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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF SAN FRANCISCO**

22 SPENCER JANSSEN, and all others similarly
situated,

23 **PLAINTIFFS,**

24 vs.

25 SQUARE, INC, and DOES 1 thru 50,
26 inclusive,

27 **DEFENDANTS.**

Case No. CGC-16-549980

**STIPULATION REGARDING
SETTLEMENT OF CLASS ACTION**

Date: April 19, 2018

Time: 2:00 p.m.

Department: 305

Judge: Hon. Mary E. Wiss

Complaint Filed: January 20, 2016

Trial Date: None Set

1 IT IS HEREBY STIPULATED AND AGREED by and between the undersigned Settling
2 Parties, subject to the approval of the Court pursuant to California Rule of Court 3.769 and other
3 applicable authority, that the settlement of this Action shall be effectuated pursuant to the terms
4 and conditions of this Stipulation and Settlement Agreement as set forth below:

5 **I. THE PARTIES TO THIS STIPULATION**

6 This Stipulation Regarding Settlement of Class Action and all associated exhibits or
7 attachments (herein, “Stipulation” or “Stipulation and Settlement Agreement”) is made and
8 entered into by and among the following Settling Parties: (i) PLAINTIFF SPENCER JANSSEN
9 (herein, the “Class Representative”), on behalf of himself and on behalf of the Class as defined
10 below; and (ii) DEFENDANT SQUARE, INC. (herein, “Defendant”). The Stipulation and
11 Settlement Agreement is intended by the Settling Parties to result in the final resolution of this
12 Action pursuant to the Judgment and to fully, finally and forever resolve, discharge and settle the
13 Released Claims upon and subject to the terms and conditions hereof.

14 **II. JURISDICTION AND VENUE**

15 The Court has jurisdiction over the Parties to this Stipulation and Settlement Agreement
16 and the subject matter of this action and venue is proper. The Class Representative agrees that the
17 Court has jurisdiction over all Members of the Class. This Court shall retain jurisdiction to
18 effectuate the Settlement.

19 **III. THE NATURE AND PURPOSE OF THIS STIPULATION**

20 This Stipulation and Settlement Agreement is made for the sole purpose of attempting to
21 consummate settlement of this Action on a class-wide basis. This Stipulation and the Settlement it
22 evidences is made in compromise of disputed claims. Because this is a putative class action, this
23 Settlement Agreement must receive preliminary and final approval from the Court. Accordingly,
24 the Parties enter into this Stipulation and associated Settlement on a conditional basis. In the event
25 that the Court does not execute and file an Order Granting Final Approval of Settlement, or in the
26 event that the Court does not enter a Judgment, or in the event that the associated Judgment does
27 not become Final for any reason, this Stipulation shall be deemed null and void *ab initio*, it shall
28 be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose

1 whatsoever, and the negotiation, terms and entry of it shall remain subject to the provisions of
2 California Evidence Code sections 1119 and 1152.

3 Defendant denies all of the claims as to liability, damages, penalties, restitution and
4 equitable relief as well as the class allegations asserted in the Action. Defendant has agreed to
5 resolve this Action via this Stipulation, but to the extent this Stipulation is deemed void or does
6 not take effect, Defendant does not waive, but rather expressly reserves, all rights to challenge all
7 such claims and allegations in the Action upon all procedural and factual grounds, including
8 without limitation the ability to challenge class treatment on any grounds or to assert any and all
9 defenses or privileges, including without limitation a challenge to the standing of the Class
10 Representative. The Class Representative and Class Counsel agree that Defendant retains and
11 reserves these rights, and agree not to take a position to the contrary. The Class Representative
12 and Class Counsel maintain that the Superior Court would certify this case as a class action under
13 California Code of Civil Procedure § 382 if this action were to proceed. Defendant disputes this
14 contention. The Class Representative and Class Counsel waive, and agree not to argue or present,
15 any argument that Defendant would be precluded from contesting class certification or standing on
16 any grounds if this Action were to proceed. In particular, the Class Representative and Class
17 Counsel waive, and agree not to argue or present, any argument that Defendant would be estopped
18 from contesting class certification or standing because it has entered into this Stipulation. In
19 addition, the Settling Parties recognize and agree that under California procedural law (which is
20 applicable here), courts impose a lesser burden for certification for settlement classes than they do
21 for contested or litigated classes.

22 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

23 Defendant is a San Francisco-based technology company that owns and operates Caviar,
24 which is a food ordering platform. Plaintiff was a customer who used Caviar on several occasions
25 in 2015 to purchase and have food delivered from restaurants.

26 Plaintiff filed his class action complaint on January 20, 2016. The original complaint
27 alleged that until August, 2015, Defendant “misrepresented that funds it charged to and collected
28 from its Customers” using its web platform ordering system “were ‘gratuities’ that would be paid

1 to the delivery drivers, when in fact Defendant retained these funds for itself.” Complaint ¶ 1.
2 Plaintiff sought to represent a class defined as: “All individuals who were customers ordering
3 from, and paying ‘gratuity’ to, trycaviar.com in California at any time within three years before
4 the filing of this complaint until August, 2015.” *Id.* at ¶ 27. Plaintiff alleged claims under the
5 California Consumer Legal Remedies Act (“CLRA”) and Unfair Competition Law (“UCL”). *Id.*
6 at ¶¶ 29-50. Plaintiff sought restitution, injunctive relief, a declaratory judgment, and attorneys’
7 fees and costs. *Id.* at Prayer for Relief ¶¶ 2-7.

