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11 on behalf of himself and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF RIVERSIDE**

14 KIRILOSE MANSOUR, individually on ) Case No.: RIC1810011  
15 behalf of himself and all others similarly )  
situated, ) *Assigned for All Purposes to the Honorable*  
16 ) *Sunshine S. Sykes*  
Plaintiff, )  
17 ) CLASS ACTION  
vs. )  
18 ) **PLAINTIFF'S NOTICE OF MOTION AND**  
BUMBLE TRADING, INC., a Delaware ) **UNCONTESTED MOTION FOR**  
19 corporation; and DOES 1-10, inclusive, ) **PRELIMINARY APPROVAL OF CLASS**  
and each of them, ) **ACTION SETTLEMENT**  
20 Defendants. )  
21 ) **Date: May 18, 2021**  
22 ) **Time: 8:30 a.m.**  
23 ) **Dept: 06**  
24 ) **Honorable Sunshine S. Sykes**  
25 )  
26 ) **Complaint Filed: May 29, 2018**  
27 )  
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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 18, 2021 at 8:30 a.m., or as soon thereafter as this uncontested motion may be heard in Department 06 of the Superior Court of California, County of Riverside, located at 4050 Main Street, Riverside, California, Class Representative/Plaintiff Kirilose Mansour (“Plaintiff”) will and hereby does request that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the Final Approval Hearing for a date that is ninety (90) days from the date of Preliminary Approval. This is Plaintiff’s third motion seeking Preliminary Approval, which has been updated to address the Court’s Case Management Order (“CMO”).

This uncontested motion is based upon this Notice of Uncontested Motion and Uncontested Motion; the Memoranda of Points and Authorities in Support thereof, the Declaration of Kirilose Mansour In Support of Plaintiffs’ Motion For Preliminary Approval of Class Action Settlement, the Declaration of Todd M. Friedman In Support of Plaintiff’s Motion For Preliminary Approval of Class Action Settlement, the Declaration of Steven S. Soliman in Support of Plaintiff’s Motion For Preliminary Approval of Class Action Settlement, the Declaration of Rita M. Haeusler in Further Support of Plaintiff’s Motion For Preliminary Approval of Class Action Settlement, the Declaration of F. Paul Bland, Jr., the Declaration of Ryan Aldrige Regarding Administration, the Declaration of Bumble’s Chief of Staff Caroline Ellis Roche, the proposed Order, the other records, pleadings, and papers filed in this action, and upon such other documentary and oral evidence or argument as may be presented to the Court at the hearing for this motion.

Respectfully submitted this 10th of May, 2021.


By:   
TODD M. FRIEDMAN  
LAW OFFICES OF TODD M. FRIEDMAN,  
P.C.  
STEVEN S. SOLIMAN  
THE SOLIMAN FIRM, P.L.C.  
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1 **I. INTRODUCTION**

2 Plaintiff Kirilose Mansour (“Plaintiff”), individually and on behalf of the “Class” (as  
3 defined below), hereby submits this uncontested motion for preliminary approval of a proposed  
4 settlement (the “Settlement”) of this action (the “Litigation”) and of certification of the proposed  
5 settlement class. Defendant Bumble Trading Co., Inc., (“Defendant”) does not oppose Plaintiff’s  
6 motion (Plaintiff and Defendant shall collectively be referred to as the “Parties”). Following the  
7 hearing on March 8, 2021 with the Honorable Court, the Parties agreed to amend the Settlement  
8 Agreement to address the concerns set forth by the Court in addition to amending the preliminary  
9 approval order, the claim form, the notice, the exclusion form, and the objection form. Plaintiff  
10 additionally revised this memorandum of points and authorities and the Declaration of Todd M.  
11 Friedman.<sup>1</sup> The terms of the Settlement are set forth in the Settlement Agreement and Release  
12 (hereinafter the “Agreement”).<sup>2</sup> See Declaration of Todd M. Friedman (“Friedman Decl.”), Ex  
13 A.

14 The Settlement resulted from the Parties’ participation in an initial mediation session  
15 before the Honorable Gail A. Andler (Ret.) of JAMS and subsequent settlement discussions to  
16 arrive at the amount of relief for Settlement Class Members and a separate subsequent mediation  
17 session before Judge Andler (Ret.) regarding attorney’s fees and costs only after the relief for  
18 Settlement Class Members had been negotiated. The Settlement provides for a substantial  
19 financial benefit to each Settlement Class Member (“Member”). The Settlement Class consists  
20 of:

21 All male persons in California who used the Bumble dating app and self-identified  
22 as interested in women on the Bumble dating app from May 29, 2016 to the present.

23  
24  
25 <sup>1</sup> Redlines comparing the previous versions of these documents and the current versions are  
26 attached as Exhibit 5-12 to the Declaration of Todd M. Friedman. Additionally, specific  
27 citation to the changes made to address the Court’s previous order are set forth in the  
28 Declaration of Todd M. Friedman at paragraphs 75-94.

<sup>2</sup> Unless otherwise defined herein, capitalized terms used in this memorandum shall have the  
same meaning ascribed to them in the Agreement.

1 The Settlement reached with the guidance of Judge Andler was a hybrid settlement that  
2 provides both a monetary automatic universal benefit component to all Members, and an  
3 additional nonmonetary component consisting of other benefits to be used within the Bumble  
4 app.

5 Defendant has agreed to be responsible for Class Notice to each Member explaining key  
6 terms of the Settlement, including benefits under the Settlement and how to opt out of or object  
7 to the Settlement. *See* Agreement at § IV & Ex. 1 to the Proposed Order. The benefits for  
8 Members who do not opt out of the Settlement include the following: Each Member will  
9 *automatically* receive 20 Super Swipes (valued at \$31.98) regardless of whether he submits a  
10 claim form. *See* Agreement § 3.2. Also, a pro rata portion of a \$3,000,000.00 common fund  
11 will be distributed to each Settlement Class Member who submits a valid claim form after a  
12 reduction for costs of up to \$50,000.00, Class Administrator costs, and an incentive award for  
13 the Plaintiff of up to \$10,000.00. *Id.* at § 3.3. A Settlement Class Member that does not have  
14 an active Bumble dating app account or that does not want 20 free Super Swipes and submits a  
15 claim may elect to instead receive two portions of the pro rata share from the distributable  
16 settlement fund. *Id.* at § 3.4. Lastly, there will be an implementation of a “reactions” feature for  
17 all California users for a period of one year as a form of practice change/injunctive relief. *Id.* at  
18 § 3.5. The proposed claim form requires each Member to provide contact and Bumble account  
19 information, a selection of the method by which he wishes to be paid, and an election between  
20 receiving 20 free Super Swipes or two portions of the pro rata share. *Id.* at § 5.1.

21 With an estimated Class size of approximately 2,000,000 Members, the Settlement has  
22 an approximate value of approximately \$67 million in monetary relief.<sup>3</sup> Friedman Decl. ¶¶ 11,  
23 37. Furthermore, Defendant has agreed to pay the costs of Notice and Settlement administration,  
24 and, subject to Court approval, a proposed Attorneys’ Fee Award in the amount of \$3,250,000.00  
25 to Class Counsel and a reasonable Cost Reimbursement not to exceed \$50,000. Agreement at §§  
26 5.4, 7.1-7.4. Payment of these fees is wholly separate from any payments or benefits to be  
27

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28 <sup>3</sup> Composed of the \$31.98 in Super Swipes provided to each Class Members and the \$3,000,000 settlement fund.



1 provided to Settlement Class Members as part of the Settlement and was negotiated entirely  
2 separately. *Id.*

3 While Plaintiff is confident of a favorable determination on the merits, he has determined  
4 that the Settlement provides significant benefits to the Settlement Class and is in the best interests  
5 of the Settlement Class. Plaintiff also believes that the Settlement is appropriate because Plaintiff  
6 recognizes the expense and amount of time required to continue to pursue the Litigation, as well  
7 as the uncertainty, risk, and difficulties of proof inherent in prosecuting such claims. Similarly,  
8 as evidenced by the Agreement, Defendant believes that it has substantial and meritorious  
9 defenses to Plaintiff's claims but has determined that it is desirable to settle the Litigation on the  
10 terms set forth in the Agreement.

