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16 on behalf of himself and all others similarly situated

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF RIVERSIDE**

19 KIRILOSE MANSOUR, individually on
20 behalf of himself and all others similarly
21 situated,

22 Plaintiff,

23 vs.

24 BUMBLE TRADING, INC., a Delaware
25 corporation; and DOES 1-10, inclusive,
26 and each of them,

27 Defendants.

) Case No.: RIC1810011

) *Assigned for All Purposes to the Honorable*

) *Sunshine S. Sykes*

) CLASS ACTION

) **PLAINTIFF'S NOTICE OF MOTION AND**
) **MOTION FOR FINAL APPROVAL OF**
) **CLASS ACTION SETTLEMENT;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT;**
) **DECLARATION OF TODD M.**
) **FRIEDMAN; AFFIDAVIT OF RYAN**
) **ALDRIDGE; DECLARATION OF RONEN**
) **BENCHETRIT; PROPOSED ORDER AND**
) **JUDGMENT**

) **Date: October 7, 2021**

) **Time: 8:30 a.m.**

) **Dept: 06**

) **Honorable Sunshine S. Sykes**

) Complaint Filed: May 29, 2018

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on October 7, 2021 at 8:30 a.m., or as soon thereafter as this
3 uncontested motion may be heard in Department 06 of the Superior Court of California, County of
4 Riverside, located at 4050 Main Street, Riverside, California, Class Representative/Plaintiff
5 Kirilose Mansour (“Plaintiff”) (“*Mansour* Counsel”) will move the Court for an order, pursuant to
6 Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, granting final approval
7 of the proposed class action settlement between Plaintiff and Defendant Bumble trading, Inc.

8 The motion will be based upon this notice, the attached memorandum of points and
9 authorities, the Declaration of Todd M. Friedman, Declaration of Ronen Benchetrit, and Affidavit
10 of Ryan Aldridge, filed concurrently herewith, the records and files in this action, and any other
11 further evidence or argument that the Court may properly receive at or before the hearing. As will
12 be noted in a forthcoming stipulation, the Parties will be seeking to extend the hearing date on this
13 Motion by approximately sixty-nine (69) days to November 17, 2021 to accommodate an
14 additional round of email notice to certain individuals who previously did not receive the original
15 notice in July 2021 which was sent on September 9, 2021.

16
17
18 Dated: September 9, 2021

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

19
20 By: 

Todd M. Friedman
Adrian R. Bacon
Attorneys for Plaintiff

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CASES

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Frazier v. City of Richmond (1986) 184 Cal. App.3d 14915

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Green v. Obledo (1981) 29 Cal.3d 1265

Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 101111

Hart v. Cult Awareness Network (1993) 13 Cal.App.4th 77711

In re Wash. Public Power Supply System Sec. Litig. (D. Ariz. 1989)720 F. Supp. 1379, 1392.....7

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Officers for Justice v. Civil Service Com’n of City and County of S.F. (9th Cir. 1982) 688 F.2d
6157, 9

Weinberger v. Kendrick (2d Cir. 1982) 698 F.2d 617

OTHER AUTHORITIES

2H. Newberg& A. Conte, Newberg on Class Actions (3d ed. 1992).....5

Manual for Complex Litigation, Second §30.445

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Kirilose Mansour seeks final approval of a proposed and valued \$67,000,000
4 non-reversionary, consumer class action settlement with Bumble Trading, Inc. on behalf of
5 approximately 2,000,000 class members. The Settlement provides that each Member will
6 *automatically* receive 20 Super Swipe (valued at \$31.98) and each Member who submits a claim
7 (of which there are 19,235 at the time of filing) will receive one or two pro rata shares¹ of the
8 Common Fund of \$3,000,000, after it is reduced by approved attorney’s costs of up to
9 \$16,714.27, an incentive award of up to \$10,000, and Class Administration costs.²

10 As set forth more fully below, the proposed Settlement satisfies all the criteria for
11 settlement approval under California law. The Settlement was reached after extensive
12 investigation, discovery, and negotiations. The negotiations were at arms-length and were
13 facilitated by an experienced neutral Gail A. Andler (Ret.) of JAMS, over the course of multiple
14 telephonic negotiations and an in-person mediation session. There has been little resistance to
15 the Settlement, with 214 opt outs³ and 86 “objections.”⁴ Accordingly, Plaintiff requests that the
16 Court finally approve the proposed Settlement, certify the proposed settlement class, and issue
17 judgment.

