payment made available to California Subclass Members in the amount of \$100 under the California Consumer Privacy Action (“CCPA”) to the extent the California Subclass Member submits a Valid Claim for the CCPA Payment.

1.4 “Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.5 “Claim Form” means the form that will be used by Class Members to submit a Claim to the Settlement Administrator and that is substantially in the form as shown in **Exhibit A** to this Settlement Agreement.

1.6 “Claims Deadline” means the postmark and/or online submission deadline for Claims, which shall be 90 days after the Notice Commencement Date (as defined below). The Claims Deadline shall clearly be set forth in the order granting Preliminary Approval of the Settlement, as well as in the Notice and on the Claim Form.

1.7 “Class” means all natural persons residing in the United States who were sent a Notice Letter notifying them that their Private Information may have been compromised in the Data Incident. The Class specifically excludes: (i) all Persons who timely and validly request

exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.8 “Class Member(s)” means a Person(s) who falls within the definition of the Class.

1.9 “Court” means the United States District Court for the Southern District of New York.

1.10 “Data Incident” means the data security incident Defendant experienced from approximately May 26, 2022 to October 12, 2022, that involved an unauthorized third-party accessing Defendant’s network and computer systems and potentially accessing the Private Information of Plaintiff and the Class Members (as defined below).

1.11 “Dispute Resolution” means the process for resolving disputed Claims as set forth in this Agreement.

1.12 “Effective Date” shall mean the date when the Settlement Agreement becomes Final.

1.13 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the Court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fees award or service award made in this case shall not affect whether the Judgment is “Final” as defined herein or any

other aspect of the Judgment.

1.14 “Final Approval Order” is the order, substantially in the form as show in **Exhibit E** to this Settlement Agreement, through which the Court grants final approval of class action settlement and finds that this settlement is fair, reasonable, and adequate.

1.15 “Judgment” means a judgment rendered by the Court.

1.16 “Litigation” means this case, number 1:23-cv-03660-PAC, pending in the United States District Court for the Southern District of New York against Defendant.

1.17 “Long Notice” means the long-form notice of settlement to be posted on the Settlement Website (as defined below), substantially in the form as shown in **Exhibit B** to this Settlement Agreement.

1.18 The “Notice Commencement Date” means 30 days after the entry of the Preliminary Approval Order, which is the date that Notice will be sent to Class Members.

1.19 “Objection Date” means the date by which Class Members must file with the Court and mail to Class Counsel, counsel for Defendant, and the Settlement Administrator their objection to the Settlement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Objection Date shall be 90 days after the Notice Commencement Date, or such other date as ordered by the Court.

1.20 “Opt-Out Date” means the date by which Class Members must mail to the Settlement Administrator their requests to be excluded from the Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date shall be 90 days after the Notice Commencement Date.

1.21 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative,

trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.22 “Plaintiff” means Christine Borovoy.

1.23 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that Notice be provided to the Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached to this Settlement Agreement as **Exhibit C**.

1.24 “Proposed Class Counsel” and “Class Counsel” shall mean Kiley Grombacher of Bradley Grombacher LLP and Mason Barney of Siri & Glimstad, LLP.

1.25 “Released Claims” shall collectively mean any and all claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. § 45, *et seq.*, and all similar statutes in effect in any states in the United States as defined below; state consumer-protection statutes including the California Unfair Competition Law; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; violation of the California Consumer Privacy Act; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief or judgment, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special

damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Class Member against any of the Released Persons based on, relating to, concerning or arising out of the alleged Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of any Person who has timely excluded themselves from the Class.

1.26 “Related Entities” means Defendant’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

1.27 “Released Persons” means Defendant and its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, principals, agents, attorneys, insurers, and reinsurers.

1.28 “Service Award” shall have the meaning ascribed to it as set forth in ¶ 7.3 of this Settlement Agreement. The Service Award requested in this matter will be \$1,500 to the Class

Representative, subject to court approval and will be in addition to any other Settlement benefits Plaintiff may receive.

1.29 “Settlement Administration” means the processing and payment of claims received from Class Members by the Settlement Administrator.

1.30 “Settlement Administrator” means KCC who is experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation.

1.31 “Settling Parties” means, collectively, Defendant and Plaintiff, individually and on behalf of the Class and California Subclass and all Released Persons.

1.32 “Short Notice” means the postcard notice that will be sent to the Class Members, the contents of which will be substantially in the form as shown in **Exhibit D** to this Settlement Agreement. The Short Notice will direct recipients to the Settlement Website where recipients may view the Long Notice and make a claim for monetary relief. The Short Notice will also inform Class Members, *inter alia*, of the Claims Deadline, the Opt-Out Date and Objection Date, and the date of the Final Approval Hearing (as defined below).

1.33 “Settlement Website” shall be the www.onlinetoydatabreachsettlement.com url that the Settlement Administrator will establish and will contain detailed information about this Litigation.

1.34 “United States” as used in this Settlement Agreement means the United States of America and includes all of its States, the District of Columbia and all territories.

1.35 “Valid Claims” means Claims in an amount approved by the Settlement Administrator or found to be valid through the claims processing and/or Dispute Resolution process.

2. Settlement Benefits

2.1 Claimed Benefits: All Class Members shall have the opportunity to submit a Claim Form for certain Claimed Benefits. The Claimed Benefits, as described below, shall include: (a) Ordinary Loss Claims, including Lost-Time Claims; (b) Extraordinary Losses/Actual Identity Theft Claims; and (c) CCPA Payment, and any Valid Claim may be combined with any other Valid Claim.

- a) Ordinary Loss Cash Payment. After the distribution of attorneys' fees, Class Counsel's litigation expenses, Administrative Fees, Service Award, Extraordinary Losses/Actual Identity Theft Claims, and Lost Time Claims (each of which is defined below in this Section), Class Members may claim up to \$200.00 by submitting a valid and timely Claim Form and reasonable supporting documentation for ordinary losses, demonstrably incurred, more likely than not, as a result of the Data Incident. Ordinary losses may include, among other things: (i) unreimbursed fees or other charges from Class Members' bank or credit card company incurred as a result of the Data Incident; (ii) unreimbursed fees relating to Class Members' account being frozen or unavailable incurred as a result of the Data Incident; (iii) unreimbursed fees or other charges relating to the reissuance of Class Members' credit or debit card incurred as a result of the Data Incident; and (iv) other unreimbursed incidental telephone, internet, mileage, or postage expenses directly related to and incurred as a result of the Data Incident.
- b) Lost-Time Claims. Class Members may submit a Claim Form for reimbursement for time spent remedying issues related to the Data Incident

for up to four (4) total hours at a rate of \$15.00 per hour (“Lost-Time Claims”). No documentation need be submitted in connection with Lost-Time Claims, but Class Members must attest that the time claimed was actually spent as a result of the Data Incident. The total claim for a Class Member seeking Lost-Time and Ordinary Loss shall not exceed \$200.00.

c) Extraordinary Losses/Actual Identity Theft Claims. Class Members can submit a Claim Form for reimbursement of documented Extraordinary Losses/Actual Identity Theft reasonably traceable to the Data Incident up to \$2,500.00 per individual if:

- i. The loss is an actual, documented, and unreimbursed monetary loss;
- ii. The loss was more likely than not caused by the Data Incident;
- iii. The loss occurred during a specified time period; and
- iv. The loss is not already covered by one or more of the normal reimbursement categories; and the Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.
- v. Extraordinary Losses/Actual Identity Theft Claims will include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services;

costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after October 12, 2022, that the claimant attests under penalty of perjury were caused or otherwise incurred as a result of the Data Incident, through the date of claim submission; and miscellaneous expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges.

- d) CCPA Payment. California Subclass Members may submit a claim for a \$100 cash payment due to the CCPA claim available to them as California residents. The CCPA Payment, for California residents, is in addition to the Settlement benefits available Paragraph 2.1(a)-(c) above. All cash payments under Paragraph 2.1(a)-(c) may be pro rata decreased depending on the total number of Valid Claims submitted under the Settlement.

2.2 Limitation on Monetary Relief. Defendant and/or its insurers' maximum payment obligation under this Settlement Agreement for any and all payments under ¶¶ 2.1(a)-(d), plus attorneys' fees, plus any Service Award is \$500,000. Payments to the Class Members who make Valid Claims shall be reduced on a *pro rata* basis according to the number of claims made if the total would exceed the overall \$500,000 cap on payments to be made by Defendant. Nothing in this Settlement Agreement shall be construed as requiring Defendant to provide, and Defendant shall not be required to provide, for a double payment for the same loss or injury that was

reimbursed or compensated by any other source. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement.

2.3 Business Practices Changes & Confirmatory Discovery. Plaintiff has received assurances that Defendant either has undertaken or will undertake certain reasonable steps to further secure its systems and environments. Defendant has provided reasonable access to confidential information regarding the number of Class Members broken down by category and state of residence, the facts and circumstances of the Data Incident and Defendant's response thereto, and the changes and improvements that have been made or are being made to protect class members' PII. If requested, Defendant will provide further information to the Plaintiff and Class Counsel on a confidential and sealed basis regarding the undertaken or planned enhancement steps and the estimated value of those changes, provided that Plaintiff, with prior approval from the Court, may file such information regarding the undertaken or planned enhancement steps under seal with the Court in accordance with the orders and instructions of the Court.

2.4 Dispute Resolution for Claims. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the Extraordinary Losses/Actual Identity Theft; and (3) the information submitted could lead a reasonable person to conclude that it is more likely than not the claimant has suffered the claimed losses as a result of the Data Incident. The Settlement Administrator may, at any time, request from the claimant, in writing, additional information as the Settlement Administrator may reasonably require in order to evaluate the claim, e.g., documentation requested on the Claim Form, information regarding the claimed

losses, and claims previously made for identity theft and the resolution thereof. For any such claims that the Settlement Administrator determines to be implausible, the Settlement Administrator will submit those claims to the Settling Parties (one Plaintiff's lawyer shall be designated to fill this role for all Plaintiff). If the Settling Parties do not agree with the claimant's Claim, after meeting and conferring, then the Claim shall be referred for resolution to the Settlement Administrator for final determination.

2.4.1 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Settlement Administrator shall request additional information and give the claimant fourteen (14) days to cure the defect before rejecting the claim. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the defective claim.

2.4.2 Following receipt of additional information requested by the Settlement Administrator, the Settlement Administrator shall have ten (10) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Settlement Administrator determines that such a claim is facially valid, then the claim shall be paid. If the claim is not facially valid because the claimant has not provided all information needed to complete and evaluate the claim, then the Settlement Administrator may reject the claim without any further action. A defect in one claim shall not cause rejection of any other valid claim submitted by the claimant.