11 Plaintiff believes that the Settlement satisfies all of the criteria for preliminary approval.  
12 Accordingly, Plaintiff moves this Court for an order preliminarily approving the Settlement,  
13 provisionally certifying the Settlement for settlement purposes under California Code of Civil  
14 Procedure Section 382, directing dissemination of Class Notice, and scheduling a Final Approval  
15 Hearing.

## 16 **II. STATEMENT OF FACTS**

### 17 **A. Factual Background**

18 Bumble is a location-based dating app that launched in December 2014. Users download  
19 the application from an app store, build a profile, and then can view other users and either  
20 indicate approval of a connection or disapproval through swiping. The experience for both men  
21 and women is the same, until a match is made. When two users swipe for approval, a connection  
22 is made. For men who have identified an interest in women, only the woman can make the first  
23 move.<sup>4</sup> By contrast, women are able to use the messaging system to make the initial  
24 communication with men.

25 If a woman does not message the man within twenty-four (24) hours, the match expires.  
26 At no point is the man able to message the woman until she messages first. Thus, the Bumble  
27 application differentiates between heterosexual men and women because the men are unable to

28 \_\_\_\_\_  
<sup>4</sup> An example of this display is on page 9 of Plaintiff's First Amended Complaint ("FAC").

1 utilize the messaging features of the application based on their sex and sexual identity as  
2 interested in women. All of these features are free as part of the Bumble app.

3 The Bumble app is the core of Defendant’s business, and it uses its “women-message-  
4 first” system to differentiate itself from other competitors by challenging what Defendant views  
5 as the outdated gender-normative expectation that men are the pursuers and women must wait  
6 to be pursued. At no point in time has Defendant permitted Class Members matched with women  
7 to message the woman first. The same is not true for homosexual men, or for women regardless  
8 of sexual preference, all of whom are able to message first. Defendant views its “women  
9 message first” feature as an expression of its core philosophy and guiding business principle:  
10 *viz.*, to advocate for change in the historically unequal balance of power between women and  
11 men.

### 12 **B. Procedural History**

13 On May 29, 2018, Mansour filed his Class action lawsuit against Defendant. The Parties  
14 thereafter engaged in discovery in preparation for Plaintiff’s Motion for Class Certification and  
15 Defendant’s Motion for Summary Judgment. On November 25, 2019, Plaintiff filed his Motion  
16 for Class Certification. Counsel for the parties agreed that the Motion for Summary Judgment  
17 and Motion for Class Certification would be heard at the same time. Defendant filed its Motion  
18 for Summary Judgment on February 14, 2020. The Parties’ oppositions to each other Motions  
19 were due to be filed at the end of July.

20 Prior to that due date, the Parties attended a mediation with Judge Andler on June 23,  
21 2020. The Parties did not resolve the case at the mediation, but engaged in subsequent  
22 discussions with Judge Andler regarding compensation for the Settlement Class. With her  
23 guidance, the Parties reached an initial agreement with respect to the compensation for the  
24 Settlement Class on September 10, 2020, but no agreement or discussion as to attorney’s fees  
25 and costs occurred prior to this date. *See Friedman Decl.*, ¶¶ 7-9. Thereafter, the Parties engaged  
26 in further settlement discussions to see if attorney’s fees and costs could be agreed to without  
27 the need for a contested motion and on October 16, 2020, the Parties attended a second mediation  
28 with Judge Andler to resolve the issue of attorney’s fees wherein Defendant agreed to pay  
attorneys’ fees awarded by the Court of up to \$3.25. *Id.* Plaintiff filed an initial Motion for

1 Preliminary Approval which was denied without prejudice by the Court. Plaintiff filed a second  
2 Motion for Preliminary which was heard by the Court on March 8, 2021. Following the hearing  
3 on March 8, 2021 with the Honorable Court, the Parties agreed to amend the Settlement  
4 Agreement to address the concerns set forth by the Court in addition to amending the preliminary  
5 approval order, the claim form, the notice, the exclusion form, and the objection form. Plaintiff  
6 now files this third revised Motion for Preliminary Approval and . respectfully requests that the  
7 Court approve the Settlement.

### 8 **III. THE SETTLEMENT**

#### 9 **A. The Settlement Class**

10 The “Settlement Class” is defined in the Agreement as follows:

11 *“All male persons in California who used the Bumble dating app*  
12 *and self-identified as interested in women on the Bumble dating app*  
13 *from May 29, 2016 to the present.”* (Agreement § 2.19.)

14 The Class Period is from May 29, 2016 through the date that the Court grants preliminary  
15 approval of the Settlement.<sup>5</sup> (*Id.* § 2.6). Defendant maintains email addresses and/or other contact  
16 information for the vast majority of users of the app and based on data provided by Defendant  
17 and its counsel, the Class contains approximately 2,000,000 Members. *See Friedman Decl.*, ¶¶  
18 6, 11. Bumble’s sole contact information for 464,000 class members who are former Bumble  
19 users consists of only telephone numbers, however these individuals will be contacted by using  
20 a reverse lookup to identify an email address or mailing address as described below. Declaration  
21 of Caroline Ellis Roche (“Roche Decl.”) at ¶ 4. For all other Class Members, Bumble has the  
22 ability to contact them through either push notifications in the App or by email. *Id.*

#### 23 **B. Settlement Benefits**

24 Under the Settlement, Defendant agrees to a multifaceted Settlement structure, which  
25 includes a universal participation component (automatic benefits to all Settlement Class  
26 Members); an additional cash payout to Settlement Class Members who submit timely valid

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27 <sup>5</sup> Plaintiff’s Counsel is are of one overlapping action filed after the second uncontested motion  
28 for preliminary approval. Friedman Decl. at ¶ 36. Defendant’s counsel is unaware of any other  
overlapping action. Declaration of Rita M. Haeusler (“Haeusler Decl.”) at ¶ 2.

1 claims; and an agreement to provide all Bumble dating app users with the ability to message first  
2 using pre-selected emoji going forward for at least a one year period. Attorneys' fees, to Plaintiff  
3 will be separately paid by Defendant. These benefits are significant, tangible and offer fair  
4 remuneration for the Settlement Class.

5 Pursuant to the Agreement, Class Notice will be sent via email directly to the  
6 approximately 2,000,000 persons in the Settlement Class.<sup>6</sup> (Agreement § 4.2); (Exhibit 1 to the  
7 Proposed Order). For any Settlement Class Member for whom Defendant does not have a valid  
8 email address and has an active Bumble dating app account, Defendant will provide notice  
9 through the Bumble dating app via a push notification. *Id.* For the approximately 464,000  
10 Settlement Class Members who are former Bumble users for whom only a telephone number is  
11 known, the Settlement Administrator will conduct a reverse lookup using his phone number to  
12 identify an email address and email a copy of the Class Notice to the Settlement Class Member  
13 at that email address. *Id.* If no email address is available, the Settlement Administrator will  
14 identify a mailing address and mail a copy of the Class Notice to the Settlement Class Member.  
15 *Id.*

16 The Class Notice will explain that if the Member had a Bumble account during the Class  
17 Period, the Member will automatically receive 20 free Super Swipes (equivalent to \$31.98 in  
18 value). *Id.* This benefit will be issued to each and every Member irrespective of whether the  
19 Member submits a claim. Also, a pro rata share of \$3,000,000.00 will be distributed to each  
20 Member who submits a valid claim form after a reduction for costs of up to \$50,000.00, an  
21 incentive award to Plaintiff of up to \$10,000, and the Class Administrator's costs. Agreement §  
22 3.3 & Ex. 2 to the Proposed Order. A Class Member that does not have an active Bumble dating  
23 app account or that does not want 20 free Super Swipes and submits a claim may elect to instead  
24 receive two portions of the pro rata share from the distributable settlement fund. *Id.* at § 3.4. A  
25 claims process is necessary because while Defendant has the email address or phone numbers of  
26 class members, it does not have mailing addresses and thus no means to mail proceeds directly  
27 to Class Members. Consequently, Class Members must provide payment information as part of

28 \_\_\_\_\_  
<sup>6</sup> The Parties have revised the notice documents in accordance with the March 8, 2021 hearing.

