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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

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

Plaintiff,

vs.

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

Defendants.

Case No.: RIC1810011

Assigned for All Purposes to the Honorable Sunshine S. Sykes

CLASS ACTION

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATION OF ADRIAN R. BACON; AFFIDAVIT OF RYAN ALDRIDGE; DECLARATION OF RONEN BENCHETRIT

Date: November 17, 2021
Time: 8:30 a.m.
Dept: 06
Honorable Sunshine S. Sykes

Complaint Filed: May 29, 2018

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Kirilose Mansour ("Plaintiff") files this reply in support of final approval of his Class Action Settlement with Bumble Trading, Inc. ("Defendant" or "Bumble") to update the Court on the final status of notice, provide current number of claims,[1] exclusions, and objections, and respond to those objections. The developments in the last month only reinforce that this is favorable settlement of heavily contested claims. For the reasons as set forth herein and in Plaintiff's Motion for Final Approval and Attorney's Fees and Costs, the Court should finally approve the proposed Settlement, certify the proposed settlement class, and issue judgment.

II. NOTICE, CLAIMS, EXCLUSIONS, AND OBJECTIONS

A. Notice

On September 10, 2021, the Parties submitted a stipulation advising the Court that Bumble had realized on September 7, 2021 that it had missed sending notice to approximately 1,130,000 Class Members ("the Additional Class Members"). The Parties proposed extending the deadlines to file a claim, exclusion, or objection for everyone based on notice being sent these additional Class Members, updating the website to advise all Class Members of the changes, and sending a revised notice to the Additional Class Members. The Court granted the stipulation on September 14, 2021 and the Parties proceeded accordingly. Postlewaith & Netterville (P&N) ("the Claims Administrator") updated the website to reflect the new dates and notice on September 15, 2021.[2] Declaration of Ryan Aldridge In Support of Reply ("Aldridge Decl.") ¶ 13.

Bumble sent email and in-app notification to the Additional Class Members on September 8 & 10, 2021. Declaration of Ronen Benchetrit In Support of Reply ("Benchetrit Decl.") ¶ 2. This consisted of 754,285 additional email notices and 361,182 additional app notices.[3] *Id.* at ¶ 3. In total, Bumble successfully sent 1,512,478 notices by email to Class Members, with approximately

[1] The Claim deadline is November 9, 2021, such that additional claims could be received prior to the hearing. Plaintiff will advise the Court of the final number of claims at the hearing.
[2] The Claims Administrator also emailed any objectors who had made an objection prior to September 11, 2021 with notice of the change in date. *Id.* at ¶ 19.
[3] This was calculated by comparing the total numbers in Mr. Benchetrit's current declaration with his previous declaration.

6.05% undeliverable, and provided 866,064 in app notifications, all of which were delivered, contacting 2,398,812 current and former Bumble users who qualify as Class Members with a delivery rate of 96.25%. *Id.* at ¶¶ 3-4.

The Claims Administrator had finished their notice at the time of the Motion for Final Approval, such that their numbers remain the same—they were provided 436,051 unique telephone numbers for users who had no email address, obtained email addresses for 53.9% and emailed those addresses successfully at 90.9%, and obtained mailing addresses for 82.8% of individuals and successfully sent postcard notice to 92.9% of those addresses. This resulted in 78.2% of the Class Members who had only provided a phone number being reached. In final sum, out of 2,942,647 Class Members, 2,739,804 received some form of direct notice, constituting a 93.1% contact rate.

B. Claims and Exclusions

The extension of the Claims filing window and further notice was incredibly successful. As set forth in the original Motion, P&N had received 19,235 claims as of September 7, 2021. As of October 26, 2021, P&N has received 42,692 claims, representing a 122% increase in the uptake and constituting a 1.3% claims rate for the Class as a whole. Aldridge Decl. at ¶ 17. Requests for exclusion similarly increased from 214 to 532.[4] *Id.* at ¶ 18. Exhibit E to Mr. Aldridge's Declaration should be appended to the judgment to reflect the list of all exclusions.

Of the 42,692 claims 35,958 requested to receive two pro rata portions and no SuperSwipe and 6,734 elected to receive one pro rata portion plus the free superswipes. *Id.* at ¶ 17. Given an anticipated net distribution amount of approximately $2,792,948.73,[5] a pro rata share is worth $35.51, such that Class Members who made claims are either receiving $35.51 plus $30.98 in Superswipes or $71.02.[6] Accordingly, Class Members ultimately valued

[4] 50 of the new exclusions are represented by one attorney.

[5] After the $3,000,000 common fund is reduced for attorney's expenses, incentive award, and claims administrator expenses as set forth in the Motion for Attorney's Fees and Costs.