2.4.3 Class Members shall have ten (10) days from receipt of the offer to accept or reject any offer of partial payment received from the Settlement Administrator.

2.5 Settlement Expenses. All costs for notice to the Class Members as required under ¶ 3.2, Administrative Fees under ¶ 1.1 and the costs of Dispute Resolution described in ¶ 2.4, shall be paid out of the overall \$500,000 cap on payments to be made by Defendant.

2.6 Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Class provided for herein, will be vacated and the Litigation shall proceed as though the Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

3. Order of Preliminary Approval and Publishing of Notice of Final Approval Hearing

3.1 As soon as practicable after the execution of the Settlement Agreement, Proposed Class Counsel shall jointly submit this Settlement Agreement to the Court, and Interim Class Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form substantially similar to **Exhibit C** in both terms and cost, requesting, *inter alia*:

- a) certification of the Class for settlement purposes only pursuant to ¶ 2.6;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Interim Class Counsel as Class Counsel;
- d) appointment of Plaintiff as Class Representative;

- e) approval of the Short Notice to be emailed or mailed to Class Members in a form substantially similar to the one attached as **Exhibit D** this Settlement Agreement;
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as **Exhibit B** to this Settlement Agreement, which, together with the Short Notice, shall include a fair summary of the Parties' respective litigation positions, statements that the settlement and notice of settlement are legitimate and that the Class Members are entitled to benefits under the settlement, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, instructions for how to obtain the benefits, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Approval Hearing;
- g) approval of a Claim Form to be used by Class Members to make a claim in a form substantially similar to the one attached as **Exhibit A** to this Settlement Agreement; and
- h) appointment of KCC as the Settlement Administrator.

The Short Notice, Long Notice, and Claim Form may be revised as agreed upon by the Settling Parties before submission to the Court for approval. Immaterial revisions to these documents may also be made prior to dissemination of notice.

3.2 Costs for providing notice to the Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Administrative Fees shall be paid out of the

overall \$500,000 cap on payments to be made by Defendant. Attorneys' fees, costs, and expenses of Proposed Class Counsel, and service award to the Class Representative, as approved by the Court, shall also be paid from the overall \$500,000 cap on payments to be made by Defendant.

Notice shall be provided to Class Members by the Settlement Administrator as follows:

- a) *Class Member Information*: No later than 14 days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the name and last known physical address of each Class Member (collectively, "Class Member Information") that Defendant possesses.
- b) The Class Member Information and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or provide all data and information in its possession to the Settling Parties upon request, the Settlement Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
- c) *Settlement Website*: Prior to the dissemination of the Notice, the Settlement Administrator shall establish the Settlement Website that will inform Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this

Settlement Agreement; and (v) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically.

d) *Short Notice*: 30 days after the entry of the Preliminary Approval Order (i.e., the “Notice Commencement Date”), and subject to the requirements of this Settlement Agreement and the Preliminary Approval Order, the Settlement Administrator shall begin to provide notice to the Class through any one of the following means:

- via email to any email address in Defendant’s possession;
- via mail to the postal address in Defendant’s possession.
Before any mailing under this paragraph occurs, the Settlement Administrator shall run the postal addresses of Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS;
- in the event that a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Short Notice to the forwarding address if the Short Notice is returned as undeliverable;

- in the event that subsequent to the first mailing of a Short Notice, and at least 14 days prior to the Opt-Out Date and Objection Date, a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, i.e., the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.
- e) Publishing, on or before the Notice Commencement Date, the Claim Form, Long Notice and this Settlement Agreement on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period;
- f) A toll-free help line with an IVR system shall be made available to provide Class Members with additional information about the settlement. The Settlement Administrator also will provide copies of the Long Notice and paper Claim Form, as well as this Settlement Agreement, upon request; and

- g) Contemporaneously with seeking Final Approval of the Settlement, Proposed Class Counsel and Defendant shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with these provisions regarding notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Class may be adjusted by the Settlement Administrator in consultation and agreement with the Settling Parties as may be reasonable and not inconsistent with such approval. The Notice Program shall commence within 30 days after entry of the Preliminary Approval Order and shall be completed within 45 days after entry of the Preliminary Approval Order.

4. Opt-Out Procedures

4.1 Each Person wishing to opt-out of the Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest a Person's intent to opt-out of the Class and must include the individual's full name, address, and telephone number, the individual's personal and original signature or the original signature of a person authorized by law to act on the individual's behalf, and state unequivocally the individual's intent to be excluded from the Settlement. To be effective, written notice must be postmarked no later than the Opt-Out Date. No collective or aggregate opt-out requests will be accepted and all such requests will be deemed invalid.

4.2 All Persons who individually submit valid and timely notices of their intent to opt-out of the Class referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Class who do not opt-out of the Class in the manner set forth in this Agreement shall be bound by the

terms of this Settlement Agreement and Judgment entered thereon.

4.3 If the Settlement Administrator receives more than 2,300 Opt-Outs from the Settlement, then Defendant shall have the right to terminate the Settlement Agreement in its entirety.

5. Objection Procedures

5.1 Each Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name and address; (ii) the case name and docket number; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Incident, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. To be timely, written notice of an objection in the appropriate form must be filed with the Court and mailed to Class Counsel, counsel for Defendants, and the Claims Administrator, with a postmark date no later than the Objection Date. For all objections mailed to Claims Administrator, Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement, unless the objection(s) were previously filed on the docket. No collective or aggregate objections will be valid. Any objections to be considered valid must be filed individually.

5.2 Any Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of this Settlement Agreement. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

6. Release

6.1 Upon the Effective Date, each Class Member, including Plaintiff, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims as against all Released Parties. Further, upon the Effective Date, and to the fullest extent permitted by law, each Class Member, including Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted. Further, upon the Effective Date, each Class Member, including Plaintiff, shall be deemed to have, and by operation of the Judgment shall have expressly waived California Civil Code § 1542, and any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR

HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Any other claims or defenses Plaintiff and each and all of the Class Members may have against Defendant that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Data Incident, the Litigation, or the Released Claims are specifically preserved and shall not be affected by the preceding sentences.

7. Class Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to Plaintiff

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Plaintiff, until after the substantive terms of the settlement had been agreed upon, other than that reasonable attorneys' fees, costs, expenses, and service award to Plaintiff as may be agreed to by Defendant and Class Counsel and as ordered by the Court shall be paid from the overall \$500,000 cap on payments to be made by Defendant.

7.2 Class Counsel may make an application to the Court, at least fourteen (14) days before the opt-out and objection deadlines, for an award of Attorneys' Fees and Expenses in the Action to be paid by Defendant. Class Counsel may seek fees and expenses in any amount however, Defendant reserves the right to oppose the application if it is greater than \$80,000. Ultimately, the amount of Attorneys' Fees and Expenses to be recovered will be determined by the Court and Defendant agrees to pay the amount determined by the Court, provided such amount in combination with all other payments required by this Settlement does not exceed the agreed \$500,000 cap. Class Counsel, in their sole discretion, shall allocate and distribute any amounts of attorneys' fees, costs, and expenses awarded by the Court among Class Counsel.

7.3 Subject to Court approval, Plaintiff intends to request a service award in the amount

of up to \$1,500.00 to Plaintiff. Any request to the Court to allow a service award to Plaintiff must be filed at least fourteen (14) days before the opt-out and objection deadlines.

7.4 For the avoidance of doubt, Defendant and/or its insurers' payment obligation under this Settlement Agreement for attorneys' fees and any Service Award shall be paid out of the overall \$500,000 cap on payments to be made by Defendant.

7.5 No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service award ordered by the Court to Class Counsel or Plaintiff shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

8. Administration of Claims

8.1 The Settlement Administrator shall administer and calculate the Claims submitted by Class Members. Class Counsel and Defendant shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Settlement Administrator's determination of whether a Claim is a Valid Claim shall be binding, subject to the Dispute Resolution process.

8.2 The Claim Form, among other things, shall ask each Class Member the form in which they want to receive the relevant settlement funds, and shall offer payments in the form of a check or in other electronic payment types (e.g., Venmo, PayPal, and CashApp).

8.3 Subject to the terms and conditions of this Settlement Agreement, Defendant or its insurer shall promptly (within 20 days) transmit needed claimant compensation funds to the Settlement Administrator following written notification by the Settlement Administrator to Defendant regarding the amount needed. The Settlement Administrator shall cause to be paid all

electronic payments and mail checks for approved claims within sixty (60) days of the Effective Date, or within sixty (60) days of the date that the Claim is approved, whichever is later.

8.4 All Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.5 All checks issued under this section shall be void if not negotiated within ninety (90) Days of their date of issue and shall bear the language “This check must be cashed within 90 days, after which time it is void.” If a check issued pursuant to this section is not negotiated within ninety (90) days of their date of issue, a Class Member may request re-issuance within one-hundred and twenty days (120) of the date of issue of the check. If a Class Member fails to cash a check issued under this section before it becomes void, and fails to request re-issuance within the time provided for herein, the Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Class Member’s right to receive monetary relief under the Settlement shall be extinguished, and Defendant shall have no obligation to make payments to the Class Member for compensation or loss reimbursement under ¶ 2.1 or to make any other type of monetary relief to the Class Member. Such a Class Member remains bound by all terms of the Settlement Agreement.

8.6 If any electronic payment issued under this section is returned as undeliverable or otherwise void due to an error, the Settlement Administrator shall use reasonable measures to contact the affected Class Member to confirm the payment information, or correct any other errors, so that a second and final attempt to make payment can be made. If the Settlement Administrator

obtains updated or corrected payment information within one-hundred and twenty days (120) of the date of issue of the initial attempt at electronic payment, then the Settlement Administrator shall re-issue that payment as a second and final attempt at payment. If the Class Member fails to provide updated or corrected payment information within one-hundred and twenty days (120) days of the date of issue of the initial attempt at electronic payment, the Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Class Member's right to receive monetary relief under the Settlement shall be extinguished, and Defendant shall have no obligation to make payments to the Class Member for compensation or loss reimbursement under ¶ 2.1 or to make any other type of monetary relief to the Class Member. Such a Class Member remains bound by all terms of the Settlement Agreement.

8.7 The settlement funds and benefits paid or payable under this Settlement Agreement will not be subject to any non-claim statutes or any possible rights of forfeiture or escheat. All monies that might be paid are not vested, contingently due, or otherwise monies in which a Class Member has an enforceable right and shall remain the property of Defendant and its insurer until all conditions for payment have been met. No interest shall accrue or be payable in connection with any payment due under this Settlement Agreement.