1 the claims process. Defendant is able to provide the universal component automatically and  
2 directly to Class Members because it does have sufficient information to distribute such benefits  
3 without further action by Class Members. It is anticipated that the claims rate will be  
4 approximately 5% based on Plaintiff's counsel's experience in the *Kim v. Tinder* matter, which  
5 featured very similar claims and a very similar structure and that received final approval from  
6 the Court. Friedman Decl. at ¶ 65. It is estimated, based on a 5% claims rate, that the average  
7 Class Member who submits a claim will receive approximately \$30 from the pro rata portion in  
8 addition to the automatic \$31.98 Super Swipes value. *Id.*

9 Lastly, for a period of one year in California, Defendant will implement a "reactions"  
10 feature as a form of practice change/injunctive relief. Agreement § 3.5.

11 Separate and apart from these Class benefits, Defendant has agreed to pay the proposed  
12 Attorneys' Fee Award in the amount of up to \$3,250,000.00, pending approval by the Court.  
13 (Agreement § 7.1-7.2). Class Notice will be provided within 30 days after entry of the order  
14 granting Preliminary Approval.<sup>7</sup> (Agreement § 4.2). Before Class Notice is provided, the  
15 Settlement Administrator will develop the Settlement Website, which shall contain relevant  
16 documents pertaining to the Settlement including the Settlement Agreement, the Claim Form,  
17 the Class Notice, and the Preliminary Approval Order. (Agreement § 4.3).

18 In the event that, after a period of 180 days following the last distribution of pro rata  
19 shares from the Common Fund, there remains any residual funds in the Common Fund, the  
20 Settlement Administrator will distribute any such funds to a *cy pres* recipient, proposed to be  
21 Public Justice. (Agreement § 5.5). Public Justice is a non-profit charitable public foundation  
22 dedicating to advancing the public interest. Declaration of F. Paul Bland, Jr. ("Bland Decl.") at  
23 ¶ 1. Public Justice has a long history of advocacy on behalf of consumer rights and consumer  
24 protection. *See, e.g.*, Bland Decl. Public Justice would use any such reward to protect against  
25 gender discrimination and advance the rights of consumers. *Id.* at ¶ 39. Plaintiff and Defendant

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26 <sup>7</sup> Email is the best notice practicable because Defendant generally maintains email address data  
27 for Settlement Class Members but not physical addresses or other information (such as landline  
28 phone numbers) that would permit Class Counsel to efficiently conduct a reverse lookup and  
send mail notice. For those who email notice is not practicable, a reverse lookup will be used  
based on their phone numbers to obtain an address and mail notice will be sent.

1 are unaware of any relationship between Public Justice and Plaintiff, Defendant, Plaintiff's  
2 attorneys, and Defendant's attorneys. Friedman Decl. at ¶ 53; Hauesler Decl. at ¶ 8; Soliman  
3 Decl. at ¶ 12.

#### 4 **C. Scope of Release**

5 The Agreement provides that Members who do not request exclusion from the Settlement  
6 will release any and all claims, known or unknown, against the Releasees based on the facts  
7 alleged in the Initial or Amended Complaints and arose during the Class Period. (Agreement §  
8 8.1). The release is narrowly tailored solely to claims arising out of the allegations made in the  
9 Initial or Amended Complaints. "Released Parties" means Defendant, the following corporate  
10 affiliates that support Defendant: Bumble, Inc., Bumble Trading LLC, Bumble Holding Limited,  
11 Badoo Trading Limited, Badoo Limited, Bumble IP Holdco LLC, and the Defendant's and its  
12 supporting affiliates' respective current and former officers, directors, members, managers,  
13 employees, controlling shareholders, and agents. (Agreement §2.17). Bumble's affiliates are  
14 included solely because certain aspects of the Bumble app are operated through Bumble's  
15 affiliates, such as Bumble's servers. Hauesler Decl. at ¶ 6. Bumble has provided a further  
16 explanation as to how each of these affiliates is directly involved in its activities as it relates to  
17 this lawsuit in the Declaration of Caroline Ellis Roche at ¶ 3.

#### 18 **D. Opportunity to Opt Out and Object**

19 Under the terms of the proposed Settlement, Members will have the right to opt out of  
20 the Settlement or object to its terms.<sup>8</sup> A Member who wishes to opt out of the Settlement must,  
21 no later than 45 days after the Class Notice Date, mail or electronically submit the Exclusion  
22 form made available on the settlement website to the Settlement Administrator. Proposed Order  
23 at ¶ 12; Ex. 3. A Member who does not opt out and who wishes to object to the Settlement may  
24 do so by mailing or electronically submitting to the Settlement Administrator, no later than 45  
25 days after the Class Notice Date, the Objection form made available on the settlement website.  
26 *Id.* at ¶ 14; Ex. 4.

27  
28 <sup>8</sup> As with the Notices, the Parties agreed to modify the opt-out and objection process per the Court's CMO as reflected in the filed Proposed Order.

1           **E.      Class Representative’s Application for Incentive award.**

2           The Settlement contemplates that Class Counsel will request an Incentive Award in the  
3 amount of \$10,000.00 to be distributed to the Class Representative, subject to Court approval.  
4 Defendant has agreed not to oppose this request. (Agreement § 7.3).

5           **F.      Class Counsel’s Application for Fees, Costs, and Expenses.**

6           The Settlement contemplates that Class Counsel may apply to the Court for an award of  
7 attorneys’ fees in the amount of \$3,250,000.00 (plus reimbursement of costs of up to \$50,000),  
8 representing less than 5% of the total estimated value of the Settlement (including the value of  
9 the injunctive component), which provides significant value to the Class. Defendant has agreed  
10 not to oppose an application by Class Counsel for an award of attorneys’ fees and costs, as long  
11 as it does not exceed this stated amount. (Agreement § 7.1).

12       **IV.    ARGUMENT**

13           **A.      Standard for Preliminary Approval of Class Action Settlement.**

14           When a proposed class-wide settlement is reached, the settlement must be submitted to  
15 the court for approval. 2H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at  
16 §11.41, p.1 1- 87. Preliminary approval is the first of three steps that comprise the approval  
17 procedure for settlements of class actions. The second step is the dissemination of notice of the  
18 settlement to all Class Members. The third step is a final settlement approval hearing, at which  
19 evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement  
20 may be presented and Class Members may be heard regarding the settlement. *See Dunk v. Ford*  
21 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 ; *Manual for Complex Litigation, Second* §30.44  
22 (1993); Cal. Rules of Court, rule 3.769.

23           The primary question presented on an application for preliminary approval of a proposed  
24 class action settlement is whether the proposed settlement is “within the range of possible  
25 approval.” *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce* (7th Cir.  
26 1982) 690 F.2d 616, 621 n.3 .<sup>9</sup> Preliminary approval is merely the prerequisite to giving notice

27 \_\_\_\_\_  
28 <sup>9</sup> California courts look to federal authority on class actions. *Vasquez v. Superior Court* (1971)  
4 Cal.3d 800, 821. “It is well established that in the absence of relevant state precedents trial

1 so that “the proposed settlement... may be submitted to members of the prospective Class for their  
2 acceptance or rejection.” *Philadelphia Housing Authority v. American Radiator & Standard*  
3 *Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 372. There is an initial presumption of fairness  
4 when a proposed settlement, which was negotiated at arm’s length by counsel for the Class, is  
5 presented for court approval. *Newberg*, 3d Ed., §11.41, p. 11-88. However, the ultimate question  
6 of whether the proposed settlement is fair, reasonable and adequate is made after notice of the  
7 settlement is given to the Class Members and a final settlement hearing is held by the Court.

8 **B. The Role Of The Court In Preliminary Approval Of A Class Action**  
9 **Settlement**

10 The approval of a proposed settlement of a class action suit is a matter within the broad  
11 discretion of the trial court. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-  
12 235 ; *Dunk, supra* 48 Cal. App. 4<sup>th</sup> at 1801. Preliminary approval does not require the trial court  
13 to answer the ultimate question of whether a proposed settlement is fair, reasonable and adequate.  
14 That final determination is made only after notice of the settlement has been given to the class  
15 members and after they have been given an opportunity to voice their views of the settlement or  
16 to be excluded from the settlement. 3B J. Moore, *Moore’s Federal Practice* §§23.80 - 23.85  
17 (2003).