18 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

19 **A. Plaintiff’s Claims**

20 Bumble is a location-based dating app that launched in December 2014. Users
21 download the application from an app store, build a profile, and then can view other users
22 and either indicate approval of a connection or disapproval through swiping. The experience
23 for both men and women is the same, until a match is made. When two users swipe for

24 _____
25 ¹ Depending on if they elect not to receive Super Swipes.
26 ² As noted above, the Parties will be seeking to extend the hearing date on this Motion by sixty-
27 nine (69) days to November 17, 2021 to accommodate an additional round of email notice to
28 certain individuals who previously did not receive the original notice in July 2021. Thus, Plaintiff
files this Motion and the Motion for Attorney’s Fees and Costs now per the current deadline and
will file a reply brief further updating with the final numbers, as Claim numbers will likely
significantly increase from this new notice.
³ Equal to 1.1% of the claims submitted or .01% of Class Members.
⁴ As described below, the “Objections” actually consist of 12 general comments about the
lawsuit, 66 individuals stating the claims are weak, bad, or should not have been filed, and 8
individuals actually stating some sort of objection to the terms of the settlement.

1 approval, a connection is made and a “Boom” screen is displayed. For men who have
2 identified an interest in women, the man will be informed that only the woman can make the
3 first move. By contrast, women are able to use the messaging system to communicate with
4 the men.

5 If a woman does not message the man within twenty-four (24) hours, the match
6 expires. At no point is the man able to message the woman until she messages first. Thus, the
7 Bumble application differentiates between heterosexual men and women because the men
8 are denied equal access to the messaging features of the application based on their sex and
9 sexual identity as interested in women.

10 The Bumble app is the core of Defendant’s business, and it uses its women-message-
11 first system to differentiate itself from other competitors. At no point in time has Bumble
12 permitted men matched with women to message the woman first. Bumble does not have a
13 means to permit heterosexual men to message women until women initially communicate
14 with them. The same is not true for homosexual men, or for all women regardless of sexual
15 preference, all of whom are free to message first. Defendant views this restriction as a key
16 way in which it demonstrates its corporate mission.

17 **B. Procedural History**

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

25 Prior to that due date, the Parties attended a mediation with Judge Andler on June 23,
26 2020. The Parties did not resolve the case at the mediation but engaged in subsequent
27 discussions with Judge Andler regarding compensation for the Settlement Class. With her
28 guidance, the Parties reached an initial agreement with respect to the compensation for the
Settlement Class on September 10, 2020, but no agreement or discussion as to attorney’s fees

1 and costs occurred prior to this date. *See* Declaration of Todd M. Friedman In Support of
2 Motion For Final Approval Attorneys’ Fees (“Friedman Decl.”), ¶¶ 7-9. Thereafter, the Parties
3 engaged in further settlement discussions to see if attorney’s fees and costs could be agreed to
4 without the need for a contested motion and on October 16, 2020, the Parties attended a second
5 mediation with Judge Andler to resolve the issue of attorneys’ fees wherein Defendant agreed
6 to pay attorneys’ fees awarded by the Court of up to \$3,250,000. *Id.*

7 Plaintiff filed an initial Motion for Preliminary Approval set for January 19, 2021 which
8 was denied without prejudice by the Court. Plaintiff filed a second Motion for Preliminary
9 which was heard by the Court on March 8, 2021. Following the hearing on March 8, 2021 with
10 the Honorable Court, the Parties agreed to amend the Settlement Agreement to address the
11 concerns set forth by the Court in addition to amending the preliminary approval order, the
12 claim form, the notice, the exclusion form, and the objection form. Subsequently, Plaintiff
13 filed his third revised Motion for Preliminary Approval which was granted by this Honorable
14 Court by Order dated July 1, 2021.