8 After an initial round of motion practice and orders concerning the sufficiency of the initial
9 complaint, Plaintiff filed a First Amended Complaint on June 27, 2016. The First Amended
10 Complaint again alleged that Defendant “misrepresent[ed] that funds it charged to and collected
11 from its Customers (Plaintiff and the Class) in connection with the ‘trycaviar.com’ food delivery
12 business, were ‘gratuities’ for the delivery drivers, when in fact the funds were not gratuities, the
13 drivers had no ownership interest in the funds, and Defendant retained the funds for itself.” FAC ¶
14 1. Plaintiff also added a claim for damages under the CLRA, and he expanded the putative class
15 period to go back four years prior to the filing of the original Complaint. *Id.* ¶¶ 8, 28, 57.

16 Defendant responded to the amended complaint by filing a second motion to strike
17 Plaintiff’s prayer for restitution and a second demurrer. Second Motion to Strike and Demurrer to
18 FAC (filed Aug. 12, 2016). On October 6, 2016, the Court overruled the demurrer and denied the
19 motion to strike based on Plaintiffs’ allegations disallowing any courier ownership interest in the
20 funds at issue. Orders (dated Oct. 6, 2016). During a Case Management Conference on October
21 18, 2016, Defendant advised the Court that it intended to file for summary judgment on Plaintiff
22 Janssen’s claims and the Court set a hearing date for March 24, 2017. Order after Oct. 18, 2016
23 CMC (Oct. 27, 2016).

24 Defendant filed its answer on October 26, 2016 and denied (and continues to deny) all of
25 Plaintiff’s material allegations. Thereafter the Parties agreed to a stay of discovery and to pursue a
26 mediation that was held before Hon. William J. Cahill (Ret.) on February 16, 2017. Stipulation
27 and Order Regarding Mediation and Stay of Discovery (Dec. 27, 2016). That mediation did not
28

1 result in a settlement, although it did narrow the range of dispute and laid the foundation for a later
2 mediation and subsequent settlement negotiations that would follow.

3 The Parties had, prior to that point and continuing thereafter, exchanged written discovery,
4 including propounding and responding to document requests, special interrogatories and requests
5 for admission. Both Defendant and the Class Representative provided documents responsive to
6 the requests. The Parties also had, through their respective counsel, engaged in discovery meet
7 and confer regarding the scope of the discovery propounded, the discovery responses, and the
8 phasing of discovery. Defendant took the Class Representative's deposition.

9 Subsequently, the Parties attended a mediation before Hon. Edward A. Infante (Ret.) on
10 July 5, 2017. Stipulation and Order Regarding Mediation and Stay of Deadlines (May 15, 2017).
11 Thereafter, the parties continued to exchange their views on the merits of the case, including
12 through arms-length negotiations and numerous additional discussion with Judge Infante who
13 ultimately proposed a mediator's proposal that both sides accepted. On August 23, 2017, the
14 Settling Parties reached an agreement as to the basic terms of a settlement, and began working
15 towards this long-form settlement agreement, which completely reflects all of the agreement terms
16 here.

17 **V. DEFENDANT'S DENIAL OF WRONGDOING OR LIABILITY**

18 Defendant denies all of the claims and contentions alleged by the Class Representative in
19 this Action, including, without limitation, all of the allegations made in the original and First
20 Amended Complaints. Nonetheless, Defendant has concluded that further conduct of this Action
21 could be protracted and expensive, and that it is desirable and beneficial that the Action be fully
22 and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.

23 **VI. CLASS REPRESENTATIVE'S CLAIMS AND BENEFITS OF SETTLEMENT**

24 The Class Representative and Class Counsel believe that claims asserted in this Action
25 have merit. However, the Class Representative and Class Counsel recognize and acknowledge the
26 expense and length of the type of continued proceedings necessary to prosecute the Action against
27 Defendant through trial and through appeals. The Class Representative and Class Counsel have
28 also taken into account the uncertain outcome and the risk of any further litigation, as well as the

1 difficulties and delays inherent in such litigation. Based upon their evaluation, the Class
2 Representative and Class Counsel have determined that the settlement set forth in this Stipulation
3 is in the best interests of the Class Representative and the Settlement Class.

4 **VII. DEFINITIONS**

5 As used in this Stipulation and Settlement Agreement and the related documents attached
6 hereto as exhibits, the terms set forth below shall have the meanings set forth below:

7 1. “Action” or “Litigation” or “Lawsuit” shall mean the civil action entitled
8 *SPENCER JANSSEN, and all others similarly situated, PLAINTIFFS, vs. SQUARE, INC, and*
9 *DOES 1 thru 50, inclusive, DEFENDANTS*, Case No. CGC-16-549980, filed in the Superior
10 Court of the State of California, County of San Francisco.

11 2. “Janssen” or “Spencer Janssen” means Spencer Janssen, the named Plaintiff and
12 Class Representative in this Action.

13 3. “Class” means all customers (including individuals and businesses) who ordered
14 and paid for food delivered in California through Caviar’s website (trycaviar.com) or mobile
15 application from January 20, 2012 through and including August 31, 2015. The Settling Parties
16 understand and agree that there are 93,914 Class Members.

17 4. “Class Counsel” means Joshua G. Konecky and Nathan B. Piller of the law firm of
18 Schneider Wallace Cottrell Konecky Wotkyns LLP and Jeremy Pasternak and Deanna Maxfield of
19 the Law Offices of Jeremy Pasternak, collectively.

20 5. “Class Member” or “Member of the Class” means any customer who is a member
21 of the Class.

22 6. “Class Notice” means the Long-form Notice and the Short-form Notice,
23 collectively. “Long-form Notice” or “long-form notice” shall mean the notice substantially in the
24 form set forth in Exhibit A. “Short-form Notice” or “short-form notice” shall mean the notices set
25 forth in Exhibit B (B-1, short-form email notice and B-2, short-form postcard notice). This Class
26 Notice shall constitute the class notice pursuant to California Rules of Court 3.769(f) and 3.771(b),
27 and once approved by the Court shall be deemed compliant with California Rule of Court
28 3.766(d).