18 In considering a potential settlement for preliminary approval purposes, the trial court  
19 does not have to reach any ultimate conclusions on the issues of fact and law which underlie the  
20 merits of the dispute and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal. App.4th  
21 at 239-40; *Dunk, supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence  
22 of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’”  
23 *Officers for Justice v. Civil Service Com’n of City and County of S.F.* (9th Cir. 1982) 688 F.2d  
24 615, 624 . The question whether a proposed settlement is fair, reasonable and adequate  
25 necessarily requires a judgment and evaluation by the attorneys for the parties based upon a  
26 comparison of “the terms of the compromise with the likely rewards of litigation.” *Weinberger*

27 \_\_\_\_\_  
28 courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil  
Procedure for conducting class actions.” *Frazier v. City of Richmond* (1986) 184 Cal. App.3d  
1491, 1499 (citing *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146 ).



1 v. *Kendrick* (2d Cir. 1982) 698 F.2d 61, 73 , cert, denied 464 U.S. 818 (1983) (quoting *Protective*  
2 *Comm, for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson* (1968) 390 U.S. 414, 424-  
3 25 ). Thus, when analyzing the settlement, the amount is “not to be judged against a hypothetical  
4 or speculative measure of what might have been achieved by the negotiators.” *Officers for Justice*,  
5 supra 688 F.2d at 625, 628.

6 With regard to class action settlements, the opinions of counsel should be given  
7 considerable weight both because of counsel’s familiarity with this litigation and previous  
8 experience with cases such as these. *Id.* at 625; *In re Wash. Public Power Supply System Sec.*  
9 *Litig.* (D. Ariz. 1989) 720 F. Supp. 1379 ; *Kirkorian v. Borelli* (N.D. Cal. 1988) 695 F. Supp.  
10 446, 451 ; *Weinberger, supra* 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should  
11 be given a presumption of reasonableness.” *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp.  
12 610, 622. As a result, courts hold that the recommendation of counsel is entitled to significant  
13 weight. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523.

### 14 C. Factors To Be Considered In Granting Preliminary Approval

15 A number of factors are to be considered in evaluating a settlement for purposes of  
16 preliminary approval. In determining whether to grant preliminary approval, the court considers  
17 whether the “(1) the proposed settlement appears to be the product of serious, informed, non-  
18 collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential  
19 treatment to class representatives or segments of the class, and (4) falls within the range of  
20 possible approval.” *In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp. 2d 1078, 1079.  
21 No one factor should be determinative, but rather all factors should be considered. The analysis  
22 has been summarized as follows:

23 If the proposed settlement appears to be the product of serious, informed,  
24 noncollusive negotiations, has no obvious deficiencies, does not improperly grant  
25 preferential treatment to class representatives or segments of the class, and falls  
26 within the range of possible approval, then the court should direct that notice be  
given to the class members of a formal fairness hearing, at which evidence may  
be presented in support of and in opposition to the settlement.

27 *Manual of Complex Litigation, Second* §30.44, at 229. Here, the Settlement meets all of these  
28 criteria for preliminary approval.

1           1. The Settlement is the Product of Serious, Informed and Noncollusive  
2           Negotiations

3           This settlement is the result of extensive and hard-fought negotiations before an  
4           experienced and well-respected mediator. Defendant has expressly denied and continues to deny  
5           any wrongdoing or legal liability arising out of the conduct alleged in the Lawsuit. Plaintiff and  
6           Class Counsel have determined that it is desirable and beneficial to the Settlement Class to put to  
7           rest the Settlement Class Members' Released Claims.

8           The Parties attended two private mediations with Hon. Gail Andler (ret.), a respected and  
9           experienced mediator for class actions. Prior to the mediation, Plaintiff conducted significant  
10          discovery as to the merits and Settlement Class and filed a Motion for Class Certification. In  
11          preparation for the mediation, Defendant provided Class Counsel with further information for the  
12          members of the Class, including the number of class members and valuation of Super Swipes.

13          Plaintiff analyzed the documents, data and prepared and each party submitted a mediation  
14          brief to Judge Andler. After a full day of settlement negotiations and months of continued  
15          negotiations thereafter, the Parties through counsel reached an agreement as to the relief for  
16          Settlement Class Members in light of the uncertainties of protracted litigation. Only after reaching  
17          such an agreement did the Parties then engage in discussions regarding Plaintiff's attorneys' fees  
18          and costs as compared to the prospect of a contested motion, ultimately resolving that issue with  
19          the assistance of Judge Andler (ret.) at a second day of mediation. As a result, the Parties signed  
20          the final Settlement Agreement now presented for this Court's approval. Friedman Decl. Ex A.  
21          Importantly, Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and  
22          adequate.

23          As consideration for this Settlement, Defendant has agreed to automatically provide  
24          each Settlement Class Member with twenty (20) Super Swipes (valued at \$31.98) and an  
25          additional Three Million Dollars (\$3,000,000) towards a claims made Common Fund. This will  
26          settle all issues pending in the litigation between the Plaintiff, on the one hand, and the  
27          Defendant, on the other hand, including the Settlement Administrator expenses, the Court-  
28          approved Service Awards, and the Pro Rata Shares for the Settlement Class. In addition to the  
29          Common Fund, the Settlement Administrator will separately invoice the Defendant, and the

1 Defendant will pay to the Settlement Administrator up to \$100,000 for the reverse look up of  
2 contact information (email addresses and/or physical addresses), for former Bumble dating app  
3 users for whom Defendant only has telephone numbers as contact information and therefore  
4 cannot provide the initial notice by email or through the Bumble dating app. (Agreement §  
5 3.3). The Settlement Administrator has estimated the cost of these additional services to be  
6 approximately \$32,000.

7 Defendant has also agreed to separately pay Plaintiff's Attorneys Fees of up to Three  
8 Million Two Hundred Fifty Thousand Dollars (\$3,250,000). The Settlement is all-in with no  
9 reversion to Defendant, and to the extent the Court does not award the full amount of attorneys'  
10 fees, any additional amount shall be distributed to the Common Fund. Agreement at § 7.5;  
11 Friedman Decl. at ¶ 42.

12 Class Counsel has conducted a thorough investigation into the facts of the class action.  
13 Class Counsel has diligently evaluated the Class Members' claims against Defendant.<sup>10</sup> Prior to  
14 the Parties executing the Settlement Agreement, counsel for Defendant provided Class Counsel  
15 with access to data and information for the Class. Defendant also filed a motion for summary  
16 judgment setting forth facts, legal authorities and argument concerning its defenses. In addition,  
17 Class Counsel has previously negotiated settlements involving similar issues and analogous  
18 defenses. Based on the foregoing data and their own independent investigation, evaluation and  
19 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in  
20 the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class  
21 in light of all known facts and circumstances, including the risk of significant delay, defenses  
22 asserted by Defendant, and numerous potential appellate issues. Friedman Decl. at ¶¶ 56-63.

23 At the point at which the Parties settled this matter, Plaintiff had filed his Motion for  
24 Class Certification and Defendant had filed its Motion for Summary Judgment. Defendant's  
25 Motion for Summary Judgment. Defendant's Motion for Summary Judgment raised arguments

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26  
27 <sup>10</sup> If the Class were to be certified and the Plaintiff were to prevail on all claims at trial, the  
28 Unruh Civil Rights Act provides for three times the amount of actual damages but in no case  
less than four thousand dollars (\$4,000) and attorney's fees and costs, and thus each Class  
Member would at most receive \$4,000 if Plaintiff prevailed. Cal. Civ. C. § 52.