15 Under the Settlement, Defendant agrees to a multifaceted Settlement structure, which
16 includes a universal participation component (automatic benefits to all Settlement Class
17 Members); an additional cash payout to Settlement Class Members who submit timely valid
18 claims; and an agreement to adopt new features to address Defendant’s allegedly discriminatory
19 practices going forward. Attorneys’ fees of up to \$3,250,000 will be separately paid by
20 Defendant but revert to the Common Fund if reduced. Costs of up to \$16,714.27,
21 administration expenses⁵, and the Incentive Payment of up to \$10,000 to Plaintiff will be paid
22 from the Common Fund. These benefits are significant, tangible and offer fair remuneration
23 for the Settlement Class.

24 Pursuant to the Agreement, Class Notice was sent via email to the approximately
25 2,000,000 persons in the Settlement Class. (Agreement § 4.2).⁶ The Class Notice explained that
26 if the Member had a Bumble account during the Class Period, the Member will automatically
27

28 ⁵ Except an additional \$100,000 for skiptracing and postcard notice is to be paid separately by
Defendant to the Claims Administrator.

⁶ The Settlement Agreement is attached to the previously filed Declaration of Todd M. Friedman
In Support of Preliminary Approval as Exhibit A.

1 receive 20 free Super Swipes (equivalent to \$31.98 in value). *Id.* Plaintiff has conducted
2 confirmatory discovery to support this valuation of a Super Swipe. This benefit will be issued
3 to each and every Member irrespective of whether the Member submits a claim. Also, one or
4 two shares⁷ of \$3,000,000.00 will be distributed to each Member that submits a valid claim form
5 after a reduction for costs of up to \$16,714.27, the incentive award of up to \$10,000, and Class
6 Administrator costs which are estimated to be approximately \$180,337. Agreement § 3.3;
7 Friedman Decl. at ¶ 19. Lastly, for a period of one year in California, Defendant will implement
8 a “reactions” feature as a form of practice change/injunctive relief. Agreement § 3.5. Defendant
9 additionally agreed to pay from the Common Fund to retain a Settlement Administrator and to
10 pay for any and all costs associated with administering the Settlement, handling of claims and
11 the distribution of monetary payments to Members who choose that option, and developing and
12 maintaining the Settlement Website. (Agreement §§ 3.3, 4.1-4.3, 5), the proposed Incentive
13 Payment of up to \$10,000 to the Plaintiff (Agreement § 7.3) and reasonable Cost Reimbursement
14 to Class Counsel, pending approval by the Court. (Agreement § 7.1-7.2). Separate and apart
15 from these Class benefits, Defendant has agreed to pay the proposed Attorneys’ Fee Award in
16 the amount of up to \$3,250,000.00. (*Id.*) Class Notice was provided within 30 days after entry
17 of the order granting Preliminary Approval.⁸ (Agreement § 4.2).

18 **C. Status Of Notice**

19 Following the Court’s issuance of the Preliminary Approval Order, Plaintiff directed the
20 Claims Administrator and Defendant to engage in the approved notice plan. As of August 2,
21 2021, Defendant sent 758,463 notices by email to Class Members, with less than 4%
22 undeliverable, and provided 504,882 in app notifications which were all delivered. Declaration
23 of Ronen Benchetrit (“Benchetrit Decl.”) at ¶ 2. Due to an administrative error, Defendant did
24 not send notice to an additional 754,285 former users who had deleted and who are being
25 emailed notice on September 8, 2021 and September 10, 2021. *Id.* Defendant is also sending
26 in app notice to an additional 381,182 active Class Members who had not previously received
27

28 ⁷ Based on whether the Class Member opts out of the Super Swipe component of the Settlement
in his claim.

⁸ As noted above, another round of Class Notice was sent on September 9, 2021, as will be
addressed in the Parties forthcoming stipulation.