1 7. “Class Period” means the period from January 20, 2012 through and including
2 August 31, 2015.

3 8. “Class Representative” means the named Plaintiff Spencer Janssen.

4 9. “Claims Administrator” shall mean the third party claims administration firm of
5 Garden City Group, LLC (“GCG”).

6 10. “Consumer Credit” shall mean a credit provided per this Stipulation to a Settlement
7 Class Member to be used for payment for food in connection with a Caviar delivery order through
8 Defendant. The total, initial redemption value of all Consumer Credits to be provided under this
9 Stipulation shall be one million four hundred and thirty-five thousand United States dollars
10 (\$1,435,000), and the Consumer Credits shall be distributed equally among Class Members. Each
11 Consumer Credit shall be distributed via a secure, unique identifier that allows for a one-time-use
12 credit at Caviar (trycaviar.com or the App) that is fully transferrable and subject to the ordinary
13 Caviar terms of service generally applicable to consumers who are not Class Members, except as
14 otherwise specified herein. The amount of each Consumer Credit will be \$15.28, based on a final
15 class size of 93,914. The Consumer Credit will be activated for those Settlement Class Members
16 on the same date the Notice of Final Approval is published and shall remain active for a 180-days
17 expiration period, which will be disclosed in the Notice.

18 11. “Defendant” or the “Company” means Defendant Square, Inc.

19 12. The “Court” means the Superior Court of the State of California for the County of
20 San Francisco.

21 13. “Effective Date” means the date on which the Judgment becomes Final.

22 14. “Final” means: (i) the date of final affirmance on an appeal of the Judgment; (ii)
23 the date of final dismissal with prejudice of any appeal from the Judgment; or (iii) if no appeal is
24 filed, the expiration date of the time for the filing or noticing of any form of valid appeal from the
25 Judgment. Any proceeding or order, or any appeal or petition for a writ pertaining solely to Class
26 Counsel’s application for or award of attorney fees and/or enhancements for the Class
27 Representative shall not, by itself, in any way delay or preclude the Judgment from becoming
28 Final.

1 15. “First Amended Complaint” means the First Amended Complaint filed in this
2 Action, i.e., the operative complaint in the Action.

3 16. “Gross Settlement Amount” or “Maximum Settlement Amount” shall mean the
4 maximum amount of consideration that Defendant shall provide under this Stipulation, which shall
5 be \$2,200,000 as follows: (a) the maximum amount to be paid to Class Counsel for attorney fees
6 and costs, which shall be \$755,000; (b) the maximum enhancement award to Janssen, which shall
7 be \$10,000; and (c) the maximum amount for Consumer Credits to Settlement Class Members,
8 which shall be \$1,435,000. Claims administration costs are to be paid by Defendant in addition to
9 this amount.

10 17. “Judgment” means the judgment to be rendered by the Court pursuant to this
11 Stipulation, substantially in the form set forth on pages F-1 through F-2 below. This Judgment
12 shall be a judgment for purposes of California Rule of Court 3.771(a).

13 18. “Notice of Final Approval” or “Notice of Final Approval of Settlement And Entry
14 of Judgment” means a notice to be approved by the Court, substantially in the form attached
15 hereto as Exhibit C (C-1, final email notice and C-2, final postcard notice). This Notice of Final
16 Approval shall constitute notice of the Judgment pursuant to California Rule of Court 3.771.

17 19. “Notice Mailing Deadline” shall mean the date that is forty-five (45) days after the
18 Preliminary Approval Date.

19 20. “Notice Response Deadline” means the deadline for all Class Members to respond
20 to the Class Notice, i.e., opt out or submit an objection, which shall be forty-five (45) days after
21 the Short Form Notice is e-mailed.

22 21. “Opt Out” shall mean a request to opt out of the settlement as set forth in paragraph
23 6.2 below.

24 22. “Order of Final Approval” or “Order Granting Final Approval of Settlement” shall
25 mean an order to be entered by the Court entitled “Order Granting Final Approval of Settlement,”
26 substantially in the form set forth on pages E-1 through E-2 below. This Order of Final Approval
27 shall constitute approval pursuant to California Rule of Court 3.769(a).

28

1 23. “Preliminary Approval Date” shall mean the date on which the Court grants
2 preliminary approval for the settlement.

3 24. “Preliminary Approval Order” or “Order Granting Preliminary Approval for the
4 Settlement and Setting a Final Approval Hearing” shall mean an order to be executed and filed by
5 the Court entitled “Order Granting Preliminary Approval for the Settlement and Setting a Final
6 Approval Hearing,” substantially in the form set forth on pages D-1 through D-4 below. This
7 Preliminary Approval Order shall constitute an order certifying a provisional settlement class
8 pursuant to California Rule of Court 3.769(d) and an order setting a final approval hearing
9 pursuant to California Rule of Court 3.769(e).

10 25. “Prospective Relief” shall mean the prospective measures that Defendant will take
11 pursuant to this Stipulation, which shall be to maintain its current practice of not using a line item
12 described as a “gratuity” on Caviar invoices presented to customers; or in the alternative
13 Defendant may use a line item described as a “gratuity” on Caviar invoices presented to customers
14 in the future only if those “gratuity” amounts are paid directly to couriers in that same full amount
15 and if those “gratuity” amounts are in addition to some other amount for which Defendant and the
16 couriers have already contracted.