1 that Defendant's conduct was protected under both the California Constitution and United States  
2 Constitution's right for intimate association and expressive association. Both issues have never  
3 been addressed by a Court with respect to the validity of the Unruh Civil Rights Act in a sexual  
4 orientation discrimination context, but had been analyzed in the context of the right to association  
5 with respect to beliefs in *Hart v. Cult Awareness Network* (1993) 13 Cal.App.4th 777. Because  
6 no Court has specifically addressed this issue, there was significant risk that the Court would find  
7 that Bumble was correct in its assertion regarding the right to association and accordingly find  
8 the Unruh Act was unconstitutional with respect to Plaintiff's claims. Bumble additionally  
9 asserted that its discrimination was not arbitrary because it served a valuable mission of  
10 attempting to promote gender equality and provided expert testimony to that effect. While such  
11 assertion has been specifically pointed to as only reinforcing gender stereotypes by the Court in  
12 *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 28, the application of this argument would be fact  
13 specific and distinguishable from *Koire*, particularly as this case concerns sexual orientation in  
14 addition to gender, and there was risk

15 In order to prevail in this lawsuit, Plaintiff would have needed to prevail on Class  
16 Certification and overcome Defendant's Motion for Summary Judgment to advance to the next  
17 stage. Plaintiff's counsel estimates the odds of Class Certification to be approximately 80% while  
18 the odds of the Motion for Summary Judgment would be approximately 50% given the lack of  
19 guidance on the constitutionality of association issue. Plaintiff would then have had to give Class  
20 Notice and overcome any efforts by Defendant to move for decertification based on any issues  
21 that arose during notice and further discovery. Finally, Plaintiff would have had to prevail at trial  
22 in demonstrating that Defendant's discrimination constituted discrimination on the basis of  
23 gender or sexual orientation and that Defendant's discrimination was arbitrary. The burden of  
24 proof would be on Plaintiff and even if Defendant had not prevailed on its Motion for Summary  
25 Judgment, it would be able to again present its arguments regarding its position that the  
26 discrimination was not arbitrary. At best, trial would also be a 50% chance of victory.  
27 Accordingly, at the time of settlement, Plaintiff's counsel estimates there was a 20% chance of  
28

1 prevailing in the matter.<sup>11</sup> While Plaintiff’s counsel was and is willing to litigate under such  
2 risks, such risks also highlight why settlement with understanding of such risks is preferable.

3 With respect to any verdicts for any similar cases and after conducting significant legal  
4 research, the only case Plaintiff could find was *Jones v. Wells Fargo Bank, N.A.* (Cal. Ct. App.  
5 Feb. 17, 2015) No. B237282, 2015 WL 661757, at \*7. In *Jones*, at a jury trial following Class  
6 Certification, the jury found that there were 880 loans in violation and awarded statutory damages  
7 of \$4,000 per, totaling \$3,520,000. This was confusing, as there were actually 7,348 members,  
8 so the plaintiff proposed redistributing it amongst the entire class, amounting to approximately  
9 \$479 per class member. Thus, it would be fair to estimate that the maximum recovery for the  
10 Class if this were to prevail at every stage and ultimately at trial and through appeals would be  
11 between \$958 million based on *Jones* and \$8 billion, based on \$4,000 in statutory damages.

12 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and  
13 trying this Lawsuit against Defendant through possible appeals which could take several years.  
14 Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially  
15 in complex actions such as this Lawsuit. Class Counsel is also mindful of and recognizes the  
16 inherent problems of proof under, and alleged defenses to, the claims asserted in the Lawsuit.  
17 Based upon their evaluation, Plaintiff and Class Counsel have determined that the settlement set  
18 forth in the Settlement Agreement is in the best interest of the Class Members. Friedman Decl.  
19 ¶¶ 61-63. Class Counsel has significant experience in UCL classes, including obtaining  
20 certification by contested motion, and has recent experience litigating this matter in a similar  
21 UCL and UCRA case arising out of age discrimination on a dating app in *Kim v. Tinder, Inc.*,  
22 (C.D. Cal. June 19, 2019) No. CV 18-3093-JFW(ASX), 2019 WL 2576367, which settled as a  
23 Class. *Id.* at ¶ 63. Here, there can be no dispute that the litigation has been hard-fought with  
24 aggressive and capable advocacy on both sides. The Parties were represented by experienced  
25 and capable counsel who zealously advocated their respective positions. Accordingly, “[t]here  
26 is likewise every reason to conclude that settlement negotiations were vigorously conducted at  
27  
28

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<sup>11</sup> 80% Class Certification \* 50% Motion For Summary Judgment \* 50% Trial = 20% total.

1 arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply*  
2 *System Sec. Litig.*, 720 F. Supp. at 1392.

3 2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within the Range for  
4 Approval

5 The proposed Settlement herein has no "obvious deficiencies" and is well within the  
6 range of possible approval. All eligible Settlement Class Members will receive a universal Super  
7 Swipe component and have an opportunity to participate in the Settlement and receive payment  
8 in accordance with the Settlement Agreement at § 3.2-3.4. For those Settlement Class Members  
9 that either do not have an active Bumble dating app account or that do not want 20 free Super  
10 Swipes, they may elect to instead receive two portions of the pro rata share from the distributable  
11 settlement fund as part of a claim.

12 Based on the nature of the claims, the evidence of the case, prevailing similar Unruh Civil  
13 Rights Acts lawsuits, the experience of Class Counsel, and the advice of Judge Andler, Class  
14 Counsel believes that a settlement of this value represents an excellent result for the Class, and it  
15 is most certainly fair and reasonable. Clearly, the goal of this litigation has been met. Friedman  
16 Decl. at ¶¶ 28-40, 41-45.

17 Where both sides face significant uncertainty, the attendant risks favor settlement.  
18 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. Here, a number of defenses  
19 asserted by Defendant presented serious threats to the claims of the Plaintiff and the other  
20 Settlement Class Members. Defendant asserted that its practices and policies complied with all  
21 applicable laws, and that there was no Unruh Civil Rights Act violation at issue. Defendant  
22 additionally raised a constitutional defense regarding the freedom of association as laid forth in  
23 its Motion for Summary Judgment. These defenses arguably weakened Plaintiff's claims, on  
24 liability, value, and class certifiability. If successful, Defendant's defenses could eliminate or  
25 substantially reduce any recovery to the Class. While Plaintiff believes that these defenses could  
26 be overcome, Defendant maintains these defenses have merit and therefore present a serious risk  
27 to recovery. Friedman Decl. at ¶¶ 56-64. After arm's-length negotiations between experienced  
28 and informed counsel, the Parties recognized the potential risks and agreed on the settlement as  
to the Class and subsequent settlement as to attorney's fees and costs as set forth above. As the

1 federal court held in *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 27 2007) 2007 WL 221862, \*16-  
2 17, where the parties faced uncertainties similar to those here:

3 In light of the above-referenced uncertainty in the law, the risk, expense,  
4 complexity, and likely duration of further litigation likewise favors the  
5 settlement. Regardless of how this Court might have ruled on the merits of the  
6 legal issues, the losing party likely would have appealed, and the parties would  
7 have faced the expense and uncertainty of litigating an appeal. “The expense and  
8 possible duration of the litigation should be considered in evaluating the  
9 reasonableness of [a] settlement.” See *In re Mego Financial Corp. Securities*  
10 *Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

11 Here, the risk of further litigation is substantial.

12 3. The Settlement Does Not Improperly Grant Preferential Treatment To Class  
13 Representatives or Segments Of The Class

14 The relief provided in the settlement will benefit all members of the Settlement Class. The  
15 settlement does not grant preferential treatment to Plaintiff or segments of the Settlement Class  
16 in any way. Payments to the Settlement Class Members are all determined under a neutral  
17 methodology, with each receiving an identical universal participation component and optional  
18 claims made settlement share. All Settlement Class Members will receive the same opportunity  
19 to participate in and receive payment. Friedman Decl. at ¶ 37.

20 Plaintiff will apply to the Court for a Service Award in consideration for his service and  
21 for the risks undertaken on behalf of the class. Settlement Agreement at §7.3. Plaintiff performed  
22 his duty by working with Class Counsel. Declaration of Kirilose Mansour at ¶¶ 3-9. At this  
23 stage, the requested Service Awards are well within the accepted range of awards for purposes of  
24 preliminary approval. See e.g. *Louie v. Kaiser Foundation Health Plan, Inc.* (S.D. Cal. Oct. 06,  
25 2008) 2008 WL 4473183, \*7 (awarding \$25,000 service award to each of six plaintiffs in class  
26 action); *Glass, supra* 2007 WL 221862 at \*16-17 (awarding \$25,000 service award in class action  
27 and a pool of \$100,000.00 in enhancements); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal.  
28 1995) 901 F.Supp. 294, 299-300 (awarding incentive award of \$50,000); *In re Dun & Bradstreet*  
*Credit Servs. Customer Litig.* (6th Cir. 2003) 130 F.R.D. 366, 373; *Cook v. Niedert* (7th Cir.  
1998) 142 F.3d 1004, 1016 . As explained in *Glass*, service awards are routinely awarded to class  
representatives to compensate for the time and effort expended on the case, for the risk of  
litigation, and to serve as an incentive to vindicate the rights of other similarly situated Class  
Members. 2007 WL 221862 at \*16-17.