1 notice. *Id.*

2 Defendant provided the Claims Administrator with 547,397 telephone numbers for
3 which there was no associated email address. Affidavit of Ryan Aldridge (“Aldridge Aff.”) at
4 ¶ 5. The Claims Administrator performed a reverse lookup and obtained mailing addresses for
5 82.8% of individuals and email addresses for 53.9%. *Id.* at ¶ 6. 90.9% of emails and 92.9% of
6 postcard notices were successfully delivered, resulting in 78.2% of the Class Members who had
7 only provided a phone number being reached. *Id.* at ¶ 16. Those who were not successfully
8 delivered an email were included in the postcard notice as well. *Id.* at ¶ 11. Accordingly,
9 1,604,279 out of 2,834,863⁹ (56.6%) Settlement Class Members have received direct notice as
10 of September 7, 2021, and if the bounceback rate remains as expected, 95.46% of Class
11 Members will have received direct notice by the end of notice.¹⁰

12 **III. DISCUSSION**

13 **A. Legal Standard On Motion For Final Approval Of Class 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.11-87. The primary question presented on an application for preliminary approval
17 of a proposed class action settlement is whether the proposed settlement is “within the range
18 of possible approval.” *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*
19 (7th Cir. 1982) 690 F.2d 616, 621 n.3.¹¹ During Final Approval, however, the Court must
20 determine whether the settlement is “fair, adequate, and reasonable.” *See Wershba v. Apple 10*
21 *Computer* (2001) 91 Cal. App. 4th 224, 244. The approval of a proposed settlement of a class
22 action suit is a matter within the broad discretion of the trial court. *Id.* at 235. In making this
23 determination the courts look to the following factors: 1) the strength of plaintiffs' case, 2) the

24 _____
25 ⁹ The Class Size increased between mediation and the present due to the Class Period continuing
26 until preliminary approval was granted.

27 ¹⁰

28 ¹¹ 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 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 risk, expense, complexity and likely duration of further litigation, 3) the risk of maintaining
2 class action status through trial, 4) the amount offered in settlement, 5) the extent of discovery
3 completed and the stage of the proceedings, 6) the experience and views of counsel, 7) the
4 presence of a governmental participant, and 8) the reaction of the class members to the
5 proposed settlement.” *See Id.* at 244-45. “However ‘a presumption of fairness exists where:
6 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
7 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
8 similar litigation; and (4) the percentage of objectors is small.’” *Id.* at 245. (internal citations
9 omitted).

10 **B. The Settlement Meets The Criteria Necessary For This Court To Grant Final**
11 **Approval**

12 This settlement agreement is fair, adequate, and reasonable by every standard set out by
13 the California courts. The initial presumption is met here as the parties had engaged in
14 extensive settlement talks, where this settlement agreement was reached by adverse parties who
15 were adequately represented by experienced counsel who examined the evidence supporting
16 both parties’ claims and fully evaluated the strengths and weaknesses of their respective cases
17 and the risk of prolonged litigation, including the pending Motions for Summary Judgment and
18 Class Certification. In addition, as explained more fully below, each and every factor weighs
19 in favor of the position that this settlement is fair, adequate and reasonable.

20 **C. There Is A Strong Initial Presumption Of Fairness In This Case**

21 **1. The settlement was reached through arm’s-length bargaining**

22 As mentioned above, the parties’ entered into this settlement with conflicting positions
23 about the case and as adverse parties who came to the terms of the Settlement Agreement after
24 hours of settlement discussion and exchange of information.

25 This settlement is the result of extensive and hard-fought negotiations, during an all-
26 day mediation with experienced mediator Gail A. Andler (Ret.). Defendant has expressly
27 denied and continues to deny any wrongdoing or legal liability arising out of the conduct
28 alleged in the Lawsuit. Plaintiff and Class Counsel have determined that it is desirable and
beneficial to the Class to put to rest the Settlement Class Members’ Released Claims.

1 Moreover, the Honorable Court previously scrutinized the analysis conducted by Plaintiff's
2 counsel and found that the settlement reached is fair and reasonable at preliminary approval.