17 26. “Released Claims” shall collectively mean all claims that were asserted, or could
18 have reasonably been asserted in the Action based on the facts alleged. This includes Unknown
19 Claims as defined in Paragraph 36 hereof, demands, rights, liabilities and causes of action of every
20 nature and description whatsoever including without limitation statutory, constitutional,
21 contractual or common law claims, whether known or unknown, whether or not concealed or
22 hidden, against the Square Releasees, or any of them, including without limitation claims for
23 damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorney fees,
24 litigation costs, restitution, disgorgement, unjust enrichment, injunctive relief, declaratory relief,
25 or other equitable relief, that accrued during the Class Period so long as they were asserted, or
26 could have reasonably been asserted in the Action based on the facts alleged. This includes claims
27 based on or arising out of the charging for, collection of, or payment of gratuities or the use of the
28 term “gratuity.” This includes any claims based on any of the following: (1) any and all alleged

1 violations of the California Consumer Legal Remedies Act, codified in California Civil Code
2 Section 1750, et seq.; (2) any and all alleged violations of the California False Advertising Law,
3 codified in California Business & Professions Code sections 17500, et seq.; (3) any and all alleged
4 violations of any state unfair competition laws, including without limitation California Business &
5 Professions Code sections 17200, et seq.; (4) any and all alleged violations of consumer protection
6 or advertising laws embodied in California or federal law; and (5) to the extent not covered above,
7 any and all allegations and/or claims that were asserted, or could have reasonably been asserted in
8 the Action based on the facts alleged, in all of the complaints (including without limitation the
9 First Amended Complaint) in the Action.

10 27. “Settlement Class” means the group of Class Members who do not submit timely
11 and valid Opt Outs.

12 28. “Settlement Class Members” means a Class Member who is a Member of the
13 Settlement Class.

14 29. “Final Approval Hearing” means a hearing set by the Court to take place on or
15 about the Final Approval Hearing Date for the purposes of (i) determining the fairness, adequacy
16 and reasonableness of the Stipulation and associated settlement pursuant to class action procedures
17 and requirements and (ii) entering Judgment. This Final Approval Hearing is intended to be the
18 hearing required under California Rule of Court 3.769(a).

19 30. “Final Approval Motion Date” is the date set by the Court that is on or near the date
20 that is fourteen (14) days after the Notice Response Deadline.

21 31. “Final Approval Hearing Date” is the date that is set by the Court that is on or near
22 the date that is sixteen (16) court days after the Final Approval Motion Date.

23 32. “Settling Parties” means Defendant, on the one hand, and the Class Representative
24 on behalf of himself and all Class Members, on the other hand.

25 33. “Square Releasees” means Square, Inc. and all of its affiliates, predecessors or
26 successors (including without limitation Caviar, Inc.), subsidiaries, divisions, joint ventures,
27 benefit plans, and also all of these entities’ past or present directors, officers, employees, partners,
28 members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders,

1 attorneys, accountants or auditors, banks or investment banks, associates, and personal or legal
2 representatives.

3 34. “Stipulation” or “Settlement Agreement” or “Settlement” or “Agreement” or
4 “Stipulation and Settlement Agreement” means this agreement, the Stipulation Regarding
5 Settlement of Class Action and all of its attachments and exhibits, which the Settling Parties
6 understand and agree sets forth all material terms and conditions of the Settlement between them,
7 and which is subject to Court approval. It is understood and agreed that Defendant’s obligations
8 for any payments or other consideration under this Stipulation are conditioned on, *inter alia*, the
9 occurrence of the Effective Date.

10 35. “Unknown Claims” means any and all Released Claims (and only those Claims that
11 meet the definition of Released Claims) which any Class Representative or any Settlement Class
12 Member does not know or suspect to exist in his or her favor at the time of the entry of the
13 Judgment, and which, if known by him or her might have affected his or her settlement with and
14 release of the Square Releasees or might have affected his or her decision not to object to this
15 settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree
16 that, upon the Effective Date, the Class Representative shall expressly and each of the Settlement
17 Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the
18 provisions, rights and benefits of California Civil Code § 1542 or any similar law, and it is agreed
19 that California Civil Code § 1542, provides:

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

23 The Class Representative and each Settlement Class Member may hereafter discover facts in
24 addition to or different from those which he or she now knows or believes to be true with respect
25 to the subject matter of the Released Claims, but the Class Representative and each Settlement
26 Class Member, upon the Effective Date, shall be deemed to have, and by operation of the
27 Judgment shall have, fully, finally, and forever settled and released any and all Released Claims,
28 known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not

1 concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity
2 now existing or coming into existence in the future, including, but not limited to, conduct which is
3 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard
4 to the subsequent discovery or existence of such different or additional facts. The Class
5 Representative acknowledges, and the Settlement Class Members shall be deemed by operation of
6 the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a
7 key element of the settlement of which this release is a part. For the sake of clarity, the terms
8 “Unknown Claims” includes only claims that meet the definition of Released Claims, *i.e.*, claims
9 that were asserted, or could have reasonably been asserted in the Action based on the facts alleged.

10 **VIII. KEY SETTLEMENT TERMS**

11 NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED by and
12 between the Class Representative (for himself and the Settlement Class Members) and Defendant,
13 with the assistance of their respective counsel of record, that, as among the Settling Parties,
14 including all Settlement Class Members, the Action and the Released Claims shall be finally and
15 fully compromised, settled and released, and the Action shall be finally resolved, as to all Settling
16 Parties, upon and subject to the terms and conditions of the Stipulation and the Judgment.

