

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.

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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
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Date: 3/1/2024

By: /s/ Mason A. Barney
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Date: 3/1/2024

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

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Date: _____

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Date: March 1, 2024