

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

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| DAVID M. SWINTON, on behalf of himself and all others similarly situated, Plaintiff, v. SQUARETRADE, INC., Defendant. | * * * * * * * * * * * | Case No. 4:18-cv-00144-SMR-SBJ |
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AGREEMENT OF SETTLEMENT

This Agreement of Settlement (the “**Settlement Agreement**” or “**Settlement**”) is made by and among individual and representative plaintiff David M. Swinton (“**Plaintiff**” or “**Named Plaintiff**”), on behalf of himself and, on the terms set forth herein, the Settlement Class, and defendant SquareTrade, Inc. (“**SquareTrade**” or “**Defendant**”). Plaintiff and SquareTrade are each referred to herein as a “**Party**” and, collectively, as the “**Parties.**” Capitalized terms that are not otherwise defined in this Settlement Agreement have the meanings set forth in Section I herein.

Claims of the Parties and Background of the Case

A. On or about April 20, 2018, Plaintiff filed this putative class action, styled *David M. Swinton v. SquareTrade, Inc.*, Case No. LACL140964, in the Iowa District Court for Polk County, Iowa (the “**Action**”). The complaint filed in the Action (“**Complaint**”) alleged that SquareTrade deceptively marketed and sold its Protection Plans through Amazon and failed to adequately disclose the terms and conditions of its Protection Plans prior to a consumer’s

purchase of the Protection Plan, including, without limitation, the provision of the terms and conditions that provides that claims related to SquareTrade's Protection Plans can be brought only in arbitration on an individual basis and not in court on an individual or class basis (the "Arbitration Provision"). The Complaint alleged that SquareTrade's conduct violated Iowa's Private Consumer Frauds Act, Iowa Code Chapter 714H, the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, and the common law prohibition against unjust enrichment. These claims were pleaded on behalf of Plaintiff and three putative classes of persons who purchased a SquareTrade Protection Plan on Amazon. The Complaint sought, *inter alia*, damages, restitution, disgorgement of profits, statutory damages, attorneys' fees, and costs.

B. On May 14, 2018, SquareTrade timely removed the Action to the United States District Court for the Southern District of Iowa pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), and pursuant to 28 U.S.C. §§ 1331 and 1441. On May 21, 2018, SquareTrade filed a motion to compel arbitration and stay the Action.

C. Thereafter, the Parties engaged in settlement negotiations.

D. Plaintiff, by and through his counsel, has analyzed the relevant factual and legal issues. While Plaintiff and his counsel believe that the claims asserted in the Complaint have merit, they also have examined the benefits to be obtained under the proposed Settlement and have considered the costs, risks, and delays associated with the continued prosecution of this litigation and the likely appeals of any rulings in favor of either Plaintiff or Defendant. Plaintiff desires to resolve the claims asserted in the Complaint against the Defendant.

E. Defendant has analyzed the relevant factual and legal issues. Defendant denies all liability with respect to any and all of the facts or claims alleged in the Complaint. In particular, Defendant denies that its marketing or sales of its Protection Plans has been in any way inconsistent with Iowa's Private Consumer Frauds Act, Iowa Code Chapter 714H, the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*, or the common law prohibition against unjust enrichment. Defendant also denies that Plaintiff's claims against Defendant can

be adjudicated appropriately in court on a class-wide basis as opposed to in arbitration on an individual basis. Defendant contends that the Arbitration Provision is fully enforceable and valid. Defendant also has weighed the risks and potential costs of continued litigation of the Action against the benefits of the proposed Settlement. Defendant desires to resolve the claims asserted against it in the Complaint by Plaintiff.

F. In order to avoid the expense, burden, and delay of litigation, and without admitting or acknowledging any liability, the Parties to this Settlement Agreement now wish to effect a complete resolution and settlement of all of Plaintiff's claims in the Action, and all claims of similarly situated persons in the United States. The Parties freely and voluntarily enter into this Settlement Agreement for that purpose.