[6] As an interesting note, 90.59% of Claimants have requested digital payments with only 9.41% requesting a paper check, showing an overwhelming preference for instant, electronic payment. *Id.* at ¶ 17.

Superswipes at almost exactly face value in choosing between receiving one or two pro rata shares. All other Class Members who opted to just receive Superswipes and not file a claim received $30.98 in Superswipes. The monetary relief paid in both the automatic portion of the Settlement and the participatory portion of the Settlement is significant and further supports approval.

C. Objections

With the extended notice and objection period, the number of objections also increased from 86 to 194. Aldridge Decl. at ¶ 19. As noted in the opening Motion, within the original set of objections, 12 were general comments, 66 were individuals stating the claims were weak, bad, or should not have been filed, and 8 individuals actually stated some sort of objection to the terms of the settlement.[7] These trends have continued. Of the additional 108 objections, 27 constitute general comments, 71 are individuals stating the claims are weak, bad, or should have been filed, and 10 individuals have made some sort of objection to the Settlement, with one represented by counsel and addressed subsequently. Accordingly, out of the 2,739,804 Class Members that received direct notice, ultimately .0002% either opted out or objected to the Settlement. *See In re Diamond Foods, Inc*. (N.D. Cal. Jan. 10, 2014) 2014 U.S. Dist. LEXIS 3252, *9 ("Also supporting approval is the reaction of class members to the proposed class settlement. After 67,727 notices were sent to potential class members, there have been only 29 requests to opt out of the class and no objection to the settlement or the requested attorney's fees and expenses."); *Steinfeld v. Discover Fin. Servs*. (N.D. Cal. Mar. 31, 2014) 2014 U.S. Dist. LEXIS 44855, *21 (only specific objections or comments from 9 class members, and 239 out of the approximately 8 million class members chose to opt out); *Couser v. Comenity Bank* (S.D. Cal. 2015) 125 F. Supp. 3d 1034, 1044 ("Upon considering the high rate of Class Member claims and the relatively low number of requests for exclusion, the Court finds the reaction of the Class to the Settlement favors approval of the [TCPA] Settlement.").

[7] Plaintiff responded to those previous 8 objections in the Declaration of Todd M. Friedman filed in Support of the Motion for Preliminary Approval.

Many of the objections mirror those previously addressed by Counsel and Counsel will keep a reiteration of those points brief. Mr. Oleary objected on September 7, 2021 on the grounds that if there is a violation of a fundamental right, the Settlement is too low and if the case is frivolous, the attorneys' fees requested are too high. This objection highlights the fundamental risk between the claims being meritorious versus being subject to significant legal defenses when Plaintiff negotiated the Settlement at mediation as set forth in the original Motion. With regards to Plaintiff's counsels' attorney's fees and costs, these have been extensively briefed as to why they are justified with respect to a lodestar plus multiplier in Plaintiff's Motion for Attorney's Fees and Costs. With respect to the use of a multiplier, Courts in the Ninth Circuit have "routinely awarded" multipliers in "the 1x to 4x range", *Perks v. v. Activehours, Inc.* (N.D. Cal., Mar. 25, 2021) 2021 WL 1146038, at *8, and courts will often award higher multipliers where the circumstances warrant it because of the excellent results obtained, complexity of the case, and risks involved. *See, e.g., Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1123 (awarding 25% of common fund, equivalent to a 5.2 multiplier) (collecting cases); *see also Stevens v. SEI Investments Company* (E.D. Pa., Feb. 28, 2020) 2020 WL 996418, at *13 (holding that "multiples ranging from 1 to 8 are often used in common fund cases" and awarding fees equivalent to a multiplier of 6.16); *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [110 Cal.Rptr.2d 145]. Accordingly, Plaintiff respectfully submits that Plaintiff's counsels' fee request is supported by California law and public policy which favor the efficient settlement of complicated claims.

Mr. Velasquez objected on September 8, 2021 on the grounds that the attorneys' fee request was too high, Plaintiff would be receiving "$60,000" and as a person who had spent money on subscriptions he should be entitled to more. Plaintiff has responded to the attorneys' fee issue immediately above. With respect to Mr. Mansour, he has petitioned the Court for only a $10,000 incentive award which is appropriately briefed and justified. With regards to his point about spending money on subscriptions, such issue had no bearing on the issues presented in this case, which impacted free members and paid members the same.

Mr. White objected on September 9, 2021 on the grounds that he no longer uses Bumble such that super swipes have no value. Mr. White was, and is, free to file a claim for two pro rata shares for which he would receive approximately $71.02.

Mr. Sullivan objected on September 19, 2021, Mr. Rice objected on September 23, 2021, and Mr. Demestihas objected on September 10, 2021 on the grounds that the there is inadequate compensation. As these objections do not otherwise explain why or how it is inadequate, Class Counsel would point to their arguments explaining how it is a fair and reasonable settlement given the significant risks presented in this litigation. For Mr. Demestihas, to the extent he feels that he is particularly aggrieved, he could also opt out and pursue his claim against Defendant himself.