1           4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary  
2           Approval Of The Settlement

3           The stage of the proceedings at which this settlement was reached also militates in favor  
4 of preliminary approval and ultimately, final approval of the settlement. Class Counsel has  
5 conducted a thorough investigation into the facts of the class action. Class Counsel began  
6 investigating the Class Members' claims before this action was filed. Class Counsel engaged in  
7 a thorough review and analysis of the relevant documents and data. Class Counsel was also  
8 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar  
9 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel  
10 possessed sufficient information to make an informed judgment regarding the likelihood of  
11 success on the merits and the results that could be obtained through further litigation. Friedman  
12 Decl. at ¶¶ 5-10. Such investigation is evidenced by the fact that Plaintiff had filed a Motion for  
13 Class Certification and was preparing an opposition to Defendant's Motion for Summary  
14 Judgment at the time this matter settled.

15           To specifically describe in detail all the discovery that was conducted, following  
16 Defendant's filing an answer on November 7, 2018, the Parties were only permitted to engage in  
17 informal email discovery of questions. On or about January 2019, Plaintiff emailed 4 document  
18 requests concerning Defendant's policies and procedures regarding the messaging feature,  
19 advertising, and revenue and 8 interrogatories concerning the features and functions, different  
20 Class sizes, and revenue. Defendant provided responses and documents to these requests around  
21 February 2019. In December 2018, Defendant served seven interrogatories and requests for  
22 documents informally which Plaintiff responded to in January 2019. While Plaintiff sought to  
23 take Defendant's PMK deposition in June 2019, due to ongoing scheduling conflicts, Plaintiff  
24 ultimately took the deposition of Sarah Jones-Simmer on October 25, 2019 on Class certification  
25 issues as well as the underlying features of the Bumble app as well as its policies, practices, and  
26 the reasoning behind those policies and practices. On October 18, 2019, Defendant took the  
27 deposition of Plaintiff. Using the discovery responses and deposition testimony, Plaintiff filed his  
28 Motion for Class Certification on November 25, 2019.



1           On February 14, 2020, Defendant filed its Motion for Summary Judgment which included  
2 the expert testimony of Elizabeth Haines Ph.D. on the issue of gender stereotyping and Patricia  
3 A. Norberg Ph.D. on the issue of corporate values and user choice on the Bumble app. Plaintiff  
4 reviewed the reports and prepared written discovery, including requests for admission, requests  
5 for documents, and interrogatories, on the issue of whether Defendant’s policy was arbitrary and  
6 capricious in preparation for opposing the Motion for Summary Judgment. While Defendant’s  
7 arguments regarding constitutional protections are largely legal arguments, the arguments  
8 regarding whether Defendant’s policy was arbitrary in its discrimination is a fact intensive inquiry  
9 that Plaintiff would have needed discovery to confirm the position set forth in Defendant’s  
10 Motion for Summary Judgment.

11           Instead of proceeding with such discovery, the Parties agreed to attend mediation with  
12 Judge Gail Andler (ret.) and to exchange informal discovery prior to such mediation—and to  
13 reserve further discovery on the Motion for Summary Judgment or Motion for Class Certification  
14 until after mediation. Prior to the mediation, Defendant confirmed the current number of Class  
15 Members within the proposed Class as of the mediation. After the Parties agreed to settle the  
16 matter and executed the Settlement Agreement, Plaintiff conducted further discovery to confirm  
17 the value of Super Swipes, the number of Super Swipes sold in California, the number of Class  
18 Members, and the ability to contact those Class Members at the deposition of Richard Watts on  
19 January 6, 2021. Thus, prior to settling this case, Plaintiff had finished Class discovery and filed  
20 his motion for class certification and had received Defendant’s Motion for Summary Judgment  
21 which included evidence and expert reports in support of its position. While Plaintiff could have  
22 conducted discovery to confirm Defendant’s positions in its Motion for Summary Judgment, the  
23 issues regarding corporate policy and belief had been touched upon already in Plaintiff’s  
24 Deposition of Sarah Jones-Simmer such that Plaintiff had already obtained some merits discovery  
25 as to the issue—even though Ms. Jones-Simmer’s deposition by agreement largely focused on  
26 Class issues. Thus, Plaintiff had largely finished all discovery needed in this action prior to the  
27 mediation and conducted additional discovery thereafter regarding assumptions made in settling  
28 the case which proved those assumptions had been correct.

1 Based on the foregoing data and their own independent investigation and evaluation,  
2 Class Counsel is of the opinion that the settlement with Defendant for the consideration and on  
3 the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best  
4 interest of the class in light of all known facts and circumstances, including the risk of significant  
5 delay, defenses asserted by Defendant, and numerous potential appellate issues. Defendant and  
6 Defendant's counsel also agree that the Settlement Agreement is fair and in the best interest of  
7 the Class Members. There can be no doubt that Counsel for both parties possessed sufficient  
8 information to make an informed judgment regarding the likelihood of success on the merits and  
9 the results that could be obtained through further litigation. Friedman Decl. at ¶¶ 5-17; 56-63.

10 In *Glass*, the Northern District of California granted final approval of a class action  
11 although in *Glass* no formal discovery had been conducted prior to the settlement:

Here, no formal discovery took place prior to settlement. As the Ninth Circuit has  
12 observed, however," [i]n the context of class action settlements, 'formal  
13 discovery is not a necessary ticket to the bargaining table' where the parties have  
14 sufficient information to make an informed decision about settlement." See *In re*  
*Mego Financial Corp. Securities Litigation*, 213 F.3d at 459.

15 *Glass*, supra 2007 WL 221862 at \*14.

16 Here, Class Counsel was in a far stronger position to evaluate the fairness of this  
17 settlement because Class Counsel had the same sufficient information, as well as independent  
18 investigations, due diligence and formal discovery to confirm the accuracy of the information  
19 supplied by Defendant.

20 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

21 Plaintiff contends that the proposed settlements meet all of the requirements for class  
22 certification under California Code of Civil Procedure §382 as demonstrated below, and  
23 therefore, the Court may appropriately approve the Class as defined in the Settlement  
24 Agreement.<sup>12</sup> This Court should conditionally certify the Settlement Class for settlement  
25 purposes only, defined as follows:

26 All male persons in California who used the Bumble dating app and self-identified as  
27 interested in women on the Bumble dating app from May 29, 2016 to the present.

28 <sup>12</sup> Defendant strongly disputes that a litigation class would meet the standard for certification in  
this case but has agreed to certification for purposes of resolution of this case.

1 Settlement Agreement § 2.19.

2 **A. California Code of Civil Procedure §382**

3 Plaintiff seeks certification of this Class for settlement purposes under California Code of  
4 Civil Procedure § 382. The California Supreme Court has summarized the standard for  
5 determining whether class certification is appropriate as follows:

6 Code of Civil Procedure Section 382 authorizes class actions “when the question  
7 is one of a common or general interest, of many persons, or when the parties are  
8 numerous, and it is impracticable to bring them all before the court...” The party  
9 seeking certification has the burden to establish the existence of both an  
ascertainable class and a well-defined community of interest among class  
members, (*citations omitted*). The “community of interest” requirement  
embodies three factors: (1) predominant common questions of law or fact; (2)  
class representatives with claims or defenses typical of the class; and (3) class  
representatives who can adequately represent the class.

10 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. While Defendant  
11 reserves all rights to dispute that the Plaintiff can satisfy any of these requirements, the Parties  
12 agree that Defendant will not dispute that these requirements may be satisfied in this case for  
13 purposes of settlement and therefore, the proposed Class should be certified for purposes of  
14 settlement.

15 **B. The Proposed Class Is Ascertainable and Numerous**

16 Plaintiff brings this action on behalf of a class of all male persons in California who used  
17 the Bumble dating app and self-identified as interested in women on the Bumble dating app from  
18 May 29, 2016 to the present. All of these individuals are ascertainable because the class members  
19 can readily be determined through examination of Defendant’s records. Given that the class  
20 consists of approximately two million members, numerosity is clearly satisfied. *See Bowles v.*  
21 *Superior Court* (1955) 44 Cal.2d 574 (class with 10 members sufficiently numerous); *Rose v.*  
22 *City of Hayward* (1981) 126 Cal.App.3d 926, 934 (class of 48 members satisfies numerosity  
23 requirement.) Here, the approximately two million individuals that comprise the class can be  
24 identified based on Defendant’s records and are sufficiently numerous for class certification.  
25 Friedman Decl. at ¶ 11.