G. The Parties and their counsel believe that, in consideration of all the circumstances, and after adversarial arm's length settlement negotiations between counsel, the proposed settlement embodied in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

H. The Parties intend that the proposed settlement embodied in this Settlement Agreement resolves all claims and disputes between the Plaintiff, Settlement Class Members, and the Defendant in this Action.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the Parties as follows:

I. DEFINITIONS

For purposes of the Settlement Agreement and all Exhibits thereto, the following terms shall have the meanings as set forth below:

A. "**Amazon**" means the website located at www.Amazon.com.

B. "**Effective Date**" means the date three business days after the date the Judgment in the Action becomes "Final." As used in this Settlement Agreement, "**Final**" means the later of: (1) the expiration of the time for the filing or noticing of any appeal or motion for

reconsideration; (2) the date of final affirmance of any appeals therefrom, including re-argument of any such appeals; or (3) the expiration of the time for petitions for review or reconsideration, and, if review or reconsideration is granted, the date of final affirmance following review or reconsideration or the final dismissal of any appeals or proceedings on review.

C. “**Execution Date**” means the date on which this Settlement Agreement is fully executed by all Parties.

D. “**Class Period**” means the period from April 20, 2012 through the date on which SquareTrade takes the action provided for in Section 2(E) herein.

E. “**Settlement Class**” means any person or entity in the United States who, during the Class Period, purchased a SquareTrade Protection Plan on Amazon. Each such SquareTrade Protection Plan shall be referred to herein as a “**Class Plan**” and collectively as the “**Class Plans**.” Excluded from the Settlement Class are the judge approving the Settlement and his or her immediately family; Defendant; any entities in which Defendant has a controlling interest or which have a controlling interest in Defendant; and the officers, directors, employees, affiliates, and attorneys for Defendant.

F. “**Lead Class Counsel**” means:

Harley C. Erbe
ERBE LAW FIRM
2501 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 281-1460
Facsimile: (515) 281-1474
Email: erbelawfirm@aol.com

Steven P. Wandro
WANDRO & ASSOCIATES
2501 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 281-1475
Facsimile: (515) 281-1474
Email: swandro@2501grand.com

G. “**Settlement Class Member**” means any person or entity who falls within the definition of the Settlement Class and who does not timely and validly elect exclusion from the

Settlement Class under the conditions and procedures for exclusion as determined by the Court and described in the Notice of Pendency and Settlement of Class Action attached hereto as **Exhibit A** (the “**Long Form Notice**”).

H. “**Released Claims**” means any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs or expenses, of any nature whatsoever, arising under federal, state, local, statutory, common or other law, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims, of the Plaintiff and/or any and all Settlement Class Members that arise out of or relate to: (i) the Action, including, without limitation, any challenge to the Arbitration Provision, or (ii) any marketing, advertising, promotion, representation, and/or sale by the Defendant associated with any SquareTrade Protection Plan on Amazon during the Class Period.

I. “**Released Parties**” means the Defendant and all of its past and present officers, directors, agents, servants, sureties, attorneys, employees, parents, associates, controlling or principal shareholders, general or limited partners or partnerships, subsidiaries, divisions, affiliates, insurers, and all successors or predecessors in interest, assigns, or legal representatives.

J. “**Unknown Claims**” means all claims arising out of any matter covered by the Released Claims which in the future are or may be found to be other than or different from the facts now believed to be true, so that each person or entity so affected shall be deemed to have expressly waived all of the rights and benefits of Section 1542 of the California Civil Code or any other similar provision or rule of law. Section 1542 of the California Civil Code reads as follows:

“Section 1542. Certain Claims Not Affected by General Release. 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 settlement with the debtor.”

All persons or entities providing releases under this Settlement Agreement upon the Effective

Date shall be deemed to have, and by operation of the Judgment in the Action shall have, waived any and all provisions, rights and benefits conferred by Section 1542 of the California Civil Code or any other similar provision or rule of law.

II. COVENANTS

A. Certification of the Settlement Class.

1. For settlement purposes only, the Parties hereto agree that, as part of the Preliminary Approval Order (as defined in Section II(B) herein), the Court may make preliminary findings and enter an order granting provisional certification of the Settlement Class subject to final findings and ratification in the Judgment, and appointing both Plaintiff and Lead Class Counsel as representatives of the Settlement Class.