17 **1. Relief for Settlement Class**

18 1.1 Defendant shall provide under this Stipulation relief in the total, gross value of
19 \$2,200,000, consisting of: (a) a maximum amount of \$1,435,000 in Consumer
20 Credits to the Settlement Class; (b) a maximum amount of \$755,000 to Class
21 Counsel for attorney fees (as provided for in paragraph 2.2 below); and (c) a
22 maximum enhancement of \$10,000 to Janssen (as provided for in paragraph 2.3
23 below). Claims administration costs (as provided for in paragraph 2.1 below) are
24 also to be paid by Defendant in addition to this amount. Defendant shall provide,
25 and the Claims Administrator shall send, the Consumer Credit unique identifier to
26 each Settlement Class Member.

27 1.2 Following the Effective Date, Defendant shall also undertake the Prospective
28 Relief, which was already implemented as of, at least, the end of August 2015. For

1 the sake of clarity, such Prospective Relief does not apply to any charge not labeled
2 a “gratuity” on customer invoices and does not limit Defendant’s ability to charge
3 or collect a “gratuity” from its customers, as long as that amount is paid directly to
4 the courier in that full amount and is in addition to some other amount for which
5 Defendant and the couriers have already contracted.

6 **2. Administrative Expenses, Costs and Attorneys’ Fees**

7 2.1 Administrative Expenses: Defendant shall pay the reasonable costs of the Claims
8 Administrator, estimated during mediation to be sixty thousand United States
9 dollars (\$60,000). In the event that this Settlement Agreement is terminated
10 pursuant to its terms, Defendant shall bear any reasonable expenses of
11 administering this Settlement already incurred.

12 2.2 Attorneys’ Fees and Costs: Subject to final approval by the Court, Defendant has
13 agreed to pay Class Counsel a sum sufficient to compensate them for their fees and
14 costs in this matter. Defendant will pay this combined and total sum, which will at
15 most be seven hundred and fifty-five thousand United States dollars (\$755,000).
16 Class Counsel and the Class Representative will not seek to recover any other fees,
17 costs or expenses incurred in this Action. The Class Representative and Class
18 Counsel agree that they shall be responsible for seeking and justifying their fee and
19 cost award to the Court pursuant to California Rule of Court 3.769(b), and they
20 agree to submit any materials to justify the requested award at least 14 days before
21 the Notice Response Deadline. Defendant will not oppose an award that is
22 consistent with this Paragraph. In the event that the Court (or appellate court)
23 awards less than the maximum amount for attorney fees and/or costs, only the
24 awarded amounts shall be paid and shall constitute full satisfaction of the
25 obligations of this paragraph and full payment thereunder, and any remaining or
26 unawarded portion of the maximum fee and cost awards shall remain the property
27 of Defendant. At least thirty (30) business days before Defendant makes any
28 payment pursuant to this Paragraph, Class Counsel shall provide counsel for

1 Defendant with the pertinent taxpayer identification number(s) and a Form W-9 for
2 Class Counsel for reporting purposes and also written and joint instructions
3 regarding the allocation of this payment among Class Counsel and the correct
4 name(s) of the payee(s). Other than any reporting of this payment as required by
5 law, which Defendant shall make, Class Counsel shall be responsible for the
6 reporting and payment of any federal, state and/or local income or other form of tax
7 on any payment made pursuant to this paragraph. The payment awarded and made
8 pursuant to this paragraph shall constitute full satisfaction of any claim for fees
9 and/or costs and/or any other expenses, and the Class Representative and Class
10 Counsel, on behalf of themselves and all Settlement Class Members, agree that
11 they shall neither seek nor be entitled to any additional attorney fees or costs under
12 any theory nor shall they seek an award in excess of the amount specified herein.
13 Not more than five business (5) days after the Court enters the Order Granting
14 Final Approval of the Settlement, Defendant shall deposit the fee and cost awards
15 approved by the Court pursuant to this Paragraph to the Claims Administrator; and
16 the Claims Administrator shall have the funds held in a non-interest bearing
17 account until the Effective Date and then paid to Class Counsel not more than five
18 (5) business days after the Effective Date. Only for purposes of determining the fee
19 and enhancement awards, the Class Representative shall be deemed the prevailing
20 party; there shall not be a prevailing party for any other purpose. Except as
21 specifically set forth herein, all Parties shall bear their own fees and costs.

22 2.3 Class Representative Enhancements: No more than five (5) business days after the
23 Court enters the Order Granting Final Approval of the Settlement, Defendant shall
24 deposit the Class Representative's award in the gross amount, subject to the Court's
25 approval, of ten thousand United States dollars (\$10,000) to the Claims
26 Administrator; and the Claims Administrator shall have the funds held in a non-
27 interest bearing account until the Effective Date and then paid to the Class
28 Representative not more than five (5) business days after the Effective Date. This

1 payment shall be compensation and consideration for the Class Representative's
2 efforts as the class representative in the Action as well as the execution of a full
3 release by the Class Representative to the benefit of Defendant, including a release
4 of claims under California Civil Code section 1542, which the Class Representative
5 must execute before receiving payment. The Class Representative agrees that
6 Defendant shall report to the Internal Revenue Service the gross payment of the
7 enhancement awarded by the Court paid to him as non-wage income to him in the
8 year of payment via a Form 1099, and the Class Representative agrees to provide a
9 Form W-9 to Defendant at least thirty (30) business days prior to payment and to
10 take full responsibility for the payment of any outstanding taxes due.

11 **3. Releases Upon Effective Date**

12 3.1 Binding Nature of Settlement Agreement: The Settling Parties and each and every
13 Settlement Class Member shall be bound by this Settlement Agreement. No other
14 action, demand, suit or other claim may be pursued against the Square Releasees
15 with respect to the Released Claims. The Class Representative, with the assistance
16 of Class Counsel, stipulates that the Court has jurisdiction over all Class Members.