8.8 Within ten (10) days following the filing of the motion for preliminary approval of class action settlement, the Settlement Administrator, on behalf of the Defendant, shall cause notice under Class Action Fairness Act, 28 U.S.C. § 1711, et seq. ("CAFA Notice") to be served upon the appropriate State and Federal officials. All expenses incurred in connection with the preparation and service of the CAFA Notice shall be borne by Defendant and are included in the costs of Settlement Administration as defined above.

8.9 Information submitted by Class Members in connection with submitted claims for

benefits under this Settlement Agreement shall be deemed confidential and the Settlement Administrator, the Parties, and counsel for the Parties shall use reasonable efforts to protect such information from disclosure to third parties.

8.10 No Person shall have any claim against the Settlement Administrator, Defendant, Class Counsel, Plaintiff, and/or Defendant's counsel based on distributions of benefits to Class Members.

9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a) Defendant has not exercised their option to terminate the Settlement Agreement pursuant to ¶ 4.3,
- b) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- c) the Judgment has become Final, as defined in ¶ 1.13.

9.2 If all conditions specified in ¶ 1.13 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated unless Class Counsel and Defendant's counsel mutually agree in writing to proceed with the Settlement Agreement.

9.3 Within 10 days after the Opt-Out Date, the Settlement Administrator shall furnish to Class Counsel and to Defendant's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.4 In the event that the Settlement Agreement including the releases are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance

with its terms, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service award shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Defendant shall be obligated to pay amounts already billed or incurred for costs of notice to the Class, Settlement Administration, and Dispute Resolution and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

10. Miscellaneous Provisions

10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 In the event that the aggregated amount of payments of all Valid Claims (i.e., Ordinary Loss Claims, Lost-Time Claims, Extraordinary Losses/Actual Identity Theft, and CCPA Payment exceeds the total amount of the overall \$500,000 cap on payments to be made by Defendant, then the value of the payments to be paid to each Class Member making a Valid Claim

shall be reduced on a *pro rata* basis, such that the aggregate value of all payments for all claims does not exceed the overall cap of \$500,000 on payments to be made by Defendant. All *pro rata* reduction determinations shall be made by the Settlement Administrator.

10.3 The Settling Parties intend this settlement to be a final and complete resolution of all claims and disputes between them with respect to the Data Incident and this Litigation. The settlement compromises claims, including but not limited to all Released Claims, that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein.

10.4 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other

theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.5 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.6 The exhibits to this Settlement Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

10.7 This Settlement Agreement, including all exhibits hereto, contains the entire understanding between Defendant and Plaintiff, individually and on behalf of the Class and all Released Entities, regarding the payment of the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between the Parties in connection with the payment of the Litigation settlement. Except as otherwise provided herein, each party shall bear its own costs. This Settlement Agreement supersedes all previous agreements made between the Parties.

10.8 Class Counsel, on behalf of the Class, and Defendant's counsel, on behalf of Defendant, are expressly authorized to take all appropriate actions required or permitted to be taken by the Parties pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Parties which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Parties.

10.9 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.10 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

10.11 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

10.12 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement. The Court shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

10.13 As used herein, “he” means “he, she, they, or it;” “his” means “his, hers, theirs, or its,” and “him” means “him, her, them, or it.”

10.14 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York.

10.15 All dollar amounts are in United States dollars (USD).

10.16 If a Class Member opts to receive settlement benefits via mailed check, cashing the settlement check is a condition precedent to any Class Member’s right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the


language: “This check must be cashed within ninety (90) days, after which time it is void.” If a check becomes void, the Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Class Member’s right to receive monetary relief shall be extinguished, and there shall be no obligation to make payments to the Class Member for expense reimbursement or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days after the Effective Date, requests for re-issuance need not be honored after such checks become void.

10.17 The Settlement Website shall be deactivated one hundred eighty (180) days after the Effective Date.

10.18 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

For Plaintiff

By: 

Christine Borovoy

Date: 03 / 01 / 2024

For Squishable.com, Inc.

By: _____
Name: Aaron Glazer
Title: Chief Executive Officer

Date: _____

language: “This check must be cashed within ninety (90) days, after which time it is void.” If a check becomes void, the Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Class Member’s right to receive monetary relief shall be extinguished, and there shall be no obligation to make payments to the Class Member for expense reimbursement or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days after the Effective Date, requests for re-issuance need not be honored after such checks become void.

10.17 The Settlement Website shall be deactivated one hundred eighty (180) days after the Effective Date.

10.18 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.


IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

For Plaintiff

By: _____
Christine Borovoy

Date: _____

For Squishable.com, Inc.

By:  _____
Name: Aaron Glazer
Title: Chief Executive Officer

Date: 3/1/2024

Approved as to form and content by counsel for Plaintiff and the Settlement Class:

By: /s/ Kiley L. Grombacher
Kiley L. Grombacher
Bradley/Grombacher LLP
31365 Oak Crest Dr., Suite 240
Westlake Village, CA 91361
Tel.: 805-270-7100
kgrombacher@bradleygrombacher.com

Date: 3/1/2024

By: /s/ Mason A. Barney
Mason A. Barney
Siri & Glimstad, LLP
745 Fifth Ave, Suite 500
New York, NY 10151
Tel.: 212-532-1091
mbarney@sirillp.com

Date: 3/1/2024

Approved as to form and content by counsel for Squishable.com, Inc.

By: _____
John C. Cleary
Polsinelli PC
600 Third Avenue, 42nd Floor
New York, NY 10016
Tel.: 212-413-2837
john.cleary@polsinelli.com

Date: _____

Approved as to form and content by counsel for Plaintiff and the Settlement Class:

By: _____
Kiley L. Grombacher
Bradley/Grombacher LLP
31365 Oak Crest Dr., Suite 240
Westlake Village, CA 91361
Tel.: 805-270-7100
kgrombacher@bradleygrombacher.com

Date: _____

By: _____
Mason A. Barney
Siri & Glimstad, LLP
745 Fifth Ave, Suite 500
New York, NY 10151
Tel.: 212-532-1091
mbarney@sirillp.com

Date: _____

Approved as to form and content by counsel for Squishable.com, Inc.

By: John C. Cleary
John C. Cleary
Polsinelli PC
600 Third Avenue, 42nd Floor
New York, NY 10016
Tel.: 212-413-2837
john.cleary@polsinelli.com

Date: March 1, 2024

SETTLEMENT TIMELINE

<u>From Order Granting Preliminary Approval</u>	
Defendant to provide list of Class Members to the Settlement Administrator	+14 days
Notice Commencement Date	+30 days
Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	+76 days after Notice Commencement Date
Objection Deadline	+90 days after Notice Commencement Date
Opt-Out Deadline	+90 days after Notice Commencement Date
Settlement Administrator Provide List of Objections/Exclusions to the Parties' counsel	+100 days
Claims Deadline	+90 days after Notice Commencement Date
<u>Final Approval Hearing</u>	
Motion for Final Approval	+180 (at minimum)
<u>From Order Granting Final Approval</u>	
Effective Date	+35 days, assuming no appeal has been taken. See definition of Final in the Agreement.
Payment of Attorneys' Fees and Expenses and Class Representative Service Award	+42 days
Payment of Claims to Class Members	+95 days (or within sixty (60) days of the date that the Claim is approved, whichever is later)
Settlement Website Deactivation	+180 days

EXHIBIT A

CLAIM FORM FOR SQUISHABLE.COM DATA INCIDENT BENEFITS

USE THIS FORM TO MAKE A CLAIM FOR ORDINARY LOSS, LOST TIME, CALIFORNIA CONSUMER PRIVACY ACT, AND EXTRAORDINARY LOSSES/ IDENTITY THEFT PAYMENTS

For more information, call 1-888-888-8888 or visit the website www.onlinetoydatabreachsettlement.com

Para una notificación en Español, pueda llamar 1-888-888-8888 o visitar nuestro sitio de web www.onlinetoydatabreachsettlement.com.

The DEADLINE to submit this Claim Form online (or mail it postmarked) is

[XXXX XX, 202X]

I. GENERAL INSTRUCTIONS

If you were notified that your Private Information was compromised in a cybersecurity incident experienced by Squishable.com, Inc. in 2022, you are a Class Member. The event that caused your data to be compromised is referred to here as the “Data Incident.”

The Settlement provides up to \$500,000 to compensate all Class Members who submit valid and timely claims for their Ordinary Losses (including Lost Time), Extraordinary Losses/Actual Identity Theft expenses, a California Consumer Privacy Act (“CCPA”) payment and to provide for Plaintiff’s service award, and attorneys’ fees and expenses as awarded by the Court and costs of class notice and settlement administration. As a Class Member, you are eligible for cash payments as reimbursement for time and money spent in response to the Data Incident (such as money spent on credit monitoring), as well as for any money you lost as a result of incidents of actual fraud or identity theft connected to the Data Incident. For California residents you are eligible for a CCPA payment of \$100. You must fill out this claim form to receive these benefits.

The benefits are as follows:

Ordinary Loss Cash Payment

Class Members may claim up to \$200 of Ordinary Losses by submitting a valid and timely Claim Form and reasonable supporting documentation for such losses, demonstrably incurred, more likely than not, as a result of the Data Incident. Ordinary Losses may include, among other things: (i) unreimbursed fees or other charges from Class Members’ bank or credit card company incurred as a result of the Data Incident; (ii) unreimbursed fees relating to Class Members’ account being frozen or unavailable incurred as a result of the Data Incident; (iii) unreimbursed fees or other charges relating to the reissuance of Class Members’ credit or debit card incurred as a result of the Data Incident; and (iv) other unreimbursed incidental telephone, internet, mileage, or postage expenses directly related to and incurred as a result of the Data Incident.

Lost-Time Payments

As part of the Ordinary Loss Cash Payment described above, Class Members may submit a Claim Form for reimbursement for time spent addressing issues related to the Data Incident for up to four (4) total hours at a rate of \$15 per hour capped at \$60 (“Lost-Time Claims”). No documentation need be submitted in connection with Lost-Time Claims, but Class Members must attest that the time claimed was actually spent as a result of the Data Incident. The total claim for a Class Member seeking Ordinary Losses, including Lost-Time, shall not exceed \$200.