2. The Defendant does not consent to certification of the Settlement Class for any purpose other than to effectuate the Settlement of the Action. If this Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur, the order certifying the Settlement Class, and all preliminary and/or final findings regarding the Court's provisional class certification order, shall be automatically vacated upon notice of same to the Court, and the Action shall proceed as though the Settlement Class had never been certified and as though such findings had never been made, without prejudice to any party to either request or oppose class certification on any basis.

B. Entry of Preliminary Approval Order. Promptly upon execution of the Settlement Agreement, the Parties shall apply to the Court for entry of an Order Preliminarily Approving Settlement and Providing for Notice substantially in the form attached as **Exhibit B** hereto (the "**Preliminary Approval Order**"):

1. Provisionally approving the terms of the Settlement Agreement;
2. Approving all forms of notice of the Settlement and ordering that notice be given substantially in the manner set forth in Section II(C) herein;

3. Finding that the requirements for provisional certification of the Settlement Class have been satisfied, appointing Plaintiff and Lead Class Counsel as representatives of the Settlement Class, as well as preliminarily approving the Settlement as being within the range of reasonableness such that notice thereof should be given to members of the Settlement Class;

4. Approving the form of judgment substantially in the form of **Exhibit C** hereto (the “**Judgment**”);

5. Providing that all members of the Settlement Class who do not, in accordance with the terms of the Long Form Notice, file valid and timely requests for exclusion from the Settlement Class be bound by the Judgment dismissing the Action on the merits and with prejudice;

6. Finding that the form and method of notice to be given in accordance with the terms of the Preliminary Approval Order constitutes the best notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all members of the Settlement Class, complying fully with the requirements of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable law;

7. Scheduling a hearing or hearings (collectively, the “**Settlement Hearing**”) to be held by the Court to consider and determine whether (1) the requirements for certification of the Settlement Class have been met; (2) whether the proposed settlement of the Action is in accordance with the terms set forth in the Settlement Agreement, including whether as part of the Settlement the payment of certain Lead Class Counsel’s attorneys’ fees and reimbursement of expenses, should be approved as fair, reasonable, and adequate; and (3) whether the Judgment approving the Settlement and dismissing the Action on the merits and with prejudice against Plaintiff and Settlement Class Members should be entered;

8. Providing that the Settlement Hearing may, from time to time and without further notice to the Settlement Class (except those Settlement Class Members who file timely and valid objections), be continued or adjourned by order of the Court;

9. Providing a procedure for members of the Settlement Class to request exclusion from the Settlement Class and for filing papers in support of the Settlement with the Court;

10. Providing that any objections by any Settlement Class Member to: (i) the certification of the Settlement Class and the proposed settlement contained in the Settlement Agreement and described in the Long Form Notice, including the provision for payment of attorneys' fees and reimbursement of expenses, and/or (ii) entry of the Judgment, shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Settlement Hearing only if, on or before a date (or dates) to be specified in the Preliminary Approval Order, such objector serves a written objection on Lead Class Counsel by mail or email so that it is received by Lead Class Counsel no later than the date set by the Court; and

11. Establishing a date (or dates) by which the Parties shall file and serve all papers in support of the application for final approval of the Settlement, including the provision for payment of certain attorneys' fees and reimbursement of expenses, and/or in response to any valid and timely objections received by the designated counsel for the Parties identified in the Settlement Notice.

C. Notice to the Settlement Class.

1. Plaintiff and Defendant shall mutually select and agree upon a reputable, experienced third-party settlement administration firm (the "**Third-Party Administrator**") that will communicate notice of the Settlement to Settlement Class Members by electronic mail substantially in the form of **Exhibit D** (the "**Email Notice**"). Using the information in its computer database, Defendant shall provide to the Third-Party Administrator a list of email addresses of Settlement Class Members, which the Third-Party Administrator shall use to

provide Email Notice. The Parties recognize that Defendant's computer database may not have a current or accurate email address for each Settlement Class Member and agree that Defendant shall be under no obligation to independently attempt to update or correct its database. The Email Notice shall contain a link to the Settlement Website (as defined herein).