Mr. Restis, Esq. objected on September 10, 2021 on four grounds, all of which unfortunately reflect a lack of understanding of the terms of the Settlement. As to his first issue regarding the objection deadline, his objection was submitted during the time where the Parties had requested an extension of the timeline and were awaiting Court approval—but had posted notice on the Settlement Website that they were in the process of requesting such time. As to his characterization of it as a "coupon settlement," this is inaccurate because the Settlement additionally features a common fund against which Class Members can and did submit claims against to the extent they wanted cash compensation and, also, because the automatic Superswipes do not require any further purchases by a Class Member to use unlike a true coupon which provides a discount on services. As to his third issue, he states that the attorney's fees and costs are reversionary, but this is also wrong. Under Section 7.5 of the Agreement "in the event that the Court does not grant the full amount of attorneys' fees provided for in Section 7.1 of this Agreement, any additional amounts shall be distributed to the Common Fund and not revert to Defendant." Accordingly, this amount does not "revert" to Defendant. With regards to the additional $100,000 in costs Defendant agreed to pay for the unexpected increase in costs associated with reverse lookup, that full amount has been used (with almost all of it being used up for postage alone) such that it effectively resulted in a $100,000 increase in the Common Fund to Class Members. With regards to his fourth point,

again, the Settlement is not reversionary, the fee request is justified, and there are no other indicia of collusion—and in fact, the participation of a respected retired Judge as a mediator in negotiating the settlement is an indicia that negotiations were fair and at arms-length. Mr. Restis's objection is, unfortunately, baseless.

Mr. Kumar, Esq. objected on September 15, 2021 on various grounds. With regards to his issue regarding the scope of the release, the Settlement only covers Class Members claims "for which liability arose during the Class Period" (Section 8.1(a))—to the extent such individuals have future claims, those were not settled. With regards to the valuation of Super Swipes, this valuation was supported by a confirmatory deposition which explained how the valuation was calculated in the Motion for Preliminary Approval. With regards to the differentiation between inactive and active users, the confirmatory discovery confirmed that active users regularly use Superswipes. As explained during preliminary approval and confirmed by the notice that was performed, there was no way to automatically issue a monetary amount to each Class Member even if that had been desired because Defendant did not have contact information that would permit such automatic claims. With regards to the attorneys' fees and costs, such has been explained above. With regards to the attorneys' hours, Class Counsels' attorneys' fee request is supported by contemporaneous time records attested to in sworn declarations in this lawsuit in which a Motion for Summary Judgment and Motion for Class Certification were filed and a significant amount of work has been necessary to administer and obtain approval of the Settlement.

Mr. Carney objected on September 15, 2021 on the grounds that the lawsuit was frivolous, should never have been filed, and that the Court "serves not justice, but merely the profiteering interests of the legal profession" if it approves the Settlement. Mr. Carney's objection defeats itself in arguing that the lawsuit was frivolous and his remaining points regarding the structure of the settlement and attorney's fees and costs have been addressed above. While Class Counsel takes issue with Mr. Carney's attacks on this Court in stating "any judge approving of this settlement will have abandoned their sworn duty to justice under the law," such *ad hominem* attacks are not actually legal objections.

D. Steven Frye's Objection

Steven Frye, through his counsel Al Rava, submitted a deadline on October 25, 2021. Mr. Rava and Mr. Frye are not white knights. They do not care about the class members. They do not care about this lawsuit. They object to this settlement because they have a personal animus against Class Counsel due to an ongoing dispute in a separate class action proceeding in federal court. See *Kim v Tinder, Inc*. Case No. 2:18-cv-03093-JFW-AS (C.D. Cal.). Moreover, both Mr. Rava and Mr. Frye have a history of vexatious litigation under the Unruh Act for political purposes, through the National Coalition for Men ("NCFM"), of which both are members and Mr. Rava is the former Secretary. This is thoroughly laid out in the contemporaneous Declaration of Adrian Bacon. The weakness of the Objection proves Plaintiff and Class Counsels' point.

Frye raises three objections, none of which have merit. First, Frye objects that the Class is not broad enough and does not include individuals who are not users of Bumble. Frye cites to *White v. Square, Inc*., (2019) 7 Cal.5th 1019, 1032-33, and to a separate ongoing class action lawsuit which is brought on behalf of those class members. It is unclear why Frye believes that Mansour and Class Counsel were obligated to represent individuals who are not encompassed within the definition of the Complaint. Those individuals are not subject to a release, as they are not members of the Class. They are not prejudiced by this Settlement. They could never have been confused by this lawsuit and believed they were represented by Mansour, as the class definition from the outset of the filing of this case did not include non-users. It should also be noted that Class Counsel discussed this with counsel in *Lingasin* and agreed there was no overlap. See Bacon Decl. Ex. N. This issue is irrelevant and is frivolously raised.