Extraordinary Losses/Actual Identity Theft Cash Payment

Class Members can submit a Claim Form for reimbursement of documented Extraordinary Losses/Actual Identity Theft reasonably traceable to incidents of actual fraud or identity theft caused by or related to the Data Incident up

to \$2,500.00 per individual (“Extraordinary Loss Claims”) if the loss is an actual, documented, and unreimbursed monetary loss; the loss was more likely than not caused by the Data Incident; the loss occurred during a specified time period; and the loss is not already covered by one or more of the other reimbursement categories; and the Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. Extraordinary Loss Claims will include, without limitation, unreimbursed losses relating to actual fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services relating to actual fraud or identity theft; and other expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges relating to actual fraud or identity theft arising out of the Data Incident.

California Resident Sub-Class \$100 Additional Payment

If you were living in the State of California at the time of the Data Incident, which occurred between May 26, 2022 and October 12, 2022, you may submit a claim for an additional payment of \$100 as part of the California Sub-Class

Completing the Claim Form

This Claim Form may be submitted online at www.onlinetoydatabreachsettlement.com or completed and mailed to the address below. Please type or legibly print all requested information, in blue or black ink. Mail your completed Claim Form, including any supporting documentation, by U.S. mail to:

Settlement Administrator
P.O. Box XXXX
XXXXX, XX XXXXX

II. CLAIMANT INFORMATION

The Settlement Administrator will use this information for all communications regarding this Claim Form and the Settlement. If this information changes prior to distribution of cash payments, you must notify the Settlement Administrator in writing at the address above.

Claimant Name: _____
First Name MI Last Name

Street Address: _____

Street Address Second Line: _____

City: _____ State: _____ Zip Code: _____

Class Member ID: _____

If you received a notice of this Settlement by U.S. mail, your Class Member ID is on the envelope or postcard.

If you received a notice of this Settlement by email, your Class Member ID is in the email.

E-mail Address: _____

[optional] Daytime Phone Number: (_____) _____ - _____

[optional] Evening Phone Number: (_____) _____ - _____

You may select a:**III. COMPENSATION FOR ORDINARY LOSSES**

Please check off this box for this section if you are electing to seek reimbursement for Ordinary Losses you undertook to prevent or mitigate fraud and identity theft following the announcement of the Data Incident.

Class Members who elect to submit a Claim for Ordinary Losses may claim no more than \$200, including any Lost Time payment, for time actually spent addressing issues arising from the Data Incident. Please be sure to fill in the total amount you are claiming for each category and attach the required documentation as described in **bold type** (if you are asked to provide account statements as part of required proof for any part of your claim, you may redact unrelated transactions and all but the first four and last four digits of any account number). Please round total amounts down or up to the nearest dollar.

Unreimbursed fees or other charges from your bank or credit card company incurred as a result of the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Unreimbursed overdraft fees, over-the-limit fees, late fees, or charges due to insufficient funds or interest.

[ATTACH DOCUMENT(S)] Required: you must submit reasonable documentation supporting the above losses such as a copy of a bank or credit card statement or other proof of claimed fees or charges (you may redact unrelated transactions and all but the first four and last four digits of any account number).

Unreimbursed fees relating to your account being frozen or unavailable incurred as a result of the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: You were charged interest by a payday lender due to card cancellation or due to an over-limit situation, or you had to pay a fee for a money order or other form of alternative payment because you could not use your debit or credit card, and these charges and payments were not reimbursed.

[ATTACH DOCUMENT(S)] Required: you must submit reasonable documentation supporting the above losses such as a copy of receipts, bank statements, credit card statements, or other proof that you had to pay these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).

Unreimbursed fees or other charges relating to the reissuance of your credit or debit card incurred as a result of the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Unreimbursed fees that your bank charged you because you requested a new credit or debit card.

[ATTACH DOCUMENT(S)] Required: you must submit reasonable documentation supporting the above losses such as a copy of a bank or credit card statement or other receipt showing these fees (you may redact unrelated transactions and all but the first four and last four digits of any account number).

Other unreimbursed incidental telephone, internet, mileage, or postage expenses directly related to and incurred as a result of the Data Incident.

DATE	DESCRIPTION	AMOUNT

Examples: Unreimbursed long distance phone charges, cell phone charges (only if charged by the minute), or data charges (only if charged based on the amount of data used).

[ATTACH DOCUMENT(S)] Required: you must submit reasonable documentation supporting the above losses such as a copy of the bill from your telephone company, mobile phone company, or internet service provider that shows the charges (you may redact unrelated transactions and all but the first four and last four digits of any account number).

IV. LOST TIME

The lost time component of this payment is capped at 4 hours at \$15 per hour, provided at least one full hour was spent responding to the incident as attested. If you are selecting reimbursement for Lost Time, you must fill in the blank in this section and sign the certification at the end of the claim form. The total claim for a Class Member seeking Lost-Time and Ordinary Losses shall not exceed \$200.

I, _____, declare that I suffered Lost Time. Specifically, I spent the following number of
/Name/
 hours attempting to prevent fraud or mitigate fraud and identity theft related to the Data Incident: ____
 hours (rounded to the nearest hour).

V. CASH PAYMENT TO CALIFORNIA RESIDENTS

California residents, due to the heightened statutory damages potentially available to them under California law, may elect to receive a \$100 cash payment under the Settlement.

If you were a California resident at the time of the Data Incident (*i.e.*, May 26, 2022 to October 12, 2022), would you like to receive a \$100 cash payment under the Settlement? (circle one)

Yes No

** The payment under this option will originally be set at \$100, however, the value of the cash payment under this option will be decreased pro rata if the total of all settlement benefits and other payments would otherwise exceed the agreed \$500,000 overall cap on settlement payments required by Defendant.

If you are electing to receive this \$100 cash payment under the Settlement, you must fill in the blanks in this section and sign the certification at the end of the claim form.

I, _____, declare that I was a resident of the State of California the time of the Data Incident
 /Name/
(*i.e.*, May 26, 2022 to October 12, 2022).

VI. COMPENSATION FOR EXTRAORDINARY LOSSES

Please check off this box for this section if you are electing to seek reimbursement for unreimbursed **Extraordinary Losses** and such claimed losses will total no more than \$2,500. You must provide reasonable documentation of the claimed **Extraordinary Losses**.

Making a Claim for Extraordinary Losses

In order to make a claim for **Extraordinary Losses**, **you must** (i) fill out the information below, or fill out a separate sheet to be submitted with this Claim Form; (ii) sign the certification at the end of this Claim Form; and (iii) include reasonable documentation supporting each claimed loss along with this Claim Form. **Extraordinary Losses** need to be established as arising out of or related to the Data Incident, as determined by the Settlement Administrator, based on the documentation you provide and the facts of the Data Incident. Extraordinary Losses must also be reasonably traceable to incidents of actual fraud or identity theft caused by or related to the Data Incident and are compensable if the loss is an actual, documented, and unreimbursed monetary loss; the loss was more likely than not caused by the Data Incident; the loss occurred during a specified time period; and the loss is not already covered by one or more of the other reimbursement categories; and the Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. Extraordinary Loss Claims may include, without limitation, unreimbursed losses relating to actual fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services relating to actual fraud or identity theft; and other expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges relating to actual fraud or identity theft arising out of the Data Incident

Failure to meet the requirements of this section may result in your claim being rejected by the Settlement Administrator.

Extraordinary Losses/Costs Type (Fill all that apply)	Approximate Date of Loss	Amount of Loss	Description of Supporting Reasonable Documentation (Identify what you are attaching and why)
<input type="checkbox"/> Unreimbursed fraud losses or charges	<div style="text-align: center;"> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 0 auto; display: flex; justify-content: space-around;"> </div> <div style="margin: 0 auto;">/</div> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 0 auto; display: flex; justify-content: space-around;"> </div> <div style="margin: 0 auto;">/</div> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 0 auto; display: flex; justify-content: space-around;"> </div> </div> (mm/dd/yy)	<div style="border: 1px solid black; padding: 2px;"> \$ <div style="border: 1px solid black; width: 60px; height: 20px; display: flex; justify-content: space-around; margin: 0 auto;"> </div> <div style="margin: 0 auto;">.</div> <div style="border: 1px solid black; width: 60px; height: 20px; display: flex; justify-content: space-around; margin: 0 auto;"> </div> </div>	<i>Examples: Account statement with unauthorized charges highlighted; Correspondence from financial institution declining to reimburse you for fraudulent charges</i> Your documents: _____ _____
<input type="checkbox"/> Professional fees incurred in connection with fraud or identity theft	<div style="text-align: center;"> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 0 auto; display: flex; justify-content: space-around;"> </div> <div style="margin: 0 auto;">/</div> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 0 auto; display: flex; justify-content: space-around;"> </div> <div style="margin: 0 auto;">/</div> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 0 auto; display: flex; justify-content: space-around;"> </div> </div> (mm/dd/yy)	<div style="border: 1px solid black; padding: 2px;"> \$ <div style="border: 1px solid black; width: 60px; height: 20px; display: flex; justify-content: space-around; margin: 0 auto;"> </div> <div style="margin: 0 auto;">.</div> <div style="border: 1px solid black; width: 60px; height: 20px; display: flex; justify-content: space-around; margin: 0 auto;"> </div> </div>	<i>Examples: Receipt for hiring service to assist you in addressing identity theft; Accountant bill for re-filing tax return</i> Your documents: _____ _____
<input type="checkbox"/> Other expenses such as notary, fax, postage, gas, copying, mileage, and long-distance telephone charges.	<div style="text-align: center;"> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 0 auto; display: flex; justify-content: space-around;"> </div> <div style="margin: 0 auto;">/</div> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 0 auto; display: flex; justify-content: space-around;"> </div> <div style="margin: 0 auto;">/</div> <div style="border: 1px solid black; width: 60px; height: 20px; margin: 0 auto; display: flex; justify-content: space-around;"> </div> </div> (mm/dd/yy)	<div style="border: 1px solid black; padding: 2px;"> \$ <div style="border: 1px solid black; width: 60px; height: 20px; display: flex; justify-content: space-around; margin: 0 auto;"> </div> <div style="margin: 0 auto;">.</div> <div style="border: 1px solid black; width: 60px; height: 20px; display: flex; justify-content: space-around; margin: 0 auto;"> </div> </div>	<i>Examples: Example: Phone bills, gas receipts, postage receipts; detailed list of locations to which you traveled (i.e. police station, IRS office) why you traveled there (i.e. police report or letter from IRS re: falsified tax return) and number of miles you traveled to remediate or address issues related to the Data Incident</i> Your documents: _____ _____

If you **do not submit** reasonable documentation supporting a claim for **Extraordinary Losses**, or your claim for an **Extraordinary Loss** payment is rejected by the Settlement Administrator for any reason and you do not cure the defect, only your claims for Ordinary Losses, Lost Time, and CCPA, if such claims are made, will be considered.