3 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate
4 and trying this Lawsuit against Defendant through possible appeals which could take several
5 years. Class Counsel has also taken into account the uncertain outcome and risk of litigation,
6 especially in complex actions such as this Lawsuit. Class Counsel is also mindful of and
7 recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted
8 in the Lawsuit. Based upon their evaluation, Plaintiff and Class Counsel have determined that
9 the settlement set forth in the Settlement Agreement is in the best interest of the Class
10 Members. Here, there can be no dispute that the litigation has been hard-fought with
11 aggressive and capable advocacy on both sides. The Parties were represented by experienced
12 and capable counsel who zealously advocated their respective positions. Accordingly, "[t]here
13 is likewise every reason to conclude that settlement negotiations were vigorously conducted at
14 arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply*
15 *System Sec. Litig.* (D. Ariz. 1989)720 F. Supp. 1379, 1392.

16 **2. Investigation and discovery are sufficient to allow counsel and the**
17 **court to act intelligently**

18 With regard to class action settlements, the opinions of counsel should be given
19 considerable weight both because of counsel's familiarity with this litigation and previous
20 experience with cases such as these. *Officers for Justice v. Civil Service Com'n of City and*
21 *County of S.F.* (9th Cir. 1982) 688 F.2d 615, 625; *In re Wash. Public Power Supply System Sec.*
22 *Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1392; *Kirkorian v. Borelli* (N.D. Cal. 1988)695 F. Supp.
23 446,451; *Weinberger v. Kendrick* (2d Cir. 1982) 698 F.2d 61, 74. For example, in *Lyons v.*
24 *Marrud, Inc.* (S.D.N.Y. 1972) [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph
25 93,525, the court noted that "[experienced and competent counsel have assessed these problems
26 and the probability of success on the merits.... The parties' decision regarding the respective
27 merits of their position has an important bearing." *Id.* at 92,520. "The recommendations of
28 plaintiffs' counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.*
(N.D. Cal. 1979) 485 F.Supp. 610, 622. As a result, courts hold that the recommendation of

1 counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D.
2 Cal. 2004) 221 F.R.D. 523, 528.

3 The Plaintiff and Class Counsel believe that the Settlement provides a favorable
4 recovery for the Settlement Class, based on the claims asserted, the evidence developed, and
5 the damages that might be proven against Defendant in the Action. The Plaintiff and Class
6 Counsel further recognize and acknowledge the expense and length of continued proceedings
7 necessary to prosecute the Action against Defendant through trial and appeals. They also have
8 considered the uncertain outcome and the risk of any litigation, especially in complex litigation
9 such as the Action, as well as the difficulties and delays inherent in any such litigation. In light
10 of the risk of further litigation and the defenses that Defendant has asserted and could assert,
11 the proposed Settlement set forth in the Settlement Agreement is fair, reasonable, adequate,
12 and in the best interests of the Settlement Class.

13 Prior to settlement, the Parties engaged in investigation and the exchange of documents
14 and information in connection with the Lawsuit. As part of this process, Defendant has
15 provided documents and detailed information to Class Counsel to review and analyze, and the
16 Plaintiff and Class Counsel have also conducted their own independent investigations and
17 evaluations.

18 Class Counsel has conducted a thorough investigation into the facts of the class action.
19 Class Counsel has diligently evaluated the Settlement Class Members' claims against
20 Defendant. Prior to the Parties executing the Settlement Agreement, counsel for Defendant
21 provided Class Counsel with access to data and information for the Class, including
22 information concerning the Defendant's practices, and documentation necessary to evaluate
23 the case. Based on the foregoing data and their own independent investigation, evaluation and
24 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in
25 the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
26 Class in light of all known facts and circumstances, including the risk of significant delay,
27 defenses asserted by Defendant, and numerous potential appellate issues. Defendant and
28 Defendant's counsel also agree that the Settlement is fair and in the best interest of the Class.

Determination of wrongdoing is still up to a trier of fact, which poses a significant risk

1 to both Plaintiff and Defendant that Defendant failed to comply with these various provisions
2 State Law provisions. Furthermore, the record supports and allows the Court to evaluate that
3 both sides are at substantial risk with regards to the issue of Class Certification. As the Ninth
4 Circuit explains, “the very essence of a settlement is compromise, ‘a yielding of absolutes and
5 an abandoning of highest hopes.’” *Officers for Justice v. Civil Service Com’n of City and County of*
6 *S.F.* (9th Cir. 1982) 688 F.2d 615, 624.