26 **C. Common Issues of Law and Fact Predominate**

27 Predominance of common issues of law or fact does not require that the common issues  
28 be dispositive of the entire controversy or even that they be dispositive of all liability issues. 1

1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative  
2 concept, and ‘the necessity for class members to individually establish eligibility and damages  
3 does not mean individual fact questions predominate.’” *Sav-On, supra* 34 Cal. 4th at 334.

4 “The community of interest requirement involves three factors: ‘(1) predominant  
5 common questions of law or fact; (2) class representatives with claims or defenses typical of the  
6 class; and (3) class representatives who can adequately represent the class.’” *Linder v. Thrifty*  
7 *Oil Co.* (2000) 23 Cal.4th 429, 435. Whether Plaintiff is likely to prevail on their theory of  
8 recovery is irrelevant at the certification stage since the question is “essentially a procedural one  
9 that does not ask whether an action is legally or factually meritorious.” *Id.* at 439-440 (2003).

10 Here, Plaintiff contends that common questions of law and fact are present, and  
11 specifically the common questions of whether Defendant violated the Unruh Civil Rights Act  
12 through its messaging restrictions contained within its Bumble app. Friedman Decl. at ¶ 4.  
13 Defendant disputes that common questions predominate but will not oppose such a finding for  
14 purposes of this settlement only.

15 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

16 The typicality requirement requires the Plaintiff to demonstrate that the members of the  
17 class have the same or similar claims as the Plaintiff. “The typicality requirement is met when  
18 the claims of the Plaintiff arise from the same event or are based on the same legal theories.” *Tate*  
19 *v. Weyerhaeuser Co.* (8th Cir. 1983) 723 F.2d 598, 608. In *Hanlon, supra* 150 F.3d at 1020, the  
20 Ninth Circuit held that “[u]nder the rule’s permissive standards, representative claims are  
21 ‘typical’ if they are reasonably coextensive with those of absent class members; they need not be  
22 substantially identical.”

23 In the instant case, there can be little doubt that the typicality requirement is fully  
24 satisfied. The Plaintiff claims he experienced the same alleged discrimination as every other  
25 member of the Settlement Class with respect to access to features within the Bumble app. The  
26 Plaintiff contends that, like every other member of the Settlement Class, he was subject to the  
27 same violations of the Unruh Civil Rights Act and is subject to the same defenses. Thus, the  
28 claims of the Plaintiff and the Settlement Class Members arise from the same course of conduct

1 by the Defendant, involve the same policies and practices of Defendant, and are based on the  
2 same legal theories. For purposes of settlement, the typicality requirement is met as to the  
3 common issues presented in this case. Defendant does not oppose a finding of typicality for  
4 purposes of this settlement only.

5 **E. The Class Representation Fairly and Adequately Protected the Class**

6 Plaintiff contends that the Settlement Class Members are adequately represented here  
7 because Plaintiff and representing counsel (a) do not have any conflicts of interest with other  
8 class members, and (b) will prosecute the case vigorously on behalf of the class. *Hanlon, supra*  
9 150 F.3d at 1020. This requirement is met here. First, Plaintiff is aware of his duties as the  
10 representative of the Class and has actively participated in the prosecution of this case to date.  
11 He has effectively communicated with counsel, provided documents to counsel and participated  
12 in discovery, investigation and negotiations in the Lawsuit. Second, Plaintiff retained competent  
13 counsel who are experienced in consumer class actions. Friedman Decl. at ¶¶ 67-74. The Law  
14 Offices of Todd M. Friedman P.C. have extensive experience in class action litigation in  
15 California and throughout the country, specifically in consumer protection litigation, including  
16 the prosecution of class actions seeking to protect consumer rights, including Unruh Civil Rights  
17 actions. *Id.* Class Counsel is qualified and able to conduct this Litigation. Third, there is no  
18 antagonism between the interests of the Plaintiff and those of the Settlement Class. Both the  
19 Plaintiff and the Settlement Class Members seek monetary relief under the same set of facts and  
20 legal theories. Defendant disputes that the adequacy requirement is satisfied but will not oppose  
21 such a finding for purposes of this settlement only.

22 **F. The Superiority Requirement Is Met**

23 To certify a class, the Court must also determine that a class action is superior to other  
24 available methods for the fair and efficient adjudication of the controversy. “Where classwide  
25 litigation of common issues will reduce litigation costs and promote greater efficiency, a class  
26 action may be superior to other methods of litigation.” *Valentinov. Carter-Wallace, Inc.* (9<sup>th</sup> Cir.  
27 1996) 97 F.3d 1227, 1234. As courts have previously observed:

28 Absent class treatment, each individual plaintiff would present in separate,  
duplicative proceedings the same or essentially the same arguments and  
evidence, including expert testimony. The result would be a multiplicity of trials

1 conducted at enormous expense to both the judicial system and the litigants. “It  
2 would be neither efficient nor fair to anyone, including defendants, to force  
3 multiple trials to hear the same evidence and decide the same issues.”

4 *Sav-On, supra* 34 Cal. 4th at 340 (citing *Boggs v. Divested Atomic Corp.* (S.D. Ohio 1991) 141  
5 F.R.D. 58, 67).

6 Here, a class action is the superior mechanism for resolution of the claims as pled by the  
7 Plaintiff. While Defendant disputes that the superiority requirement may be satisfied, it will not  
8 dispute such a finding for purposes of this settlement only.

### 9 **G. The Proposed Method Of Class Notice Is Appropriate**

10 The Court has broad discretion in approving a practical notice program. The Parties have  
11 agreed upon procedures by which the Class Members will be provided with direct email notice  
12 or push notification of the Settlement similar to that approved and utilized in hundreds of class  
13 action settlements and email and mail notice using a reverse lookup for any Class Members who  
14 are former Bumble app users for whom an email address is unavailable. In accordance with the  
15 Settlement Agreement, within thirty (30) days after preliminary approval of this settlement,  
16 Defendant will email the Notice to the email addresses it has on file for Settlement Class  
17 Members—whose use of the Bumble app is predicated on them providing such email address.  
18 (Settlement Agreement at § 4.2 & Proposed Order at Ex. 1). Email notice is appropriate in this  
19 case as compared to first class U.S. mail because Defendant does not collect mailing addresses  
20 as part of its services but does collect email addresses. Because the app at issue in this case is  
21 accessed electronically and requires an email address to sign-up, Class Members will have access  
22 to and use email. For any Class Members for whom Defendant does not have an email address  
23 but has an active account, Defendant will issue a push notification to their App. For the  
24 approximately 464,000 Settlement Class Members who are former users for whom Defendant  
25 only has a phone number, Defendant will provide a phone number to the Class Administrator  
26 who will conduct a reverse lookup to identify an email address to email notice or, if no email  
27 address is identifiable, a mailing address for those Class Members and mail notice.

28 Defendant will provide information regarding the successful transmission rate, bounce  
back rate, and any other relevant information regarding the sending of Notice to Class Counsel.  
*Id.* Email notice has been deemed adequate for Class Notice in numerous cases. *See Schaffer v.*

1 *Litton Loan Servicing, LP* (C.D. Cal. Nov. 13, 2012) 2012 WL 10274679, at \*8 (approving notice  
2 plan where class members were sent direct notice informing them and directing them to a  
3 settlement website); *Lo v. Oxnard European Motors, LLC* (S.D. Cal. May 29, 2012) 2012 WL  
4 1932283, at \*1 (final approval of class settlement using direct notice and settlement website).