VII. CERTIFICATION

By submitting this Claim Form, I certify that I am eligible to make a claim in this settlement and that the information provided in this Claim Form and any attachments are true and correct. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. I understand that this claim may be subject to audit, verification, and Court review and that the Settlement Administrator may require supplementation of this Claim or additional information from me. I also understand that all claim

payments are subject to the availability of settlement funds and may be reduced in part or in whole, depending on the type of claim and the determinations of the Settlement Administrator.

Signature: _____

Date: _____

Print Name: _____

EXHIBIT B

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Christine Borovoy v. Squishable.com, Inc., Case No. 1:23-cv-03660-PAC

A court has authorized this notice. This is not a solicitation from a lawyer.

If You Were Subject to the Squishable.com Data Incident and Previously Received a Notice Letter Notifying You of the Data Incident, You Could be Eligible for a Payment from a Class Action Settlement

- You may be eligible to receive a payment from a proposed \$500,000 maximum class action settlement.
- The class action lawsuit concerns the data security incident that occurred from May 26, 2022 to October 12, 2022, involving Squishable.com, Inc (“Squishable” or “Defendant”) in which it was determined that an unauthorized third party gained access to certain of Defendant’s files containing the sensitive Personal Information of customers and website visitors (the “Data Incident”). Defendant denies any wrongdoing and denies that Defendant has any liability but has agreed to settle the lawsuit on a class wide basis.
- To be eligible to make a claim, you must have received a Notice Letter of the Data Incident.
- Claimants under the Settlement Agreement will be eligible to receive:
 - ❖ **Compensation of up to \$200 (including up to \$60 consisting of 4 hours at \$15 per hour) for ordinary losses and time spent dealing with the Data Incident;**
 - ❖ **Compensation for extraordinary losses and incidents of actual identity theft and verified fraud of up to \$2,500, with supporting documentation; and**
 - ❖ **Compensation of up to \$100 for eligible California residents.**
- For more information or to submit a claim visit www.onlinetoydatabreachsettlement.com or call 1-###-###-#### Monday through Saturday, between 8:30 a.m. and 5:00 p.m. Eastern Time
- **Please read this notice carefully. Your legal rights will be affected, and you have a choice to make at this time.**

	Summary of Legal Rights	Deadline(s)
Submit a Claim Form	The only way to receive payment.	Submitted or Postmarked on or Before _____, 2024
Exclude Yourself By Opting Out of the Class	Receive no payment. This is the only option that allows you to keep your right to bring any other lawsuit against Defendant for claims arising out of the Data Incident.	Submitted or Postmarked on or Before _____, 2024
Object to the Settlement and, if you	You must write the Court, the parties’ counsel, and the Claims	Received on or Before _____, 2024

<p>wish, Attend the Fairness Hearing</p>	<p>Administrator about why you object to the Settlement. The Court cannot order a different Settlement. If you file a timely objection, you can also ask to speak to the Court at the Final Approval Hearing on <u> </u>, 2024 about the fairness of the Settlement, with or without your own attorney.</p>	
<p>Do Nothing</p>	<p>Receive no payment. Give up rights if you are a Class Member.</p>	<p>No Deadline.</p>

- Your rights and options as a Class Member – and the deadlines to exercise your rights – are explained in this notice.
- The Court still will have to decide whether to approve the Settlement. Payments to class members will be made if the Court approves the Settlement and after any possible appeals are resolved.

What This Notice Contains

Basic Information..... 3

Who is in the Settlement 3

The Settlement Benefits—What You Get if You Qualify 4

How do You Submit a Claim..... 5

What Does Defendant Get 6

Excluding Yourself from the Settlement 6

Objecting to the Settlement 7

The Lawyers Representing You..... 8

The Court’s Fairness Hearing 8

If You Do Nothing 9

Getting More Information..... 9

BASIC INFORMATION

1. Why is there a notice?

The Court authorized this notice because you have a right to know about the Settlement, and all of your options, before the Court decides whether to give “final approval” to the Settlement. This notice explains the nature of the lawsuit that is the subject of the Settlement, the general terms of the Settlement, and your legal rights and options.

Judge Paul A. Crotty of the United States District Court for the Southern District of New York is presiding over this case captioned as *Christine Borovoy v. Squishable.com, Inc., Case No. 1:23-cv-03660-PAC*. The person who brought the lawsuit is called the Plaintiff. The company being sued, Squishable.com (“Squishable”), is called the Defendant.

2. What is this lawsuit about?

The lawsuit claims that Defendant was responsible for the Data Incident and asserts claims such as: (i) negligence; (ii) unjust enrichment; (iii) breach of express contract; (iv) breach of implied contract; (v) invasion of privacy; and (vi) violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

Defendant denies these claims and says it did not do anything wrong. No court or other judicial entity has made any judgment or other determination that Defendant has any liability on these claims or did anything wrong.

3. Why is this lawsuit a class action?

In a class action, one or more people called class representatives or representative plaintiffs sue on behalf of all people who have similar claims. Together, all of these people are called a class, and the individuals are called class members. One court resolves the issues for all class members, except for those who exclude themselves from the class.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to the Settlement. The Settlement avoids the cost and risk of a trial and related appeals, while providing benefits to members of the Class (“Class Members”). The “Class Representative” appointed to represent the Class, and the attorneys for the Class (“Class Counsel,” see Question 18) think the Settlement is best for all Class Members.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

You are affected by the Settlement and potentially a member of the Class if your Private Information was compromised in connection with the Data Incident and you were provided a notification by or on behalf of any of the Defendant regarding the Data Incident.

Only Class Members are eligible to receive benefits under the Settlement. Specifically excluded from the Class are all Persons who timely and validly request exclusion from the Class, the Judge assigned to evaluate the fairness of this settlement, and any Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call 1-###-###-#### with questions. You may also write with questions to:

Squishable.com Claims Administrator
address
address
info@squishabledataattlement.com

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

The Settlement provides that Defendant will fund the following payments up to a total of \$500,000: (a) \$15 per hour for up to four (4) hours of lost time (up to a total of \$60), with an attestation that the time claimed was actually spent as a result of the Data Incident, plus documented ordinary losses reasonably traceable to the Data Incident (with such claimed lost time and ordinary losses, together, not to exceed \$200); (b) up to \$2,500 per person for verified and documented extraordinary losses/actual identity theft expenses that you incurred that are reasonably traceable to the Data Incident; (c) Class Members who were residents of the State of California at the time of the Data Incident are eligible for an additional benefit of \$100 upon submitting a claim and attesting that they were a California resident at the time of the Data Incident; (d) attorneys' fees and costs; (e) Service Award; and (f) costs of notification and settlement administration.

The Settlement benefits are also subject to pro rata reduction as needed in the event that the total claims plus attorneys' fees and expenses (see Question 19), plus Service Award plus the costs of notifying the Class and administering the Settlement exceed the \$500,000 cap on payments to be made by Defendant. Payment of attorneys' fees and expenses (see Question 19), the Service Award and the costs of notifying the Class and administering the Settlement will be paid by Defendant subject to the overall cap of \$500,000 for the settlement as a whole.

Also as part of the Settlement, Defendant either has undertaken or will undertake certain reasonable steps to further secure its systems and environments.

8. What payments are available for reimbursement under the settlement?

Class Members who submit a claim are eligible to receive:

- a) Reimbursement of actual, documented, unreimbursed ordinary losses resulting from the Data Incident including time spent addressing issues related to the Data Incident (up to \$200 in total), such as:
 - Unreimbursed fees or other charges from your bank or credit card company incurred as a result of the Data Incident;
 - Unreimbursed fees relating to your account being frozen or unavailable incurred as a result of the Data Incident;
 - Unreimbursed fees or other charges relating to the reissuance of your credit or debit card incurred as a result of the Data Incident; and
 - Other unreimbursed incidental telephone, internet, mileage, or postage expenses directly related to and incurred as a result of the Data Incident.

- Professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services;
 - Costs associated with freezing or unfreezing credit with any credit reporting agency;
 - Credit monitoring costs that were incurred on or after October 12, 2022, that you attest under penalty of perjury were caused or otherwise incurred as a result of the Data Incident, through the date of claim submission; and
 - Miscellaneous expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges.
- b) Compensation for verified and documented instances of fraud (up to the amount of \$2,500 in total), such as:
- Unreimbursed losses relating to actual fraud or identity theft as a result of the Data Incident;
 - Professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services in connection with actual fraud or identity theft as a result of the Data Incident;; and
 - Other expenses such as notary, data charges (if charged based on the amount of data used) fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges in connection with actual fraud or identity theft as a result of the Data Incident.
- c) Compensation of up to \$100 for eligible California residents.

HOW DO YOU SUBMIT A CLAIM?

9. How do I get a benefit?

To receive a benefit under the Settlement, you must complete and submit a claim for that benefit (a “Claim”). Every Claim must be made on a form (“Claim Form”) available at or by calling **www.onlinetoydatabreachsettlement.com 1-###-###-####**. Read the instructions carefully, fill out the Claim Form, provide the required documentation, and submit it according to the instructions on the Claim Form.

10. How will claims be decided?

The Claims Administrator will decide whether and to what extent any Claim made on each Claim Form is valid. The Claims Administrator may require additional information. If you do not provide the additional information in a timely manner the Claim will be considered invalid and will not be paid.

11. When will I get my payment?

The Court will hold a hearing on _____, 2024 at _____ .m. Eastern Time to decide whether to approve the Settlement. The date, time, and manner of this hearing may be changed by further order of the Court. Accordingly, please check the website for most recent information concerning this hearing. If the Court approves the Settlement, there may be appeals

from that decision and resolving them can take time, perhaps more than a year. It also takes time for all the Claim Forms to be processed. Please be patient.

WHAT DOES DEFENDANT GET?

12. What am I giving up as part of the Settlement?

Defendant gets a release from all claims covered by this Settlement. Thus, if the Settlement becomes final and you do not exclude yourself from the Settlement, you will be a Class Member and you will give up your right to sue Defendant and other persons (“Released Parties”) as to all claims (“Released Claims”) arising out of or relating to the Data Incident. This release is described in the Settlement Agreement, which is available at www.onlinetoydatabreachsettlement.com. If you have any questions you can talk to the law firms listed in Question 18 for free or you can talk to your own lawyer.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be part of this Settlement then you must take steps to exclude yourself from the Class. This is sometimes referred to as “opting out” of the Class.

13. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself you will not be entitled to receive any benefits from the Settlement, but you will not be bound by any judgment in this case.