7 **3. Counsel is experienced in similar litigation**

8 Both Plaintiff’s and Defendant’s counsel are extremely well experienced in this type of
9 litigation. Defendant’s counsel is a large nationwide firm that specializes in part in Consumer
10 Class Action Litigation, while Plaintiff’s counsel collectively have years of Class Action, and
11 Consumer Protection experience. Plaintiff’s counsel The Law Offices of Todd M. Friedman is
12 one of the primary plaintiff litigators of consumer rights in the southern California. Attorney
13 Todd M. Friedman has been requested to and has made regular presentations to community
14 organizations regarding consumer rights. Lead counsel Adrian R. Bacon has practices
15 exclusively as a Plaintiffs-side class action attorney for the duration of his career, including
16 two years at Marlin and Saltzman, a firm that exclusively hour class action law. The Law
17 Offices of Todd M. Friedman has litigated over 1000 individual based consumer cases,
18 employment cases and class actions. These class actions were litigated in federal courts in
19 California, as well as California State Courts. Over the past four years alone, The Law Offices
20 of Todd M. Friedman has been appointed as plaintiff’s counsel in nearly sixty class action cases
21 involving various class actions claims consumer rights and wage and hour claims, where a
22 settlement was reached on a class-wide basis, and have achieved over \$200,000,000 in class-
23 wide relief for consumers. *See* Friedman Decl. at ¶¶ 38-44. The Law Offices of Todd M.
24 Friedman is currently appointed as class counsel in seven matters which were certified by
25 contested motion. *Id.*

26 **4. The percentage of objectors is small**

27 In settling this class action, the Parties agreed to a notice program consisting of direct
28 emailing by Defendant to any Class Members for whom they had an email address, in-app
notification for any Class Members who did not have an email but who still had an active

1 account, and reverse look-up with email and mail for any Class Members for whom only a
2 phone number was known by the Claims Administrator. As of September 7, 2021, P&N has
3 received 19,235 claims. Aldridge Aff. at ¶ 17. As described above, P&N reached 78.2% of
4 Class Members for whom only a phone number was known. *Id.* at ¶ 16.

5 As of September 7, 2021, P&N has received 214 requests for exclusion and 97
6 objections, of which 11 objections also submitted requests for exclusion. *Id.* at ¶¶ 18-19; Exs.
7 E & G. Of those 86 objections, 12 were just general comments about the lawsuit and 66 were
8 objections to the existence of the case generally, advocating on behalf of Defendant that the
9 claims were weak, defenses are strong, or that the litigation should not have been filed.
10 Friedman Decl. at ¶¶ 28-29. The remaining 8 objections are at most 3 sentences and are
11 addressed by citing the objection and Plaintiff's response in the Declaration of Todd M.
12 Friedman.¹² *Id.* at ¶ 30. Since these 8 objections make up, effectively, .0004% of the Settlement
13 Class, this Settlement Agreement is presumed to be fair, since the settlement is reached through
14 arm's-length bargaining; investigation and discovery are sufficient to allow counsel and the
15 court to act intelligently; counsel is experienced in similar litigation; and the percentage of
16 objectors is minimal.

17 **D. The Settlement Agreement is Fair, Reasonable, and Adequate**

18 As mentioned above, in making this determination the courts look to the following
19 factors: 1) the strength of plaintiffs' case, 2) the risk, expense, complexity and likely duration
20 of further litigation, 3) the risk of maintaining class action status through trial, 4) the amount
21 offered in settlement, 5) the extent of discovery completed and the stage of the proceedings, 6)
22 the experience and views of counsel, 7) the presence of a governmental participant, and 8) the
23 reaction of the class members to the proposed settlement.” *See Wershba v. Apple 10 Computer*,
24 91 Cal. App. 4th 224, 244 (2001). As explained below, all of these factors weigh in favor of
25 the Court approving the Settlement Agreement.