2. The Third-Party Administrator shall also arrange for banner ads across the Google Display Network and Facebook. The Third-Party Administrator shall target the banner ads in a manner designed to reach Settlement Class Members. The banner ads shall contain a link to the Settlement Website. The banner ads shall run over a two- to four-week period and shall commence once the Settlement Website becomes active, but in no event later than 60 calendar days following the of the Preliminary Approval Order.

3. The Third-Party Administrator shall set up a website (the "**Settlement Website**") on which it shall post this Settlement Agreement, the Long Form Notice, and a request for exclusion or opt-out form substantially in the form of **Exhibit E** hereto (the "**Opt-Out Form**"). The Settlement Website shall be made active no later than 60 calendar days following entry of the Preliminary Approval Order, and shall remain active until 30 days after the Effective Date.

4. All costs of notice shall be borne by SquareTrade.

D. **The Judgment.** If, at or after the Settlement Hearing, the Settlement Agreement is approved by the Court, the Parties shall submit to the Court the Judgment:

1. Ratifying the certification of the Settlement Class and approving the Settlement Agreement, judging its terms to be fair, reasonable, and adequate and in the best interests of the Settlement Class Members, directing its consummation in accordance with its terms, and reserving continuing jurisdiction to implement, enforce, administer, effectuate, interpret, monitor, and ensure compliance with the provisions of the Settlement Agreement and the Judgment;

2. Ordering the parties to carry out or complete the provisions of this Settlement Agreement;

3. Dismissing the Action as to the Defendant on the merits, with prejudice and without costs (except as otherwise provided herein) and releasing the claims of the Settlement Class Members as described in Section II(L) herein;

4. Barring and permanently enjoining the Settlement Class Members from prosecuting any action in state or federal court against Defendant and its predecessors, successors, shareholders, parents, subsidiaries, affiliates, present or former officers, directors, partners, insurers, employees, associates, agents, attorneys, representatives, heirs, successors, assigns, and administrators with respect to any and all individual or class claims to be released pursuant to Section II(L) herein;

5. Determining the Judgment to be Final.

E. **Changes to Webpages Offering SquareTrade Protection Plans.** Within 30 days of the Execution Date, SquareTrade shall move the Notice of Channel Restriction that presently appears on Amazon for SquareTrade Protection Plans to the part of the Amazon selling page for SquareTrade Protection Plans that appears to a consumer without scrolling when viewed on a standard computer screen at 100% font size or, in the event of changes or evolution to the Amazon site and/or the presentation of SquareTrade Protection Plans on the Amazon site, in a comparable location (collectively, the “Amazon First Page”). In addition, SquareTrade shall include within the Amazon First Page language that describes where the customer can access a copy of the terms and conditions for SquareTrade Protection Plans. The “**Notice of Channel Restriction**” is a notice explaining that a SquareTrade Protection Plan purchased on Amazon is valid only if the product to which the SquareTrade Protection Plan applies is purchased on Amazon.

F. **Refund Payments.**

1. For each Settlement Class Member who, based on SquareTrade's records, had a claim with respect to a Class Plan denied on the ground that said person or entity had purchased the product subject to the Class Plan (the "**Covered Product**") from a retailer other than Amazon (a "**Refund Settlement Class Member**"), SquareTrade will, pursuant to the procedure set out herein, refund to each such Refund Settlement Class Member the amount that said person or entity paid for the Covered Product, exclusive of sales tax and/or shipping charges (the "**Purchase Price**"), less any percentage that the Court awards in attorneys' fees for Lead Class Counsel pursuant to Section II(J)(1)(ii) herein (the "**Refund Settlement Class Attorneys' Fees Percentage**"). By way of illustration, if the Purchase Price of the Covered Product under a Refund Settlement Class Member's Class Plan was \$500.00 and the Court, pursuant to Section II(J)(1)(ii) herein sets the Refund Settlement Class Attorneys' Fees Percentage at 15% (fifteen percent), then the amount of the refund issued to said Refund Settlement Class Member would be \$500.00 minus \$75.00, or \$425.00.