14. If I do not exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant (and any other Released Parties) for the claims that this Settlement resolves. You must exclude yourself from the Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for any benefit under the Settlement.

15. How do I exclude myself from the Settlement?

To exclude yourself, send a letter that says you want to be excluded from the Settlement in *Christine Borovoy v. Squishable.com, Inc., Case No. 1:23-cv-03660-PAC*. The letter must: (a) state your full name, address, and telephone number; (b) contain your personal and original signature or the original signature of a person authorized by law to act on your behalf; and (c) state unequivocally your intent to be excluded from the Settlement. You must mail your exclusion request postmarked by [REDACTED], 2024, to:

Squishable Claims Administrator

Attn: Exclusion Request

[REDACTED]
address

[REDACTED]
address

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not like the Settlement?

You can tell the Court that you do not agree with the Settlement or some part of it by objecting to the Settlement. The Court will consider your views in its decision whether to approve the Settlement. The Court can only approve or deny the Settlement and cannot change the terms. To object, you must file your objection with the Clerk of the Court and mail your objection to Class Counsel, Defendant's counsel, and the Claims Administrator, postmarked by **no later** than the objection deadline, , **2024**. The mailing addresses are listed below:

Court	Claims Administrator
Daniel Patrick Moynihan United States Courthouse 500 Pearl Street New York, NY 10007 - 1312	Squishable Claims Administrator Attn: Objection address address
Class Counsel	Defendant's Counsel
Kiley Grombacher Bradley/Grombacher LLP 31365 Oak Crest Dr., Suite 240 Westlake Village, CA 91361 and Mason A. Barney, Esq. Siri Glimstad 745 Fifth Ave, Suite 500 New York, NY 10151	John C. Cleary Polsinelli PC 600 Third Avenue, 42 nd Floor New York, NY 10016

Your objection must be written and must include all of the following: (i) your full name and address as the objector; (ii) the case name and docket number, *Christine Borovoy v. Squishable.com, Inc., Case No. 1:23-cv-03660-PAC*; (iii) information identifying you as a Class Member, including proof that you are a member of the Class; (iv) a written statement of all grounds for the objection, accompanied by any and all legal support for the objection the objector believes is applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him/her in connections with the objection.

17. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the Settlement and why you do not think it should be approved. You can object only if you are a Class Member. Excluding yourself is telling the Court that you do not want to be part of the Class and do not want to receive any payment from the Settlement. If you exclude yourself, you have no basis to object because you are no longer a member of the Class and the case no longer affects you. If you submit both a valid objection and a valid request to be excluded, you will be deemed to have only submitted the request to be excluded.

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

Yes. The Court appointed Kiley Grombacher of Bradley Grombacher LLP and Mason Barney of Siri & Glimstad LLP as Class Counsel, to represent the Class in settlement negotiations. If you want to be represented by your own lawyer, you may hire one at your own expense.

19. How will the lawyers be paid?

Class Counsel will ask the Court for an award for attorneys' fees plus litigation expenses. Defendant has agreed not to contest any award of attorneys' fees and expenses up to \$80,000, but may contest amounts above \$80,000. Upon approval by the Court, any such award would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement and will be the only payment to them for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

Class Counsel will also ask the Court for a service award of up to \$1,500 for the Class Representative.

Any award for attorneys' fees and expenses for Class Counsel, and for a service award to the Class Representative, must be approved by the Court. The Court may award less than the amounts requested. Any approved payment for Attorneys' Fees and Expenses and a Service Award will be subject to the agreed and approved overall \$500,000 cap on payments to be made by Squishable. Class Counsel's papers in support of final approval of the Settlement will be filed no later than _____, 2024 and their application for attorneys' fees, costs and expenses, and service award will be filed no later than _____, 2024 and will be posted on the Settlement Website.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at _____ m. Eastern Time on _____, 2024, in Courtroom 14C at the U.S. Courthouse, 500 Pearl Street, New York, NY 10007, or by remote or virtual means, or an alternative date and time as may be ordered by the Court. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely and valid objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys' fees and reasonable costs and expenses, as well as the request for service award for the Class Representative. After the hearing the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The

hearing may be moved to a different date or time without additional notice, so Class Counsel recommend checking www.onlinetoydatabreachsettlement.com or calling 1-###-###-####.

21. Do I have to attend the hearing?

No. Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your expense, but you are not required to do so. If you send an objection, you do not have to attend the Court hearing to talk about it. As long as you filed your written objection on time with the Court and mailed it according to the instructions provided in Question 16, the Court will consider it.

22. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file a timely objection according to the instructions in Question 16, including all the information required. Your objection must be **mailed** to the Clerk of the Court, Class Counsel and Defendant's Counsel, postmarked no later than _____, 2024.

IF YOU DO NOTHING

23. What happens if I do nothing?

If you do nothing you will not get any money from this Settlement. If the Settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant and the other Released Parties based on any of the Released Claims, ever again.

GETTING MORE INFORMATION

24. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement itself. A copy of the Settlement Agreement is available at www.onlinetoydatabreachsettlement.com. You may also call the Claims Administrator with questions or to get a Claim Form at 1-###-###-####.

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHRISTINE BOROVOY, an individual, and on behalf of classes of similarly situated individuals,

Plaintiff,

v.

SQUISHABLE.COM, INC., a New York corporation,

Defendant.

Case No: 1:23-cv-03660

Judge: Hon. Paul A. Crotty

[PROPOSED] PRELIMINARY APPROVAL ORDER

Before the Court is Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum in Support (collectively, the “Motion”), the terms of which settlement are set forth in a Settlement Agreement between Plaintiff Christine Borovoy and Defendant Squishable.com, Inc. (“Squishable” or “Defendant”) (together with Plaintiffs, the “Parties”), with accompanying exhibits, attached as Exhibit 1 to the Declaration of Kiley L. Grombacher filed with the Motion (the “Settlement Agreement”).¹

Having fully considered the issue, the Court hereby **GRANTS** the Motion and **ORDERS** as follows:

1. **Class Certification for Settlement Purposes Only**. The Settlement Agreement provides for a Settlement Class defined as follows:

All persons residing in the United States whose PII was involved in the Data Incident.

¹ All defined terms in this Order (“Preliminary Approval Order”) have the same meaning as set forth in the Settlement Agreement, unless otherwise indicated.

The Settlement Agreement also provides for the following California Subclass:

All persons residing in the State of California whose PII was involved in the Data Incident.

Specifically excluded from the Settlement Class and California Subclass are (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

Pursuant to Federal Rules of Civil Procedure 23(e)(1), the Court finds that giving notice is justified. The Court finds that it will likely be able to approve the proposed Settlement as fair, reasonable, and adequate. The Court also finds that it will likely be able to certify the Settlement Class for purposes of judgment on the Settlement because it meets all of the requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the Court finds for settlement purposes that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact that are common to the Settlement Class; (c) the claims of the Class Representative are typical of and arise from the same operative facts and the Class Representative seeks similar relief as the claims of the Settlement Class Members; (d) the Class Representative will fairly and adequately protect the interests of the Settlement Class as the Class Representative has no interests antagonistic to or in conflict with the Settlement Class and has retained experienced and competent counsel to prosecute this Litigation on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this Litigation.

2. **Settlement Class Representative and Settlement Class Counsel.** The Court finds that Plaintiff will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as the Class Representative. Additionally, the Court finds that Kiley Grombacher of Bradley Grombacher LLP and Mason A. Barney of Siri & Glimstad LLP will likely satisfy the requirements of Rule 23(e)(2)(A) and should be appointed as Class Counsel pursuant to Rule 23(g)(1).

3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the Settlement is fair, reasonable, and adequate to warrant providing notice of the Settlement to the Settlement Class and accordingly is preliminarily approved. In making this determination, the Court has considered the monetary and non-monetary benefits provided to the Settlement Class through the Settlement, the specific risks faced by the Settlement Class in prevailing on their claims, the good faith, arms' length negotiations between the Parties and absence of any collusion in the Settlement, the effectiveness of the proposed method for distributing relief to the Settlement Class, the proposed manner of allocating benefits to Settlement Class Members, the Settlement treats the Settlement Class Members equitably, and all of the other factors required by Rule 23 and relevant case law.

4. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on _____, 2024, at the [INSERT], where the Court will determine, among other things, whether: (a) this Litigation should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a) and (b)(3); (b) the Settlement should be approved as fair, reasonable, and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) this

Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members (who have not timely and validly excluded themselves from the Settlement) should be bound by the releases set forth in the Settlement Agreement; (e) the application of Class Counsel for an award of Attorneys' Fees, Costs, and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (f) the application of the Class Representative for a Service Award should be approved.

6. **Settlement Administrator.** The Court appoints KCC as the Settlement Administrator, with responsibility for class notice and settlement administration. The Settlement Administrator is directed to perform all tasks the Settlement Agreement requires. The Settlement Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.

7. **Notice.** The proposed notice program set forth in the Settlement Agreement and the Notices and Claim Form attached to the Settlement Agreement as **Exhibits** are hereby approved. Non-material modifications to these Exhibits may be made by the Settlement Administrator in consultation and agreement with the Parties, but without further order of the Court.

8. **Findings Concerning Notice.** The Court finds that the proposed form, content, and method of giving Notice to the Settlement Class as described in the Notice program and the Settlement Agreement and its exhibits: (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Litigation, the terms of the proposed Settlement, and their rights under the proposed Settlement, including, but not limited to, their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all

Settlement Class Members and other persons entitled to receive notice; (d) meet all applicable requirements of law, including Federal Rule of Civil Procedure 23(c); and (e) meet the requirements of the Due Process Clause(s) of the United States and New York Constitutions. The Court further finds that the Notice provided for in the Settlement Agreement is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

The Settlement Administrator is directed to carry out the Notice program in conformance with the Settlement Agreement.

9. **Class Action Fairness Act Notice.** Within ten (10) days after the filing of the Settlement Agreement with the Court, the Settlement Administrator acting on behalf of Defendant shall have served or caused to be served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).

10. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest a Person’s intent to opt-out of the Class and must include the individual’s full name, address, and telephone number, the individual’s personal and original signature or the original signature of a person authorized by law to act on the individual’s behalf, and state unequivocally the individual’s intent to be excluded from the Settlement. To be effective, written notice must be postmarked no later than the Opt-Out Date, which is 90 days after the Notice Commencement Date. No collective or aggregate opt-out requests will be accepted and all such requests will be deemed invalid.

