

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

IF YOU PURCHASED FOOD DELIVERED BY CAVIAR BETWEEN JANUARY 20, 2012 AND AUGUST 31, 2015, THIS NOTICE AFFECTS YOUR RIGHTS; PLEASE READ IT CAREFULLY.

**PLEASE DO NOT CONTACT THE COURT OR
THE COURT CLERK REGARDING THIS MATTER.**

THIS IS NOT A SOLICITATION. THIS IS NOT A LAWSUIT AGAINST YOU.

**YOU ARE NOT BEING SUED. A COURT AUTHORIZED THIS NOTICE,
BUT THE FOLLOWING DOES NOT CONSTITUTE THE FINDINGS OF THE COURT. IT SHOULD NOT BE
UNDERSTOOD TO BE AN EXPRESSION OF THE COURT'S VIEWS ON THE MERITS OF CLAIMS OR
DEFENSES RAISED BY THE PARTIES.**

I. INTRODUCTION

You are receiving this notice because you may have ordered and paid for food delivered in California through Caviar's website (trycaviar.com) or mobile application from January 20, 2012 through August 31, 2015. The purpose of this Notice is to notify you of the existence and settlement of a lawsuit, filed on January 20, 2016, by Spencer Janssen ("Plaintiff"), against Square, Inc. doing business as Caviar ("Defendant").

The Plaintiff, who previously ordered food for delivery through Defendant, filed a class action lawsuit alleging that Defendant did not pass on to delivery couriers amounts charged as a "gratuity" line item on customer invoices. Plaintiff sought to pursue such claims on behalf of all customers who ordered and paid for food delivered in California through Caviar's website or mobile application from January 20, 2012 through August 31, 2015, when Defendant eliminated the "gratuity" line item on customer invoices. Defendant disputes and denies the allegations in the lawsuit in all respects.

This Notice informs you of the terms of the pending Settlement Agreement and your rights under it. Please read it carefully. This Notice provides instructions on the options available to you.

II. CERTIFICATION AND HEARING

On or about April 19, 2018, the Court granted preliminary approval for the settlement of this matter and scheduled a hearing on final approval of the settlement for September 21, 2018 at 10:30 a.m. This hearing will take place at Department 305 of the San Francisco County Superior Court, located at 400 McAllister Street, San Francisco, CA 94102. Members of the Class, including you, can express their views on the settlement at or before this hearing, but you are not required to do so, and no appearance at the hearing is required.

III. THE PUBLICATION OF THIS NOTICE

Plaintiff Janssen brought this action as a putative California class action. In class actions, one or more persons bring claims on behalf of themselves and others who are in similar situations or have similar claims. In other words, Plaintiff Janssen is seeking to represent those who are similarly situated and thus may also have similar or related claims. In order to ensure that Class Members are given an adequate opportunity to protect their rights, this Notice is being published to a unique Internet address with a link sent via email to Class Members. This Notice concerns the resolution of this lawsuit and your associated rights.

IV. DESCRIPTION OF THE UNDERLYING CLAIMS

Defendant is a San Francisco-based technology company that, among other things, operates Caviar, a food ordering technology platform. Plaintiff Janssen was a customer who used Caviar's food ordering technology on several occasions in 2015 to purchase food for delivery from restaurants.

Plaintiff filed his class action complaint on January 20, 2016. The lawsuit alleged that the Defendant collected "gratuities" from the customers who ordered food deliveries on the Caviar platform, but that the Defendant did not pass those gratuities on to the couriers delivering the food. Plaintiff further alleged that the Defendant misrepresented to the customers that the funds charged as "gratuities" would be paid to the couriers, when in fact the Defendant retained those funds for itself. Plaintiff sought to represent a class defined as: "All individuals who were customers ordering from, and paying 'gratuity' to, trycaviar.com in California at any time within three years before the filing of this complaint until August, 2015" for claims under the California Consumer Legal Remedies Act ("CLRA") and Unfair Competition Law

("UCL") and seeking monetary relief in the form of damages and restitution as well as injunctive relief, a declaratory judgment, and attorneys' fees and costs.

Defendant denied all allegations and took the position that the use of the term "gratuity" was neither misleading to reasonable consumers nor unlawful. Defendant contended that the amounts collected as gratuities from Plaintiff were paid to his independent contractor couriers.