2. In the event that SquareTrade is unable to determine from its records the Purchase Price of the Refund Settlement Class Member's Covered Product, the Purchase Price for such product shall be deemed to be the highest amount available under the Refund Settlement Class Member's applicable Class Plan. By way of illustration, if SquareTrade is unable to determine from its records what the Purchase Price was for the Covered Product under a Refund Settlement Class Member's Class Plan, but the Refund Settlement Class Member's Class Plan covered products with a purchase price between \$175 and \$199.99, the Purchase Price for purposes of calculating said Refund Settlement Class Member's refund would be deemed to be \$199.99.

3. SquareTrade shall make each such payment to a Refund Settlement Class Member by check, and shall mail each such check (the "**Refund Check**") to the last known mailing address that SquareTrade has for such Refund Settlement Class Member; *provided, however*, that prior to SquareTrade sending a Refund Check to a Refund Settlement Class

Member, the Third-Party Settlement Administrator shall, using the email address that SquareTrade has on file for such person or entity, send an email to the Refund Settlement Class Member to attempt to confirm his, her or its mailing address (the “**Mailing Address Confirmation Email**”). The failure by a Refund Settlement Class Member to respond to the Mailing Address Confirmation Email shall not relieve SquareTrade of the obligation to send the Refund Check to said Refund Settlement Class Member using the last known mailing address that SquareTrade has for such person or entity.

4. Upon SquareTrade mailing a Refund Check to a Refund Settlement Class Member, said Refund Settlement Class Member’s Class Plan will be deemed fulfilled and have no further value.

5. To the extent that any Refund Checks have not been cashed within one year of issuance by SquareTrade, SquareTrade shall cancel such Refund Checks and donate the total amount of such Refund Checks to an appropriate charity that it is mutually agreeable to SquareTrade and the Named Plaintiff.

G. Claims Made Under Outstanding Class Plans. With respect to each outstanding Class Plan, SquareTrade shall not deny a claim made under such Class Plan on the ground that the Covered Product was not purchased from Amazon. SquareTrade reserves the right to deny a claim under such Class Plans on any other basis permissible under such Class Plans.

H. Settlement Coupons.

1. **Eligibility for Settlement Coupons.** Subject to the terms set forth below in Sections II(H)(2) and II(I), Defendant shall make available to Settlement Class Members one coupon per Class Plan he, she or it purchased redeemable for a discount of \$10.00 off the purchase of a SquareTrade Protection Plan for a mobile phone (each a “**Settlement Coupon**” and collectively, “**Settlement Coupons**”).

2. **Terms of Settlement Coupons.** Settlement Coupons may only be redeemed for purchases directly from SquareTrade via the SquareTrade.com website or the SquareTrade mobile phone app. Settlement Coupons may be aggregated with other SquareTrade promotions, but may not be aggregated with other Settlement Coupons. Settlement Coupons have no cash value, are not transferable, and may be redeemed only by the Settlement Class Member to whom the Settlement Coupon is issued up through and including the date that this is one year from their issuance. Settlement Coupons cannot be applied to purchases made prior to issuance of the Settlement Coupons.

I. **Settlement Coupon Claims Administration.** Defendant shall be responsible for reviewing its computer database, identifying through that review Settlement Class Members and the number of Settlement Coupons that each Settlement Class Member is entitled to receive, and providing that information to the Third-Party Administrator. Thereafter, the Third-Party Administrator shall, using the information provided to it by Defendant, distribute by email to Settlement Class Members all Settlement Coupons required to be distributed by the terms of Section II(H) above. Defendant shall bear all of the claims administration costs incurred by the Third-Party Administrator.