All Persons who individually submit valid and timely notices of their intent to opt-out of the Class (the “Opt-Outs”) shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Class who do not opt-out of the Class in the manner set forth in this Agreement shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

The Settlement Administrator shall promptly furnish to Class Counsel and to Defendant’s counsel a complete list of all timely and valid requests for exclusion. If the Settlement Administrator receives more than 2,300 Opt-Outs from the Settlement, then Defendant shall have the right to terminate the Settlement Agreement in its entirety.

If a Final Order and Judgment is entered, all Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Final Order and Judgment. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any benefits of and/or be bound by the terms of the Settlement Agreement.

11. **Objections and Appearances.** A Settlement Class Member (who does not submit a timely written request for exclusion) desiring to object to the Settlement Agreement may submit a timely written notice of his or her objection by the Objection Date and as stated in the Notice. The Long Notice shall instruct Settlement Class Members who wish to object to the Settlement Agreement to mail their written objections to the Settlement Administrator, Class Counsel, and counsel for Defendant, and to file their written objections with the Court at the addresses indicated in the Long Notice. The Notice shall advise Settlement Class Members of the deadline for submission of any objections—the “Objection Deadline.” Any such notices of an intent to object to the Settlement Agreement must be written and must include all of the following: (i) the

objector's full name and address; (ii) the case name and docket number; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Incident, or a statement explaining why the objector believes he or she is a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Approval Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection.

Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The provisions stated in Paragraph 5 of the Settlement Agreement shall be the exclusive means for any challenge to the Settlement Agreement. Any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Final Order and Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

12. **Claims Process.** Class Counsel and Defendant have created a process for Settlement Class Members to claim benefits under the Settlement. The Court preliminarily approves this process and directs the Settlement Administrator to make the Claim Form or its substantial equivalent available to Settlement Class Members in the manner specified in the Notice.

The Settlement Administrator will be responsible for effectuating the claims process. Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirement and procedures specified in the Claim Form. If the Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Final Order and Judgment, including the releases contained therein.

13. **Termination of Settlement.** This Preliminary Approval Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing before the Court entered this Preliminary Approval Order and before they entered the Settlement Agreement, if: (a) the Court does not enter this Preliminary Approval Order; (b) Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement; (c) there is no Effective Date; or (d) for reasons otherwise consistent with the terms of the Settlement Agreement. In such event, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and (c) any Judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

14. **Use of Order.** In the event the Final Order and Judgment is not entered or there is no Effective Date, this Preliminary Approval Order shall be of no force or effect and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. Nor shall this Preliminary Approval Order be construed or used as an admission, concession, or declaration by or against the Class Representative or any other Settlement Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claims they may have in this Litigation or in any other lawsuit.

15. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Fairness Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website maintained by the Settlement Administrator. The Court may approve the Settlement, with such modifications as may be agreed upon by the Parties, if appropriate, without further notice to the Settlement Class.

16. **Stay of Litigation.** All proceedings in the Litigation, other than those related to approval of the Settlement Agreement, are hereby stayed. Further, any actions brought by Settlement Class Members concerning the Released Claims are hereby enjoined and stayed pending Final Approval of the Settlement Agreement.

17. **Schedule and Deadlines.** The Court orders the following schedule of dates for the specified actions/further proceedings:

SETTLEMENT TIMELINE

Action	Deadline
CAFA Notice to be served on State/Federal officials	10 days after filing of Motion for Preliminary Approval of Class Action Settlement
List of Settlement Class Members to be provided to Settlement Administrator	14 days after entry of Preliminary Approval Order
Notice Commencement Date	30 days after entry of the Preliminary Approval Order
File Motion for Attorneys' Fees and Expenses Awards and Service Awards	76 days after Notice Commencement Date
Objection Deadline	90 days after Notice Commencement Date
Opt-Out Deadline	90 days after Notice Commencement Date
Claims Deadline	90 days after the Notice Commencement Date
List of Objections and Opt-Outs due to Parties' Counsel	100 days after entry of Preliminary Approval Order
Final Approval Hearing	_____, 20__ at __: __
File Motion for Final Approval	14 days before Final Approval Hearing
Effective Date	35 days from Order granting Final Approval, assuming no appeal has been taken
Settlement Website Deactivation	180 days from Order granting Final Approval
Distribution of Settlement Claims to Class Members	95 days from Order granting Final Approval (or within 60 days of the date that the Claim is approved, whichever is later)
Attorneys' Fees and Expenses Awards and Service Awards to be paid	42 days from Order granting Final Approval

SO ORDERED THIS _____ DAY OF _____, 2024.

Hon. Paul A. Crotty
United States District Court Judge

EXHIBIT D

Borovoy v. Squishable.com,
Inc.
c/o Settlement Administrator
P.O. Box XXXX
City, State Zip

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, STATE ZIP
PERMIT NO. XXXX

NOTICE OF CLASS ACTION
SETTLEMENT

If you received a notice of data
incident regarding Squishable.com you
are entitled to submit a claim for
monetary compensation under a class
action settlement.

www.onlinetoydatabreachsettlement.com

<<Barcode>>

Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<BusinessName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

WHO IS A CLASS MEMBER?

In the lawsuit *Christine Borovoy v. Squishable.com, Inc.*, No. 1:23-cv-03660-PAC (United States District Court, Southern District of New York) you are a class member if your personal information was potentially compromised as a result of the cyber-attack against Squishable.com (“Squishable” or “Defendant”) experienced from May 26, 2022 to October 12, 2022 (the “Class”).

WHAT ARE THE SETTLEMENT BENEFITS AND TERMS?

Under the Settlement, Defendant has agreed to pay up to \$500,000.00 to Class Members who submit timely and valid Claims, after deducting the Class Representative’s Service Award, Class Counsel’s attorneys’ fees and expenses, and settlement administration notice and administration costs, if such awards are approved by the Court. All Class Members may submit Claims to receive cash payments. Class Members who believe they suffered out-of-pocket expenses and spent time dealing with the Data Incident may claim up to \$200 for the reimbursement of sufficiently documented expenses and time spent. Class Members who can prove verified actual identity theft or fraudulent activity as a result of the Data Incident may claim up to \$2,500 with documented proof. Class Members who were residents of California at the time of the Data Incident may claim an additional \$100. More information about the types of Claims and how to file them is available at the Settlement Website.

WHAT ARE YOUR RIGHTS AND OPTIONS?

Submit a Claim Form. To qualify for a cash payment, you must timely mail a Claim Form that is attached to this notice or timely complete and submit a Claim

Form online at www.onlinetoydatabreachsettlement.com (“Settlement Website”). Your Claim Form must be postmarked or submitted online no later than [REDACTED], 2024. KCC is the Settlement Administrator.

Opt Out. You may exclude yourself from the Settlement and retain your ability to sue Defendant on your own by mailing a written request for exclusion to the Settlement Administrator that is postmarked no later than [REDACTED], 2024.

If you do not exclude yourself, you will be bound by the Settlement and give up your right to sue regarding the released claims.

Object. If you do not exclude yourself, you have the right to object to the Settlement. Written objections must be signed, postmarked no later than [REDACTED], 2024, and provide the reasons for the objection. Please visit www.onlinetoydatabreachsettlement.com for more details.

Do Nothing. If you do nothing, you will not receive a Settlement payment and will lose the right to sue regarding the released claims. You will be bound by the Court’s decision if the Court approves the Settlement.

Attend the Final Approval Hearing. The Court will hold a **Final Approval Hearing** at [REDACTED] m. on [REDACTED], 2024 to determine if the Settlement is fair, reasonable, and adequate. All persons who timely object to the Settlement may appear at the Final Approval Hearing.

Who are the attorneys for the Plaintiff and the proposed Class? The Court appointed Kiley Grombacher of Bradley Grombacher LLP and Mason Barney of Siri & Glimstad LLP to represent the Class.

Do I have any obligation to pay attorneys’ fees or expenses? No. Attorneys’ fees and expenses will be paid exclusively by Defendant as awarded and

approved by the Court and within the overall \$500,000 cap. Class Counsel intends to request an award of attorneys' fees up to \$150,000 (equal to 30% of the \$500,000 cap), and Defendant has reserved the right to contest that request before the court. The motion for attorneys' fees and expenses will be posted on the Settlement Website once it is filed.

What is the amount of the Class Representative Service Award? The named plaintiff, also called the Class Representative, will seek a Service Award in the amount of \$1,500 for her efforts in this case.

Who is the Judge overseeing this Settlement? The Honorable Paul A. Crotty.

Where may I locate a copy of the settlement agreement, learn more about the case, or learn more about submitting a Claim? Please visit

www.onlinetoydatabreachsettlement.com.

This Notice is a summary of the proposed Settlement. Full details concerning this Settlement may be found on the website.

Postage
Required

Borovoy v. Squishable.com, Inc.
c/o Settlement Administrator
P.O. Box XXXX
City, State Zip

<<Barcode>> Class Member ID:
<<Refnum>>

CLAIM FORM

Claim Forms must be postmarked no later than _____, 2024. You may also submit a Claim Form online no later than _____, 2024.

NAME: _____ ADDRESS: _____

Monetary Compensation

- 1. Lost Time & Out-of-Pocket Expenses:** I am submitting a claim for monetary compensation of \$ _____ for Ordinary Losses, that is, for _____ hours of time spent addressing issues related to the Data Incident and for out-of-pocket expenses. I understand any monetary compensation I may receive under the Settlement for Ordinary Losses is capped at \$200 and that any compensation for lost time is capped at four (4) total hours at a rate of \$15 per hour for a total amount of \$60 (which is included in the \$200 Ordinary Loss cap). I understand that I am required to provide supporting documentation to support my claim. I understand the Settlement Administrator may contact me for additional information before processing my claim. I understand that if I lack information supporting my claim, I will likely not receive compensation for this Settlement benefit.
- 2. Extraordinary Losses/Actual Identity Theft:** I am submitting a claim for monetary compensation in the amount of \$ _____ for Extraordinary Losses, that is, for verified incidents of fraud which occurred as a result of the Data Incident. I understand that I am required to provide supporting documentation to support my claim. I understand the Settlement Administrator may contact me for additional information before processing my claim. I understand that if I lack information supporting my claim, I will likely not receive compensation for this Settlement benefit. I understand any monetary compensation for Extraordinary Losses is capped at \$2,500.
- 3. California Resident Cash Payment:** Were you a resident of California at the time of the Data Incident, May 26, 2022 to October 12, 2022? (circle one)
Yes No

I understand any monetary compensation I may receive under the settlement due to my California residency is capped at \$100.