26 **1. The strength of Plaintiff's case**

27 At the point at which the Parties settled this matter, Plaintiff had filed his Motion for
28 _____

¹² To the extent additional objections arrive after the filing of this Motion but prior to the
objection deadline, Class Counsel will address such further objections in Plaintiff's Reply.

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

17 **2. The risk, expense, complexity and likely duration of further litigation**

18 Where both sides face significant uncertainty, the attendant risks favor settlement.
19 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. Class actions such as these pose
20 serious risk, expense, complexity and likely last for years of protracted litigation, and this case is no
21 different. There is a significant risk on liability, damages, and issues of Class Certification.

22 Here, a number of defenses asserted by Defendant presented serious threats to the
23 claims of the Plaintiff and the other Settlement Class Members. As described in the motion
24 for Preliminary Approval, there are risks with respect to certification issues, as well as merits
25 issues, which were detailed in Defendant's Motion for Summary Judgment.

26 Even if Plaintiff had prevailed on MSJ and Certification briefing, Plaintiff would have
27 had to prevail at trial in demonstrating that Defendant's discrimination constituted
28 discrimination on the basis of gender or sexual orientation and that Defendant's discrimination
was arbitrary. The burden of proof would be on Plaintiff and even if Defendant had not

1 prevailed on its Motion for Summary Judgment, it would be able to again present its arguments
2 regarding its position that the discrimination was not arbitrary. At best, trial would also be a
3 50% chance of victory. Accordingly, at the time of settlement, Plaintiff's counsel estimates
4 there was a 20% chance of prevailing in the matter.¹³ While Plaintiff's counsel was and is
5 willing to litigate under such risks, such risks also highlight why settlement with understanding
6 of such risks is preferable.

7 After arm's length negotiations between experienced and informed counsel, and with
8 the assistance of an experienced mediator, the Parties recognized the potential risks and agreed
9 on a fair settlement. As the federal court recently held in *Glass*, where the parties faced
10 uncertainties similar to those here:

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

19 Here, the risk of further litigation is substantial. These risks of liability are multiplied
20 for each Class Members if certification cannot be established, which may make it impossible
21 for the Class Members to find an attorney that would be willing to litigate the issue on an
22 individual basis, leaving the Class Members with little to no recourse. However, even if Class
23 Certification were established in this case, additional risks ensue for both parties as Plaintiff
24 are forced to prove a widespread, systematic and common violations as to all Members of the
25 Class, while Defendant is forced to carry an enormous judgement over its head, likely for years.

26 **3. The risk of maintaining class action status through trial**

27 At trial, many of the risks and expenses that were outlined above with respect to litigation
28 are also applicable to trial. Plaintiff and Defendant will have to call multiple witnesses and experts
with little assurance of succeeding at trial. The case would only proceed to trial if there were genuine
factual issues that must be determined by a fact-finder, and thus no party would be able to accurately
predict the outcome. In the meantime, there would be a long, difficult struggle that would likely last for

¹³ 80% Class Certification * 50% Motion For Summary Judgment * 50% Trial = 20% total.

1 days with substantial risk hanging over both parties.

2 **4. The amount offered in settlement**

3 Given the financial concerns associate with recent legislation, this is a very fair
4 settlement that comes close to making Class Members whole without the risk of protracted
5 litigation, where they could potentially receive zero. The settlement reached is fair and
6 reasonable. Based on the nature of the claims, the evidence of the case, prevailing similar
7 lawsuits, the experience of Class Counsel, Class Counsel believes that a settlement of this value
8 represents an excellent result for the Class, and it is most certainly fair and reasonable. Clearly,
9 the goal of this litigation has been met. In this matter, every Settlement Class Member
10 automatically receives \$30.98 in Super Swipes and the benefits of the injunctive “reactions”
11 feature without the need to file a claim. For those Settlement Class Members who want cash
12 remuneration, they may file a claim seeking either one pro rata share or two rata shares if they
13 forego the Super Swipes. While Plaintiff expects significantly more claims to be submitted
14 with the second round of notice, based on the number of claims currently submitted and
15 expected expenses, a Class Member who submits a claim would receive between \$72.60 and
16 \$290.40 depending on whether he sought one or two claims against all other claims consisting
17 of one or two shares.¹⁴ Friedman Decl. at ¶ 30(a). Thus, Class Members will receive a
18 significant automatic or monetary component (at their option) as a result of the settlement. The
19 amount offered in settlement weighs in favor of approval.