17 3.2 Releases: The Class Representative and each of the Settlement Class Members
18 shall be deemed to have, and by operation of the Judgment shall have, fully, finally
19 and forever released, relinquished and discharged the Square Releasees from any
20 and all of the Released Claims.

21 **4. Approval of Notice to Class Members and Scheduling of a Hearing**

22 4.1 The Class Representative and Defendant, through their counsel of record, shall file
23 this Stipulation with the Court and jointly move for preliminary approval of this
24 Stipulation pursuant to California Rule of Court 3.769(c). Via this submission, and
25 a supporting motion, the Settling Parties, through their counsel of record, shall
26 request that the Court enter the Preliminary Approval Order thereby scheduling the
27 Final Approval Hearing (pursuant to California Rule of Court 3.769(e)) for the
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1 purposes of granting final approval of the settlement, granting final approval of this
2 Stipulation and obtaining entry of Judgment.

3 4.2 Subject to the availability of the Court, the Class Representative and Defendant
4 shall endeavor to notice the joint motion for entry of the Preliminary Approval
5 Order described in Paragraph 4.1 for a hearing within thirty (30) days of final
6 execution of this Stipulation. Failure of the Court to enter the Preliminary
7 Approval Order will be grounds for either Party to terminate the settlement and the
8 terms of this Stipulation pursuant to Paragraph 8.2.

9 4.3 If the Court enters the Preliminary Approval Order more than ten (10) days after
10 the date of the hearing on the motion(s) for preliminary approval, Class Counsel
11 and counsel for Defendant shall meet and confer to reach agreement on revisions of
12 the deadlines and timetables set forth in this Stipulation, if necessary. In the event
13 that the Settling Parties fail to reach such agreement, any of the Settling Parties
14 may apply to the Court for modification of the dates and deadlines in this
15 Stipulation, provided that such a request to the Court may seek only reasonable
16 modifications of the dates and deadlines contained in this Stipulation and no other
17 changes.

18 4.4 If the Court enters the Preliminary Approval Order, then at the resulting Final
19 Approval Hearing, the Class Representative and Defendant, through their counsel
20 of record, shall address any written objections from Class Members or any
21 concerns from Class Members who attend the Final Approval Hearing as well as
22 any concerns of the Court, and shall and hereby do, unless provided otherwise in
23 this Stipulation, stipulate to final approval of this Stipulation and entry of the
24 Judgment by the Court and will in good faith seek to obtain Court approval for this
25 Agreement.

26 **5. Notice to Class Members**

27 5.1 If, by entering the Preliminary Approval Order, the Court provides authorization to
28 publish the Notice to Class Members, Defendant shall provide the Claims

1 Administrator with the names and most recent email address of each Class Member
2 as those addresses are maintained in Defendant's customer records. On or before
3 the Notice Mailing Deadline Date, the Claims Administrator shall send to all Class
4 Members by email the Short-form Notice substantially in the same form as Exhibit
5 **B-1**. For those Class Members for whom the Short-form Notice email bounces
6 back or is otherwise undeliverable, Defendant shall provide the last known home
7 delivery address to the Claims Administrator, who shall send those Class Members
8 the Short-form Notice via First Class Mail (postcard or otherwise) within 10
9 business days of the bounce-back notification in the same form as Exhibit **B-2**. The
10 Short-form Notice will include a link to the published Internet location (by a unique
11 Internet address) of the Long-form Notice substantially in the same form as Exhibit
12 **A**, which shall remain posted (published) on the website until the Notice Response
13 Deadline.

14 5.2 Neither the Class Representative nor Class Counsel shall receive from Defendant or
15 the Claims Administrator the email addresses of the Class Members.

16 5.3 Once the Short-form Notice is sent to a Class Member via email, that Class
17 Member shall be deemed to have received the Notice, unless the email bounces
18 back to the Claims Administrator indicating that the email address is not correct
19 and/or that the email was not deliverable. For a Class Member for whom the email
20 bounces back, once the Short-form Notice is sent by First Class Mail to the Class
21 Member, the Class Member shall be deemed to have received the notice.

22 **6. Responses to the Notice to Class Members; Motion for Final Approval**

23 6.1 Class Members may object to the approval of this Stipulation by submitting written
24 objections (with a statement of reasons) to the Claims Administrator no later than
25 the Notice Response Deadline. The Long-form Notice will advise Class Members
26 of this option. Any Class Member who fails to submit objections in the time and
27 manner provided shall be foreclosed from making any further objection or
28 opposition.

1 6.2 The long-form Notice will also advise Class Members how they can opt out of the
2 settlement. Any Class Member who timely and validly opts out of the settlement
3 shall not recover anything under the settlement, and shall not be subject to the
4 Judgment and shall be free to pursue any Released Claim, subject to the statute of
5 limitations, any other pertinent restriction, and any other defenses to the action
6 Defendant may wish to assert.

7 6.3 The deadline for Class Member responses set forth in Paragraphs 6.1 or 6.2, i.e.,
8 the Notice Response Deadline, cannot be modified or extended by the Court by
9 more than 30 days, absent the express agreement of all Settling Parties.

10 6.4 Prior to the Final Approval Hearing and by the Final Approval Motion Date, if
11 feasible, the Class Representative and Defendant shall jointly move the Court for
12 entry of the Order of Final Approval (and the associated or eventual entry of
13 Judgment). Through this motion, pursuant to California Rule of Court 3.769(b),
14 the Settling Parties shall advise the Court of the agreements in Paragraphs 2.2 and
15 2.3 of this Section VIII of this Stipulation. To the extent required by the Court or
16 pertinent rules, Class Counsel shall be responsible for justifying the agreed upon
17 payments set forth in Paragraphs 2.2 and 2.3 of this Section VIII of this Stipulation.
18 To the extent possible, the motion seeking entry of the Order of Final Approval
19 shall be noticed for the same day as the Final Approval Hearing, i.e., the Final
20 Approval Hearing Date. The Settling Parties shall take all reasonable efforts to
21 secure entry of the Order of Final Approval and Judgment. If the Court rejects the
22 Stipulation or fails to grant final approval, this Stipulation shall be void *ab initio*,
23 and Defendant shall have no obligation to make any payments or take any
24 Prospective Measures under the Stipulation.