J. **Attorneys' Fees To Lead Class Counsel And Payment To Class Representative.**

1. **Attorneys' Fees Incurred in Prosecuting The Action.** The Parties agree that an award to Lead Class Counsel of attorneys' fees, expenses, and costs in the following amounts is appropriate and should be approved by the Court: (i) up to \$25,000 payable by SquareTrade in addition to any benefits or compensation provided by SquareTrade under the terms of this Settlement; plus (ii) up to 15% of the Purchase Price of each Covered Product that is the basis for a Refund Check issued by SquareTrade under Section II(F) hereto (collectively, the "**Maximum Awardable Attorneys' Fees**"). The percentage set by the Court pursuant to the foregoing sentence is referred to in this Settlement Agreement as the Refund Settlement Class

Attorneys' Fees Percentage. Lead Class Counsel agrees to not seek an award of attorneys' fees, costs, and expenses in excess of the Maximum Awardable Attorneys' Fees, and Defendant agrees to pay any award of attorneys' fees, costs, and expenses approved by the Court up to the Maximum Awardable Attorneys' Fees.

2. **Payment to the Named Plaintiff.** The Parties agree that payment to the Named Plaintiff in the amount of \$2,500 is appropriate and fair and should be approved by the Court. The Named Plaintiff sought out counsel to pursue this Action, spent time himself in pursuing the Action, and incurred personal risks in pursuing the Action. The payment to the Named Plaintiff is in no way an acknowledgement by Defendant that the Named Plaintiff's actions were proper, that he was wronged in any respect, or that Defendant has any liability for any of the acts complained of in the Action.

3. **General Provisions.** The foregoing amounts will be paid by Defendant to Lead Class Counsel and the Named Plaintiff within 30 days of the Effective Date. Defendant agreed to the payment of such amounts after reaching agreement upon all other material terms of the Settlement Agreement. Defendant, its present and former officers, directors, shareholders, parent companies, subsidiaries, affiliated companies, employees, agents, attorneys, representatives, heirs, successors and assigns, shall not be liable to any person or entity for any additional fees, costs, or expenses of whatever kind or for whatever purpose (including taxes) in connection with the Action.

K. **Opt-Out List.** Within five business days after the deadline established by the Court in the Preliminary Approval Order for members of the Settlement Class to request exclusion from the Settlement Class, Lead Class Counsel shall furnish to Defendant's counsel a complete list of all timely and valid requests for exclusion received by Lead Class Counsel (the "Opt-Out List").

L. **Releases.** In accordance with the provisions of the Judgment, for good and sufficient consideration, the receipt of which is hereby acknowledged, upon the Effective Date

the Plaintiff and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims (including Unknown Claims) against the Released Parties.

M. **Use of Settlement Agreement.** The Parties agree that to the fullest extent permitted by law, neither the Settlement Agreement nor the settlement, nor any act performed nor document executed pursuant to or in furtherance of the Settlement Agreement or the settlement: (1) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim of the Settlement Class Members; or (2) is or may be deemed to be or may be used as an admission of, or evidence of, any wrongdoing, fault, omission, or liability of the Defendant in any proceeding in any court, administrative agency, or other tribunal. Nothing in this Section II(M) shall preclude any party hereto from using the Settlement Agreement, the Judgment, or any act performed or document executed pursuant thereto in a proceeding to consummate, monitor, or enforce the Settlement Agreement, the terms of the Settlement, and/or the Judgment, including, without limitation, the releases included therein.

N. **Settlement Conditioned on Final Judgment.** This Settlement Agreement is conditioned upon the Judgment in the Action becoming Final. If the Judgment is reversed or vacated, or if the Judgment does not become Final for any other reason, this Settlement Agreement shall be terminated as provided in Section II(S) herein. If the Judgment is modified in any manner which limits the scope of releases given to the Released Parties as provided under the terms of this Settlement Agreement or which alters the Defendant's obligations as provided under the terms of this Settlement Agreement, Defendant shall have the right either to affirm this Settlement Agreement as modified, or to terminate this Settlement Agreement as provided in Section II(S) herein.

O. **Best Efforts.** Upon the entry of the Preliminary Approval Order, the Parties agree to use their best efforts to implement the Settlement or comply with, confirm the bases for, or effectuate the terms of this Settlement Agreement. The Parties agree to cooperate and use

their best efforts to the extent necessary to effectuate and implement all terms and conditions of the Settlement Agreement.