In light of the litigation, discovery and motion practice thus far, the Plaintiff and his counsel worked with the Defendant and its counsel to resolve the litigation through settlement. Subject to court approval, the parties have entered a Settlement Agreement that provides for the certification of a settlement class consisting of all customers who ordered and paid for food delivered in California through Caviar's website (trycaviar.com) or mobile application from January 20, 2012 through and including August 31, 2015, and that provides the benefits described below.

V. RELIEF FOR SETTLEMENT CLASS

The Settlement Class is defined as follows: all customers (including individuals and businesses) who ordered and paid for food delivered in California through Caviar's website (trycaviar.com) or mobile application from January 20, 2012 through and including August 31, 2015. The Settling Parties understand and agree that there are 93,914 Class Members.

On behalf of the Members of the Class, Plaintiff Janssen reached a voluntary settlement agreement with Defendant. Neither Defendant nor any of its affiliates, predecessors (including without limitation Caviar, Inc.), officers, or directors have admitted any liability or wrongdoing. A full copy of the settlement agreement and other public documents filed with the Court with regard to this matter can be viewed online at <http://www.sfsuperiorcourt.org/online-services>. Please see Section VIII of this Notice for further details.

Under the terms of the settlement, Defendant has agreed that, subject to final approval by the Court, it will provide relief in the total, gross value of \$2,200,000. In addition to this amount, Defendant will also pay the costs of administration of settlement claims, and it has agreed to prospective relief as set forth below.

A. Consumer Credit to Class Members

Subject to approval by the Court, Defendant will provide a maximum amount of \$1,435,000 in Consumer Credits to the Settlement Class. Defendant will provide this amount by making available to each Settlement Class Member a one-time use Consumer Credit of approximately \$15.28 to be used for payment for food in connection with a Caviar delivery order through Defendant and which will expire 180-days from activation. The Consumer Credits are fully transferable—meaning that the person receiving them can give them to anyone else. The Consumer Credit unique identifiers will be distributed to the Class Members through electronic or regular mail. They are subject to the same terms as other Caviar credits, such as, for example they cannot be combined with other offers or discounts, the credit can only be applied to the food order value of the order, and the food order minimums apply.

B. Attorneys' Fees and Costs

Subject to approval by the Court, the attorneys for class representative Janssen and the Class (herein "Class Counsel") will be paid a sum to compensate them for their attorneys' fees, services and costs in this matter. Defendant will pay this combined sum, which is approximately 34% percent of the total dollar amounts of the payments and credits to be provided for the settlement. Specifically, as noted above, the total monetary value of the settlement is \$2,200,000. Approximately 34% of this amount (\$755,000) is reserved to compensate Class Counsel for their reasonable attorneys' fees and costs. Class Members will not be required to separately compensate Class Counsel for their fees and costs.

C. Class Representative Enhancements

Subject to approval by the Court, Defendant also will make a payment to the class representative Janssen in compensation for his time and effort as the named plaintiff in this matter. The Class Representative will receive ten thousand United States dollars (\$10,000).

D. Expenses of Claims Administration

Subject to approval by the Court, Defendant also will pay the reasonable costs of administration of settlement claims, estimated to be sixty thousand United States dollars (\$60,000).

E. Prospective Relief

Subject to approval by the Court, Defendant also agrees that it will maintain its now current practice of not using a line item described as a “gratuity” on its Caviar invoices, provided it can do so in the future if those “gratuity” amounts are paid directly to couriers in the full amount and are in addition to some other amount for which Defendant and the couriers have already contracted.

VI. RELEASES

Settlement Release: Provided the Court approves the settlement and enters the requested judgment, all Members of the Class shall be bound by the settlement agreement and the judgment. Under this judgment, all Class Members who do not submit a timely and valid opt-out request shall be deemed to have forever released and discharged the “Square Releasees” from all claims that were asserted, or could have reasonably been asserted in the Action based on the facts alleged. This release includes claims based on or arising out of the charging for, collection of, or payment of gratuities or the use of the term “gratuity.” For example, claims for physical injury arising out a defective product or premises condition and claims for employment-related torts are not covered by this release and your status as a class member in this action will not affect such claims.