25 **7. Notice of Final Approval to Class Members**

26 7.1 Within thirty (30) days of and only after the Effective Date, Defendant shall direct
27 the Claims Administrator to post the Notice of Final Approval to the website listed
28 in the Short-form Notice. As provided in Section 7, paragraph 10, above, the

1 Consumer Credit shall become active on the same date the Notice of Final
2 Approval is published.

3 7.2 On the same day the Consumer Credit is activated and the Notice of Final Approval
4 is published pursuant to Paragraph 7.1., above, the Claims Administrator shall
5 email to each Settlement Class Member for whom there is a valid email address a
6 Notice of Final Approval that includes the Class Member's unique individualized
7 16-Digit Code, instructions for using the Code, and the date on which the 180-day
8 period for the Consumer Credit expires in the same form as Exhibit C-1. For those
9 Class Members for whom the Notice of Final Approval email bounces back or is
10 otherwise undeliverable, the Claims Administrator shall send those Class Members
11 the Notice of Final Approval via First Class Mail (postcard or otherwise) within 10
12 business days of the bounce-back notification in the same form as Exhibit C-2.

13 7.3 Subsequent to the posting of the Notice of Final Approval per Paragraph 7.1, the
14 Claims Administrator will provide Class Counsel and Counsel for Defendant with
15 written confirmation that the Consumer Credit was sent and the number of
16 bounceback emails received and mailings sent, establishing that the Consumer
17 Credits have been issued. In the event the number of bounceback emails is
18 sufficiently numerous as to raise concerns by either Party, counsel will meet and
19 confer to determine an appropriate resolution. The Claims Administrator will also
20 notify and/or forward to Class Counsel and Counsel for Defendant any
21 communication that a Class Member has initiated with respect to this action;
22 provided that this reporting will not include the names or contact information of
23 any Class Member. To the extent any communication raises any issue that either
24 side believes may require a response or further follow-up to effectuate the purposes
25 of the settlement, they will meet and confer as to manner and content of an
26 appropriate response.

1 **8. Miscellaneous Provisions**

2 8.1 The Settling Parties (a) acknowledge that it is their intent to consummate this
3 agreement; and (b) agree to cooperate to the extent reasonably necessary to
4 effectuate and implement all terms and conditions of the Stipulation and to exercise
5 their best efforts to accomplish the foregoing terms and conditions of the
6 Stipulation, regardless of any future factual developments or subsequent
7 developments in the law. In the event that more than two and one half percent
8 (2.5%) of Class Members opt out of the Settlement Class by submitting Opt Outs
9 pursuant to section 6.2 above, Defendant shall have the right (but shall not be
10 required) to terminate and void this settlement and Stipulation.

11 8.2 Termination of Settlement if Not Approved: In the event that the settlement set
12 forth in this Stipulation shall not be approved in its substantive entirety by the
13 Court, or in the event that the Effective Date does not occur or as otherwise set
14 forth herein, Defendant shall have the option to void the settlement, and in such
15 case, no payments shall be made and no Consumer Credits shall be issued by
16 Defendant to anyone in accordance with the terms of this Stipulation, and this
17 Stipulation shall be deemed null and void with no effect on the Action whatsoever.
18 If the Court changes the dates of hearings provided for in this Stipulation, then this
19 shall not be deemed a substantive change necessitating termination of the
20 settlement, and in such a situation, the Settling Parties agree to move other dates
21 and deadlines in the Stipulation accordingly.

22 8.3 Unless otherwise ordered by the Court, in the event the Stipulation shall be
23 terminated, cancelled, declared void or fails to become effective in accordance with
24 its terms, or if the Judgment is reversed on appeal, within twenty (20) business days
25 after written notification of such event, Defendant and Class Counsel shall notify
26 each other of this event in writing.

27 8.4 The full or partial value of any Consumer Credit not used by the expiration date of
28 that credit shall remain the property of Defendants, and the expiration date for each

1 Consumer Credit cannot be extended except by express agreement of all Settling
2 Parties. Any Court finding or ordering to the contrary shall be grounds for
3 Defendant to void this Agreement. The Settling Parties agree, and the entry of
4 Judgment shall be confirmation that, California Code of Civil Procedure Section
5 384 does not apply to this Agreement. Any finding that California Code of Civil
6 Procedure section 384 applies to this Stipulation to prevent expiration of the
7 Consumer Credits and/or require payment by Defendant other than as set forth in
8 this Stipulation is grounds for Defendant to void the settlement. The Settling
9 Parties agree, and the entry of Judgment shall be confirmation that, the Consumer
10 Credits issued under this Stipulation are not and shall not be gift certificates for
11 purposes of California Civil Code section 1749.45, et seq., or otherwise, and the
12 Consumer Credits will expire per the terms of this Stipulation, and any finding to
13 the contrary shall be grounds for Defendant to void the settlement.

14 8.5 The Stipulation compromises claims which were contested and the subject of a
15 good faith dispute, and it shall not be deemed an admission by any of the Settling
16 Parties as to the merits of any claim or defense. The Settling Parties agree that the
17 terms of the settlement were negotiated at arm's length and in good faith with
18 sufficient information by the Settling Parties and reflect a settlement that was
19 reached voluntarily after consultation with competent legal counsel.