By signing my name below, I swear and affirm that the information included on this Claim Form is true and accurate, and that I am completing this claim form to the best of my personal knowledge. I further affirm that I will submit my supporting documentation by U.S. Mail or online no later than the dates listed above.

_____ (signature)

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHRISTINE BOROVOY, an
individual, and on behalf of classes of
similarly situated individuals,

Plaintiff,

v.

SQUISHABLE.COM, INC., a New
York corporation,

Defendant.

Case No: 1:23-cv-03660

Judge: Hon. Paul A. Crotty

[PROPOSED] FINAL APPROVAL ORDER

Before the Court is Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement ("Motion for Final Approval"). The Motion seeks approval of the Settlement as fair, reasonable, and adequate. Also before the Court is Plaintiff's Motion for Attorneys' Fees, Costs, and Expenses to Class Counsel, and Service Award to Plaintiff ("Motion for Attorneys' Fees").

Having reviewed and considered the Settlement Agreement, Motion for Final Approval, and Motion for Attorneys' Fees, and having conducted a Final Fairness Hearing, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Order.

WHEREAS, on [REDACTED] **[DATE]**, the Court entered an Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order") (**Doc. No. __**) which, among other things: (a) conditionally certified this matter as a class action, including

defining the class and class claims, (b) appointed Plaintiff Christine Borovoy as the Class Representative and appointed Kiley Grombacher of Bradley Grombacher LLP and Mason A. Barney of Siri & Glimstad LLP as Class Counsel; (c) preliminarily approved the Settlement Agreement; (d) approved the form and manner of Notice to the Settlement Class; (d) set deadlines for opt-outs and objections; (e) approved and appointed the Settlement Administrator; and (f) set the date for the Final Fairness Hearing;

WHEREAS, on [REDACTED] [DATE], pursuant to the Notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement Agreement, of the right of Settlement Class Members to opt-out, and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a Final Fairness Hearing;

WHEREAS, on [REDACTED] [DATE], the Court held a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this action with prejudice. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the Final Fairness Hearing in support of or in opposition to the proposed Settlement Agreement, the award of attorneys' fees, costs, and expenses to Class Counsel, and the payment of a Service Award to the Class Representative;

WHEREAS, the Court not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

WHEREAS, the Court being required under Federal Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for Defendant, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees, costs, and expenses, and the application for a Service Award to the Representative Plaintiff, and having reviewed the materials in support thereof, and good cause appearing:

IT IS SO ORDERED that:

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class.
2. The Settlement involves allegations in Plaintiff's Class Action Complaint against Defendant for the alleged failure to implement or maintain adequate data security measures and safeguards to protect Personal Information, which Plaintiff alleges directly and proximately caused injuries to her and Settlement Class Members.
3. The Settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.
4. Unless otherwise indicated, words contained in this Order and Judgment Granting Final Approval of Class Action Settlement ("Final Order and Judgment") with initial capital letters have the same meaning as set forth in the Settlement Agreement.

5. The Court, having reviewed the terms of the Settlement Agreement submitted by the Parties pursuant to Federal Rule of Civil Procedure 23(e)(2), grants final approval of the Settlement Agreement and for purposes of the Settlement Agreement and this Final Order and Judgment only, the Court hereby finally certifies the following Settlement Class:

All persons residing in the United States whose PII was involved in the Data Incident.

Furthermore, the Court certifies the following California Subclass:

All persons residing in the State of California whose PII was involved in the Data Incident.

Specifically excluded from the Settlement Class and California Subclass are (i) all Persons who timely and validly request exclusion from the Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

6. The Settlement was entered into in good faith following arm's length negotiations and is non-collusive. The Settlement is in the best interests of the Settlement Class and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays, and uncertainties, including as to the outcome, and on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the settlement reflected in the Settlement Agreement.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for:

- a. Settlement Administration as outlined in the Settlement Agreement whereby Settlement Class Members had the ability to submit claims that were evaluated by a Settlement Administrator.
- b. Defendant to pay all costs of Settlement Administration, including the cost of the Settlement Administrator, instituting Notice, processing and administering claims, and preparing and mailing checks.
- c. Defendant to pay, subject to the approval and award of the Court, the reasonable attorneys' fees, costs, and expenses of Class Counsel and a Service Award to Class Representative.

The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Federal Rule of Civil Procedure 23(a) and (b)(3) set forth in the Preliminary Approval Order and notes that because this certification of the Settlement Class is in connection with the Settlement Agreement rather than litigation, the Court need not address any issues of manageability that may be presented by certification of the class proposed in the Settlement Agreement.

8. The terms of the Settlement Agreement are fair, adequate, and reasonable and are hereby approved, adopted, and incorporated by the Court. Notice of the terms of the Settlement, the rights of Settlement Class Members under the Settlement, the Final Fairness Hearing, Plaintiff's application for attorneys' fees, costs, and expenses, and the Service Award payment to the Class Representative have been provided to Settlement Class Members as directed by this Court's Orders, and proof of Notice has been filed with the Court.

9. The Court finds that the notice program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the

circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and their right to object and to appear at the final approval hearing or to exclude themselves from the Settlement Agreement, and satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and other applicable law.

10. The Court finds that Defendant has fully complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

11. As of the Opt-Out deadline, [REDACTED] potential Settlement Class Members have requested to be excluded from the Settlement. Their names are set forth in **Exhibit A** to this Final Order and Judgment. Those persons are not bound by the Settlement Agreement and this Final Order and Judgment and shall not be entitled to any of the benefits afforded to the Settlement Class Members under the Settlement Agreement, as set forth in the Settlement Agreement.

12. [REDACTED] objections were filed by Settlement Class Members. The Court has considered all objections and finds the objections do not counsel against Settlement Agreement approval, and the objections are hereby overruled in all respects.

13. All Settlement Class Members who have not objected to the Settlement Agreement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

14. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Fairness Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

15. The Parties, their respective attorneys, and the Settlement Administrator are hereby directed to consummate the Settlement in accordance with this Final Order and Judgment and the terms of the Settlement Agreement.

16. Pursuant to the Settlement Agreement, Defendant, the Settlement Administrator, and Class Counsel shall implement the Settlement in the manner and timeframe as set forth therein.

17. Within the time period set forth in the Settlement Agreement, the relief provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

18. Pursuant to and as further described in the Settlement Agreement, Plaintiff and the Settlement Class Members are deemed by operation of the Settlement Agreement and this Order to have forever fully, finally, completely, and unconditionally released, discharged, and acquitted Squishable and the Released Parties from any and all Released Claims as follows:

For purposes of this order, “Released Claims” shall collectively mean any and all claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. § 45, *et seq.*, and all similar statutes in effect in any states in the United States as defined below; state consumer-protection statutes including the California Unfair Competition Law; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; violation of the California Consumer Privacy Act; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief or judgment, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Class Member against any of the Released Persons based on, relating to, concerning or arising out of the alleged Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or

otherwise described in the Litigation. Released Claims shall not include the right of any Class Member or any of the Released Persons to enforce the terms of the settlement contained in the Settlement Agreement, and shall not include the claims of any Person who has timely excluded themselves from the Class.

Upon the Effective Date, each Class Member, including Plaintiff, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims as against all Released Parties. Further, upon the Effective Date, and to the fullest extent permitted by law, each Class Member, including Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted. Further, upon the Effective Date, each Class Member, including Plaintiff, shall be deemed to have, and by operation of the Judgment shall have expressly waived California Civil Code § 1542, and any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

Any other claims or defenses Plaintiff and each and all of the Class Members may have against Defendant that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Data Incident, the Litigation, or the Released Claims are specifically preserved and shall not be affected by the preceding sentences.

21. The Court grants final approval to the appointment of Plaintiff Christine Borovoy as Class Representative. The Court concludes that the Class Representative has fairly and adequately represented the Settlement Class and will continue to do so.

22. Pursuant to the Settlement Agreement, and in recognition of her efforts on behalf of the Settlement Class, the Court approves a payment to the Class Representative in the amount

of \$_____ as a Service Award. Such payment shall be made by Squishable in accordance with the terms of the Settlement Agreement.

23. The Court grants final approval to the appointment of Kiley Grombacher of Bradley Grombacher LLP and Mason A. Barney of Siri & Glimstad LLP as Class Counsel. The Court concludes that Class Counsel has adequately represented the Settlement Class and will continue to do so.

24. The Court, after careful review of the fee petition filed by Class Counsel, and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees in the amount of \$_____. Reasonable costs and expenses of \$_____ are also hereby awarded. Payment shall be made pursuant to the terms of the Settlement Agreement.

25. This Final Order and Judgment and the Settlement Agreement, and all acts, statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendant of any claim, any fact alleged in the Litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of Defendant's or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the lawsuit. This Final Order and Judgment, the Settlement Agreement, and all acts, statements, documents, or proceedings relating to the Settlement Agreement shall not be offered or received or be admissible in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; provided, however, that the Settlement Agreement and this Final Order and Judgment may be filed in any action by Defendant, Class Counsel, or Settlement Class

Members seeking to enforce the Settlement Agreement or the Final Order and Judgment (including, but not limited to, enforcing the releases contained herein). The Settlement Agreement and Final Order and Judgment shall not be construed or admissible as an admission by Defendant that Plaintiff's claims or any similar claims are suitable for class treatment. The Settlement Agreement's terms shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims and other prohibitions set forth in this Final Order and Judgment that are maintained by, or on behalf of, any Settlement Class Member or any other person subject to the provisions of this Final Order and Judgment.

26. If the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Order and Judgment and the Preliminary Approval Order shall be deemed vacated, and shall have no force and effect whatsoever; the Settlement Agreement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement, the Preliminary Approval Order, and this Final Order and Judgment and the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated *nunc pro tunc*, and the Parties shall be restored to their respective positions in the Litigation, as if the Parties never entered into the Settlement Agreement (without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue). In such event, the Parties will jointly request that all scheduled Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel. Further, in such event, Defendant will pay amounts already billed or incurred for costs of notice to the Settlement

Class, and Claims Administration, and will not, at any time, seek recovery of same from any other Party to the Litigation or from counsel to any other Party to the Litigation.

27. Pursuant to *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 382, 114 S. Ct. 1673, 1677, 128 L. Ed. 2d 391 (1994) and the parties' agreement, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

28. Without affecting the finality of this Final Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement Agreement for all purposes.

29. This Order resolves all claims against all Parties in this action and is a final order.

30. The matter is hereby dismissed with prejudice and without costs except as provided in the Settlement Agreement.

SO ORDERED THIS _____ DAY OF _____, 202__.

Hon. Paul A. Crotty
United States District Court Judge