“Square Releasees” means all of Square, Inc.’s affiliates, predecessors or successors (including without limitation Caviar, Inc.), subsidiaries, divisions, joint ventures, benefit plans, past or present directors, officers, employees, partners, members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders, attorneys, accountants or auditors, banks or investment banks, associates, and personal or legal representatives). The released claims include unknown claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, whether known or unknown, whether or not concealed or hidden, against the Square Releasees, or any of them, including without limitation claims for damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorney fees, litigation costs, restitution, disgorgement, unjust enrichment, injunctive relief, declaratory relief, or other equitable relief, that accrued during the Class Period so long as they were asserted, or could have reasonably been asserted in the Action based on the facts alleged. This includes claims based on or arising out of the charging for, collection of, or payment of gratuities or the use of the term “gratuity.” This includes any claims based on any of the following: (1) any and all alleged violations of the California Consumer Legal Remedies Act, codified in California Civil Code Section 1750, et seq.; (2) any and all alleged violations of the California False Advertising Law, codified in California Business & Professions Code sections 17500, et seq.; (3) any and all alleged violations of any state unfair competition laws, including without limitation California Business & Professions Code sections 17200, et seq.; (4) any and all alleged violations of consumer protection or advertising laws embodied in California or federal law; and (5) to the extent not covered above, any and all allegations and/or claims that were asserted, or could have reasonably been asserted in the Action based on the facts alleged, in all of the complaints (including without limitation the First Amended Complaint) in the Action.

Through this release, all Settlement Class Members shall be deemed to have, and by operation of the judgment shall have, expressly waived, the rights and benefits of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In other words, any claims that meet the above description in the previous paragraph will be released even if they are unknown to the Settlement Class Member at this time. To be clear, this release does not cover claims that are unrelated to the use of the term “gratuity.” For example, claims for physical injury arising out a defective product or premises condition and claims for employment-related torts are not covered by this release and your status as a class member in this action will not affect such claims.

VII. THE RIGHTS OF CLASS MEMBERS

If you ordered and paid for food delivered in California through Caviar’s website (trycaviar.com) or mobile application between January 20, 2012 and August 31, 2015, you are a member of the conditionally certified Class.

You do not need to do anything to receive your Consumer Credit: Class Members who do not opt out will receive their credits by email (at the email address used to make the purchase from Caviar) or mail without the need to submit a claim form or do anything else.

Although under no obligation to do so, Class Members may participate in this lawsuit at their own expense by obtaining their own attorneys, *i.e.*, Class Members can seek to intervene in the matter and appear as a party (Class

Members who choose this option will be responsible for any attorney fees or costs incurred as a result of this election). Class members may also object to any particular aspect of the settlement by mailing a letter explaining the objection to the Settlement Administrator at the address below; or “opt out” of the Settlement Class (be excluded from the Settlement Class) by mailing a letter stating that you have read this notice and want to be excluded from the *Janssen v. Square, Inc.* Settlement Class. Class Members cannot both object and opt out. Any Class Member who opts out of the settlement will not receive any Consumer Credit and will not be bound by the release described below. Class Members may, but are under no obligation to hire an attorney to either object or opt out. For any objection or opt out to be valid, it must be (a) in writing and state your name, address, and telephone number; (b) signed by you; (c) postmarked no later than July 27, 2018; and (d) sent by first class mail to the Settlement Administrator at the following address:

Janssen v. Square Settlement Administrator
c/o GCG
P.O. Box 9349
Dublin, Ohio 43017-4249

Opt out requests and objections that are not mailed to this address, personally signed by the Class Member, or postmarked by July 27, 2018, will not be valid.

VIII. HEARING ON FINAL APPROVAL

The Court will hold a hearing on whether to grant final approval of this settlement on September 21, 2018 at 10:30 a.m. This hearing will take place at Department 305 of the San Francisco County Superior Court, located at the Civic Center Courthouse, 400 McAllister St., San Francisco, CA 94102, The Honorable Mary E. Wiss presiding. You are not required to attend this hearing to participate in the settlement or to opt out of the lawsuit.

IX. CLASS COUNSEL

The lawyers acting as Class Counsel in this matter are:

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X. EXAMINATION OF PAPERS FILED IN THIS ACTION

Members of the public may inspect the files (including the full settlement agreement) online at <http://www.sfsuperiorcourt.org/online-services> by searching for Case No. CGC-16-549980 under the “Case Query.”

PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK OF THE COURT WITH QUESTIONS.