P. **Publicity.** In order to ensure that all information provided to the Settlement Class Members regarding the terms and conditions of this Settlement is content neutral and has been approved by the Court in substance, the Parties agree that they shall not issue any statements for publication or public comment regarding the terms and conditions of the Settlement beyond disseminating information provided either in this Settlement Agreement and any exhibit thereto or in the Settlement Notice until after the Settlement Hearing. Notwithstanding the agreement contained in this provision, Defendant retains, at all times, its right to deny liability. Moreover, Lead Class Counsel and all members and/or employees of their respective firms agree that they will not provide any notice or announcements about the Settlement prior to preliminary approval by the Court of this Settlement Agreement.

Q. **Jurisdiction.** The Parties agree that the United States District Court for the Southern District of Iowa (the “**Court**”) shall have exclusive and continuing jurisdiction over the Parties hereto and the implementation, effectuation, interpretation, administration, monitoring, and enforcement of this Settlement Agreement and all provisions thereof with respect to all Parties hereto and all beneficiaries hereof, including Plaintiff, Lead Class Counsel, Defendant, and all Settlement Class Members and Released Parties. The Parties further agree that the Court shall have the authority to impose sanctions, including without limitation, the authority to impose injunctive relief, in the event of non-compliance with this Settlement Agreement by any party or their counsel, or any Settlement Class Members. Any and all disputes, requests, or petitions regarding or arising out of the enforcement, construction, administration, or interpretation of the Settlement Agreement, or any provisions of the Settlement Agreement or the Judgment in the Action, must be made, if at all, to this Court by motion to the Court.

R. **Binding Effect.** This Settlement Agreement shall be binding upon each of the Parties hereto, their successors, heirs, assigns, and personal representatives, and upon all other

persons claiming any interest in the subject matter hereto through any of the Parties hereto, including Plaintiff and any Settlement Class Member.

S. **Disapproval of Settlement.** If this Settlement Agreement is not approved by the Court (or, in the event of appeal, any appellate court) in substantially its present form, the Judgment does not become Final, or the Settlement Agreement is terminated in accordance with its provisions, the Parties hereto shall be restored to their respective positions as of the date of this Settlement Agreement. The terms and provisions of the Settlement Agreement shall at that time have no further force and effect with respect to the Parties and, to the extent permitted by law, shall not be used in any action or proceeding for any purpose. Any Judgment entered in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Any order of the Court certifying the Settlement Class pursuant to Section II(A) herein shall be vacated, without prejudice to Plaintiff's right to proceed with a motion to certify a class and without prejudice to Defendant's right to oppose such certification.

T. **No Release of Obligations Created by This Settlement Agreement.** The Parties expressly understand and agree that, by entering into this Settlement Agreement, none of the Parties is releasing any other Party from performance of its obligations under this Settlement Agreement.

U. **Applicable Law.** The Settlement Agreement shall be governed by and interpreted according to the laws of the State of California, without regard for any applicable choice of law rules.

V. **Entire Agreement.** This Settlement Agreement represents the entire agreement between the Parties relating to the subject matter hereof, and supersedes any prior agreements or understandings between them. The Settlement Agreement may be amended or modified only by a written instrument, signed by an authorized representatives of each of the Parties hereto with, where required by law, the approval of the Court.

W. **Materiality of Exhibits.** All of the Exhibits to the Settlement Agreement are material and integral parts hereof.

X. **Waiver of Breach.** The waiver by one Party of any breach of the Settlement Agreement by any other Party shall not be deemed a waiver of any prior or subsequent breach of the Settlement Agreement.

Y. **Authority of Signatories.** Each signatory on behalf of a Party to the Settlement Agreement warrants and represents that he or she is a duly authorized representative of that Party, with full power and authority to agree to the Settlement Agreement, and all terms herein, on behalf of that Party.

Z. **Mistake.** Each of the Parties to the Settlement Agreement has investigated the facts pertaining to it to the extent each party deems necessary. In entering into this Settlement Agreement, each party assumes the risk of mistake with respect to such facts. This Settlement Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake.