20 **5. The extent of discovery completed and the stage of the proceedings**

21 The stage of the proceedings at which this settlement was reached also militates in favor
22 of final approval of the settlement. As mentioned above, Class Counsel has conducted a
23 thorough investigation into the facts of the class action. Class Counsel began investigating the
24 Class Members’ claims before this action was filed. Class Counsel engaged in a thorough
25 review and analysis of the relevant documents and data. Class Counsel was also experienced
26 with the claims at issue here, as Class Counsel previously litigated and settled similar claims
27

28 _____
¹⁴ Plaintiff will determine the specific portion of one versus two pro rata shares once the additional claims are submitted and provide that information and the expected payout in the reply brief.

1 in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
2 possessed sufficient information to make an informed judgment regarding the likelihood of
3 success on the merits and the results that could be obtained through further litigation, which
4 including briefing Class Certification and Defendant’s Motion for Summary Judgment.

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

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

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

19 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14.

20 Here, Class Counsel was in a far stronger position to evaluate the fairness of this
21 settlement because Class Counsel had the same sufficient information via discovery,
22 depositions, as well as independent investigations and due diligence to confirm the accuracy
23 of the information supplied by Defendant.

24 **6. The experience and views of counsel**

25 As mentioned above, counsel for both Plaintiff and Defendant have a plethora of
26 experience in cases similar to this one. Class Counsel has conducted a thorough investigation
27 into the facts of the class action. Based on the foregoing data and their own independent
28 investigation, evaluation and experience, Class Counsel believes that the settlement with
Defendant on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate

1 and is in the best interest of the Class in light of all known facts and circumstances, including
2 the risk of significant delay, defenses asserted by Defendant, and numerous potential appellate
3 issues. Defendant and Defendant’s counsel also agree that the Settlement is fair and in the best
4 interest of the Class.

5 **7. The reaction of the class members to the proposed settlement**

6 As mentioned above, the reaction of the class members has been exceptionally positive.
7 Notice has been successfully emailed and mailed to 56.6% of Settlement Class Members thus
8 far and is anticipated to reach 95.4% of Class Members after September 10, 2021, fully laying
9 out the terms of the settlement agreement, the rights of the Class Members to object and the
10 rights of the Class Members to opt out of the class. After being so informed, 8 objections of
11 at most 3 sentences (as discussed above) and 214 requests for exclusion have been filed against
12 19,235 claims and 1,604,279 Settlement Class Members having received direct notice so far.
13 This is less than .0002% of noticed Settlement Class Members either opting out or objecting
14 and 1.2% submitting claims thus far. There has been effectively no resistance to the Settlement.

15 **IV. CONCLUSION**

16 Plaintiff respectfully request that the Court approve the proposed settlement, sign the
17 proposed Final Approval Order, and enter judgment which is submitted herewith.

18
19 Respectfully submitted,

20 Dated: September 9, 2021

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

21
22 By: 

23 Todd M. Friedman
24 Adrian R. Bacon
25 Attorneys for Plaintiff
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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My Business Address is 21031 Ventura Blvd, Suite 340 Woodland Hills, CA 91364.

On September 9, 2021, I served the following document(s) described as:


**PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL;
DECLARATION OF TODD M. FRIEDMAN; AFFIDAVIT OF RYAN ALDRIDGE;
DECLARATION OF RONEN BENCHETRIT; PROPOSED ORDER AND
JUDGMENT**, on all interested parties in this action by placing:

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

Rita Hauesler
HUGHES HUBBARD
rita.haesler@hugheshubbard.com
Attorneys for Defendant

- BY FACSIMILE – The facsimile machine us
- BY EMAIL
- STATE – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 9, 2021, at Los Angeles, California.

By: 
Thomas Wheeler