20 8.6 Neither the Stipulation nor the settlement, nor any act performed or document
21 executed pursuant to, or in furtherance of, the Stipulation or the settlement: (a) is or
22 may be deemed to be or may be used as an admission of, or evidence of, the
23 validity of any Released Claim, or of any wrongdoing or liability of the Square
24 Releasees, or any of them; or (b) is or may be deemed to be or may be used as an
25 admission of, or evidence of, any fault or omission of the Square Releasees, or any
26 of them, in any civil, criminal or administrative proceeding in any court,
27 administrative agency or other tribunal.

- 1 8.7 All of the exhibits to the Stipulation are material and integral parts hereof and are
2 fully incorporated herein by this reference.
- 3 8.8 The Stipulation may be amended or modified only by a written instrument signed
4 by or on behalf of all Settling Parties or their respective successors-in-interest.
- 5 8.9 The Stipulation constitutes the entire agreement among the Settling Parties hereto
6 and no representations, warranties or inducements have been made to any party
7 concerning the Stipulation or its exhibits other than the representations, warranties
8 and covenants contained and memorialized in such documents. Except as
9 otherwise provided herein, each party shall bear its own fees and costs.
- 10 8.10 Class Counsel, on behalf of the Class, are expressly authorized by the Class
11 Representative to take all appropriate action required or permitted to be taken by
12 the Class pursuant to the Stipulation to effect its terms and also are expressly
13 authorized to enter into any modifications or amendments to the Stipulation on
14 behalf of the Class which they deem appropriate.
- 15 8.11 Each person executing the Stipulation or any of its exhibits on behalf of any party
16 hereto hereby warrants that such person has the full authority to do so.
- 17 8.12 The Stipulation may be executed in one or more counterparts. All executed
18 counterparts and each of them shall be deemed to be one and the same instrument.
19 A complete set of executed counterparts shall be filed with the Court.
- 20 8.13 The Stipulation shall be binding upon, and inure to the benefit of, the successors
21 and assigns of the parties hereto; however, this Stipulation is not designed to and
22 does not create any third party beneficiaries unless otherwise specifically provided
23 herein.
- 24 8.14 The Court shall retain jurisdiction with respect to implementation and enforcement
25 of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of
26 the Court for purposes of implementing and enforcing the settlement embodied in
27 the Stipulation, provided it is understood that this Stipulation and the resulting
28 Judgment should not result in an injunction or other form of injunctive relief.

1 8.15 The parties recognize that these are unsettled and/or disputed issues of law and
2 questions of fact that affect or could have affected the outcome of this action;
3 nevertheless, the Settling Parties agree to this Stipulation and agree to act in good
4 faith to obtain Court approval for this Stipulation regardless of any developments,
5 foreseen or unforeseen, that may occur subsequent to the execution of this
6 Stipulation.

7 8.16 The Settling Parties agree that the Notice Response Deadline was specifically
8 bargained for and is a key part of the Stipulation for which consideration was
9 given. The Notice Response Deadline may not be changed without the express
10 consent of the Settling Parties. The Stipulation and the exhibits hereto shall be
11 considered to have been negotiated, executed and delivered, and to have been
12 wholly performed, in the State of California, and the rights and obligations of the
13 parties to the Stipulation shall be construed and enforced in accordance with, and
14 governed by, the internal, substantive laws of the State of California without giving
15 effect to that State's choice of law principles.

16 8.17 The language of all parts of this Stipulation shall in all cases be construed as a
17 whole, according to its fair meaning, and not strictly for or against either party. No
18 party shall be deemed the drafter of this Stipulation. The parties acknowledge that
19 the terms of the Stipulation are contractual and are the product of negotiations
20 between the parties and their counsel. Each party and his/its counsel cooperated in
21 the drafting and preparation of the Stipulation. In any construction to be made of
22 the Stipulation, the Stipulation shall not be construed against any party and the
23 canon of contract interpretation set forth in California Civil Code section 1654 shall
24 not be applied.

25 8.18 Prior to the joint submission of the settlement agreement to the Court for
26 preliminary approval by the parties, neither Class Representative nor Class Counsel
27 shall communicate any terms of this settlement to any third parties. Following the
28 submission for preliminary approval and thereafter, Class Representative and Class

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Counsel shall not publicize the settlement in this action or the terms thereof via (a) press releases; (b) Internet postings (other than postings on Class Counsel's firm website); or (c) communications with the media. This shall not prohibit Class Counsel from discussing this case or any aspect of this settlement with the Class Representative, any Class Member (or his or her counsel), or the Court or any counsel in this matter; also, this shall not prohibit Class Counsel from in any way disclosing their mere status as counsel in the case.


* * * * *

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation and Settlement Agreement to be executed, and this Stipulation and Settlement Agreement is AGREED TO on the dates set forth below:

DATED: April 18 2018

By: 
SPENCER JANSSEN
Plaintiff

DATED: April 18, 2018

By: 
SIVAN WHITELEY
GENERAL COUNSEL, SQUARE, INC.
Defendant

1 APPROVED AS TO FORM:

2 DATED: April 18 2018

SCHNEIDER WALLACE COTTRELL KONECKY
WOTKYNS LLP

3
4 By: 

JOSHUA G. KONECKY

5
6 Attorneys for Plaintiff SPENCER JANSSEN
7 LAW OFFICES OF JEREMY PASTERNAK

8 By: 

JEREMY PASTERNAK

9
10 Attorneys for Plaintiff SPENCER JANSSEN

11
12 DATED: April 18 2018

MUNGER, TOLLES & OLSON LLP

13
14 By: 

MALCOLM A. HEINICKE

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16 Attorneys for Defendant SQUARE, INC.
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