AA. **Construction.** This Settlement Agreement has been reviewed by Plaintiff and Defendant and their respective attorneys, and each have had full opportunity to negotiate the contents of this Settlement Agreement. Plaintiff and Defendant waive any common law or statutory rule of construction that ambiguity should be construed against the drafter of this Settlement Agreement, and agree that the language in all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning. Headings or titles of provisions are merely for convenience, and should not be construed to limit, expand, or modify in any way the actual language in each section or subsection.

BB. **Effectuation of Intent and Purposes.** Each Party agrees to execute any and all documents necessary to effectuate the intent and purposes of this Settlement Agreement.

CC. **Reasonable Extensions.** Without further order of the Court, the Parties hereto may agree to reasonable extensions of time to carry out any of the provisions of this Settlement.

DD. **Notices to Counsel or to Defendant.** All notices, requests, demands, and other communications required or permitted to be given pursuant to this Settlement Agreement to Counsel of the Parties or to Defendant shall be in writing, and shall be delivered to either Lead Class Counsel or Defendant, as required herein¹, by First Class U.S. Mail, postage prepaid or by email to the following addresses:

Lead Class Counsel:

Harley C. Erbe
ERBE LAW FIRM
2501 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 281-1460
Facsimile: (515) 281-1474
erbelawfirm@aol.com

Steven P. Wandro
WANDRO & ASSOCIATES
2501 Grand Avenue
Des Moines, Iowa 50312
Telephone: (515) 281-1475
Facsimile: (515) 281-1474
swandro@2501grand.com

SquareTrade:

Douglas A. Winthrop
Arnold & Porter Kaye Scholer LLP
Three Embarcadero Center, 10th Fl.
San Francisco, CA 94111
Telephone: (415) 471-3174
Facsimile: (415) 471-3400
douglas.winthrop@arnoldporter.com

EE. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them together shall constitute one and the same instrument. Counsel for Parties to the Settlement Agreement shall exchange among themselves copies of the original signed counterparts, and a complete set of original signed counterparts shall be filed with the Court.

FF. **Finality.** This Settlement Agreement is intended to be final and binding among the Parties, and is further intended to be a full and final accord and satisfaction between each of

¹ For avoidance of doubt, any objector who wishes to object to the Settlement need only deliver his or her objection to Lead Class Counsel (and not to SquareTrade) pursuant to Section II(B)(10) of this Settlement Agreement.

them. Defendant and Plaintiff each rely on the finality of this Settlement Agreement as a material factor inducing that Party's execution of this Settlement Agreement.

GG. Advice of Counsel. All Parties acknowledge that they have read and understand and consent to the terms of this Settlement Agreement; that they have been advised by their respective legal counsel with respect thereto; that they understand and acknowledge the significance and consequences of this Settlement Agreement and each of the terms thereof, including (without limitation) the releases set forth in Section II(L) herein; that they have agreed thereto knowingly and voluntarily; and that they have not relied upon any representation, declaration, promise, or inducement other than as set forth in this Settlement Agreement.

Dated: July __, 2018

David M. Swinton
NAMED PLAINTIFF

Dated: July __, 2018

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LEAD CLASS COUNSEL

Dated: July __, 2018

Ahmed Khaishgi
President & CEO
SquareTrade, Inc.

SQUARETRADE, INC.

Dated: July __, 2018

Douglas A. Winthrop
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Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
Telephone: (415) 471-3174
Facsimile: (415) 471-3400

Attorney for Defendant SQUARETRADE, INC.

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Dated: July 31, 2018



David M. Swinton
NAMED PLAINTIFF

Dated: July __, 2018



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LEAD CLASS COUNSEL

Dated: July __, 2018

Ahmed Khaishgi
President & CEO
SquareTrade, Inc.

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Dated: August __, 2018

David M. Swinton
NAMED PLAINTIFF

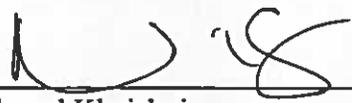
Dated: August __, 2018

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LEAD CLASS COUNSEL

Dated: August 2, 2018



Ahmed Khaishgi
President & CEO
SquareTrade, Inc.

SQUARETRADE, INC.



Dated: August 2, 2018

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