5 In addition, the Parties have agreed to provide notice posted on the Settlement Website  
6 which the Claims Administrator will establish and maintain. Settlement Agreement at § 4.2. The  
7 Settlement Website will allow visitors to access (and print) a copy of the Notice, the Settlement  
8 Agreement, and the pertinent papers in this matter. Any Class member will be able to ask  
9 questions by calling the toll-free number. *Id.*

10 Furthermore, the notices will be disseminated and also posted on the website sufficiently  
11 prior to the Final Approval hearing to give Class members the opportunity to comment on the  
12 settlement, or to opt out and preserve their rights. *See Torrissi v. Tucson Electric Power Co.* (9<sup>th</sup>  
13 Cir. 1993) 8 F.3d 1370, 1374-1375 (31 days is more than sufficient, as Class as a whole had  
14 notice adequate to flush out whatever objections might reasonably be related to the settlement)  
15 (citing *Marshall v. Holiday Magic, Inc.* (9<sup>th</sup> Cir. 1977) 550 F.2d 1173, 1178 (approving timing  
16 of a notice which was mailed 26 days before the deadline for opting out of a settlement)). Here  
17 there will be 45 days to opt out or object from the date of notice being sent. Accordingly, the  
18 Email Notice and posted notice on the Settlement Website fulfill all requirements of adequate  
19 notice and should be duly approved.

20 The Notice, drafted jointly and agreed upon by the Parties through their respective counsel  
21 and to be approved by the Court, includes all relevant information. Proposed Order at Ex. 1. The  
22 Notice will include, among other information: (i) information regarding the Lawsuit; (ii) the  
23 impact on the rights of the Settlement Class Members if they do not opt out; (iii) information to  
24 the Settlement Class Members regarding how to opt out and how to object to the Settlement; (iv)  
25 the estimated consideration for each of the Settlement Class Members; (iii) the amount of  
26 attorneys' fees and litigation expenses to be sought; (v) the amount of the Plaintiff's Service  
27 Award; and (vi) the Settlement Administrator Expenses to be paid to the Claims Administrator.  
28 *Id.*

1           The Notice documents will state that the Settlement Class Members shall have forty-five  
2 (45) days from the date that the Notice is emailed to them to request exclusion or to submit an  
3 objection. Settlement Agreement at §§ 4.4, 4.5, & 5. The Settlement Class Members shall be  
4 given the opportunity to object to the terms of the Settlement Agreement and/or the request for  
5 attorneys’ fees and costs and to participate at the Final Approval Hearing, in accordance with the  
6 instructions set forth in the Notice. Settlement Class Members who submit a timely and valid  
7 claim form receive an Individual Settlement Payment. This notice program was designed to  
8 meaningfully reach the Settlement Class Members and it advises them of all pertinent information  
9 concerning the settlement. Friedman Decl. at ¶¶ 25-27; Proposed Order at Ex. 1. The emailing  
10 and distribution of the Notice and backup mailing of the Notice satisfies the requirements of due  
11 process and is the best notice practicable under the circumstances and constitutes due and  
12 sufficient notice to all persons entitled thereto. The Notice provides information on the terms and  
13 provisions of the settlement; the benefits that settlement provides for Settlement Class Members;  
14 the date, time and place of the Final Approval Hearing; and the procedure and deadlines for  
15 submitting objections and requests for exclusion and complies with Rules of Court 3.766 and  
16 3.769(f). The notices are drafted in a manner that is likely to be readily understood by the  
17 members of the Class—particularly as Bumble was only available in English in California during  
18 the Class Period. Friedman Decl. at ¶¶ 48-50.

19           **H. The Court Should Provisionally Appoint the Class Representative and Appoint**  
20           **Class Counsel.**

21           “[T]wo criteria for determining the adequacy of representation have been recognized.  
22 First, the named representatives must appear able to prosecute the action vigorously through  
23 qualified counsel, and second, the representatives must not have antagonistic or conflicting  
24 interests with the unnamed members of the class.” *Lerwill v. Inflight Motion Pictures, Inc.* (9th  
25 Cir. 1978) 582 F.2d 507, 512. The adequacy of representation requirement is met here. For  
26 settlement purposes, Class Counsel moves for Plaintiff Kirilose Mansour to be preliminarily  
27 appointed as the Class Representative. Class Counsel requests that the Law Offices of Todd M.  
28 Friedman, P.C. and The Soliman Firm, P.L.C. preliminarily be appointed as Class Counsel for



1 purposes of the Settlement. Plaintiff's counsel has extensive experience sufficient to be  
2 appointed as Class Counsel. Plaintiff Kirilose Mansour understands the obligations of serving  
3 as a class representative, has adequately represented the interests of the putative class, and has  
4 retained experienced counsel. Plaintiff has no antagonistic or conflicting interests with the  
5 Settlement Class, and all members of the Settlement Class are eligible to receive the same  
6 benefits.

7 **I. The Court Should Appoint Postlethwaite & Netterville as the Settlement**  
8 **Administrator.**

9 Plaintiff proposes that the Court appoint Postlethwaite & Netterville ("P&N") to serve  
10 as the Settlement Administrator. Postlethwaite & Netterville specializes in providing  
11 administrative services in class action litigation, and has extensive experience in administering  
12 consumer protection and privacy class action settlements. Defendant does not oppose this  
13 request. Plaintiff's counsel collected competitive bids from P&N and Simpluris Inc. prior to  
14 ultimately choosing P&N as the proffered Claims Administrator. Friedman Decl. at ¶ 27. P&N  
15 estimates the cost of administration will be \$98,363 based on a 3% claims rate and would cost  
16 \$1,270,447 in the extremely unlikely scenario there is a 100% claims rate. Declaration of Ryan  
17 Aldridge ("Aldridge Decl.") at ¶ 12. The calculation of these estimates is attached to Mr.  
18 Aldridge's Declaration as Exhibit A. With respect to the reverse lookup procedure, Plaintiff's  
19 counsel collected competitive bids from P&N and JND Legal Administration prior to ultimately  
20 choosing P&N for that portion of the Settlement as well. Friedman Decl. at ¶ 35. Mr. Aldridge's  
21 declaration otherwise addresses P&N's history and anticipated administration of the claims.

22 **J. A Final Approval Hearing Should Be Scheduled.**

23 The last step in the settlement approval process is the formal fairness or Final Approval  
24 Hearing, at which time the Court will hear all evidence and argument, for and against, the  
25 proposed Settlement. Plaintiff requests that the Court grant preliminary approval of the  
26 Settlement and schedule a Final Approval Hearing to be held not before 90 days after the date  
27 of entry of the Preliminary Approval Order, in order to allow sufficient time for developing the  
28

1 Settlement Website and providing Class Notice via email, and to allow Class Members time to  
2 submit exclusion requests and objections.

3 **VI. CONCLUSION**

4 For all the foregoing reasons, Plaintiff respectfully requests that the Court enter an order  
5 preliminarily approving the Settlement and certifying a class for settlement purposes.

6  
7 Dated: May 10, 2021

Respectfully submitted,

8  
9 By: 

10  
11 Todd M. Friedman (SBN 216752)  
12 Adrian R. Bacon (SBN 280332)  
13 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**  
14 Steven S. Soliman (SBN 285049)  
15 **THE SOLIMAN FIRM, P.L.C.**

16  
17 *Attorneys for Plaintiff and all others*  
18 *similarly situated.*  
19  
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28

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of  
3 18 and not a party to the within action. My Business Address is 21550 Oxnard St., Ste. 780,  
4 Woodland Hills, CA 91367.

5 On May 10, 2021, I served the following document(s) described as: **PLAINTIFF’S**  
6 **NOTICE OF MOTION AND UNCONTESTED MOTION FOR PRELIMINARY**  
7 **APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATION OF KIRILOSE**  
8 **MANSOUR; DECLARATION OF TODD FRIEDMAN; DECLARATION OF STEVEN**  
9 **SOLIMAN; DECLARATION OF RYAN ALDRIDGE; DECLARATION OF F. PAUL**  
10 **BLAND; DECLARATION OF RITA HAEUSLER; DECLARATION OF THOMAS E.**  
11 **WHEELER; PROPOSED ORDER,** on all interested parties in this action by placing:

- 12  a true copy  
13  the original thereof enclosed in sealed envelope(s) addressed as follows:


14 Rita Hauesler  
15 HUGHES HUBBARD  
16 rita.haeusler@hugheshubbard.com  
17 Attorneys for Defendant

18  BY FACSIMILE – The facsimile machine us

19  BY EMAIL

20  STATE – I declare under penalty of perjury under the laws of the State of  
21 California that the above is true and correct.

22 Executed on May 10, 2021, at Los Angeles, California.

23  
24  
25  
26  
27  
28  
By:   
Thomas Wheeler