Second, Frye objects that the injunctive relief does not go far enough. Again, this is a non-issue. A consumer of Bumble's services remains free in the future to bring a separate injunctive relief action against Bumble if they desire further action. Class Counsel believed there were legitimate issues raised by Bumble as to why a total cessation of the practices that gave rise to this case may not necessarily be in the best interests of Class Members. Even so, Class Members were presented the ability to opt out of the settlement. There is nothing

preventing Frye, or anyone else, from opting out and seeking a stronger injunction if they desire. *Lingasin* could still do so. This issue has zero bearing on the fairness of the Settlement. Class Counsel negotiated improvements in the parity of services between male and female users. Class Counsel did not place monetary value on these improvements or inflate the settlement value by way of these benefits. The Settlement remains fair and reasonable. This too is a frivolous objection that should be given short shrift.

Finally, Frye objects to the fairness of the monetary and automatic non-monetary relief components of the settlement. These benefits were thoroughly discussed at preliminary approval, and Frye's legal points were extensively litigated by Class Counsel. Mr. Frye has been a Bumble user for more than five years and is a well-documented vexatious litigant and instrument of the NCFM, as used by Mr. Rava. If he was upset about how he was treated on the Bumble App, he could have brought a case at any time, but chose not to. Clearly the only reason he is objecting is because Mr. Rava wants to scuttle this settlement for his own personal and business reasons. This also explains why he waited until the absolute last day to object.

Neither Mr. Rava nor Mr. Frye point to a single class action settlement in which anyone has ever negotiated a class action settlement with more benefits than were negotiated in this case for the Class. Indeed, there is only one such class settlement under the Unruh Act where that has occurred - the *Tinder* case which is being litigated by Class Counsel. A review of Mr. Rava's record on Unruh class actions shows that he values the rights of class members far less.

In 2006, Al Rava filed a class action lawsuit with himself as the named plaintiff against the Oakland A's under the Unruh Act, seeking statutory penalties for the baseball club's promotional giveaway of hats to female attendees. Apparently, he also wanted a free plaid floppy hat with a Macy's logo on it, and sued for gender discrimination, since he was not entitled to receive one. *See Alfred G. Rava v. Athletics Investment Group, LLC*, Case No. RG 06268693, Superior Court of California County of Alameda (2006). Bacon Decl. Ex A and B. The settlement was on behalf of 2,500 male attendees who presumably missed out on the chance for a free hat, like Mr. Rava. *Id*. The structure of the settlement was that notice

would be given through publication (less preferable than direct notice), as well as direct notice to season ticket holders (at best a small fraction of the class), and that those who made claims would be entitled to receive $50 in cash, plus a $25 coupon for Macy's and a $25 coupon for the Athletics, for a total of $100 per claim. There was no injunctive component. There was no fund or floor on guaranteed class member benefits. Only 19 class members made valid claims, for a total class settlement value of $1,900. Mr. Rava asked for and was awarded a $20,000 incentive award for his role as the named plaintiff, over 10 times the total amount recovered by the class. This was primarily based upon the fact that he was receiving death threats from the general public and possibly from class members for filing the lawsuit. *Id*. His attorneys asked for $200,000 in fees.[8] There were 15 opt outs, and several objections/comments. These terms were granted approval. Bacon Decl. Ex H. Mr. Rava's declaration in support of the settlement lauds it as a victory for the Class, despite the Class receiving $1,900 worth of benefits while Rava and his counsel received $220,000. Yet, Rava and Frye object to this settlement, where millions of dollars of monetary benefits, and over $100 million worth of non-monetary relief are provided to the Class. *Rava v. Athletics Investment Group, LLC*, should tell the Court all it needs to know about the intentions of this objection.

Mr. Frye and Mr. Rava have used the California court system and the Unruh Act as a playground to vexatiously enrich themselves. Mr. Rava is the secretary of the NCFM, and Mr. Frye is a member. Bacon Decl. Ex C-N. Mr. Rava has represented Frye in cases dozens of times, as well as representing the president of the NCFM. *Id*. Mr. Rava sends his NCFM friends to womens' networking mixers and then sues them for not letting them in. Bacon Decl. Ex E. There is a clear pattern of Mr. Rava using Frye to further his goals of filing lawsuits, by sending him out into the wild to engage in conduct that would give them standing to sue someone for any number of trivial or frivolous forms of "discrimination" and then acting as his lawyer to attempt to shake down the defendant for a settlement. *Id*. This has happened dozens of times. It apparently has resulted in death threats made on Mr. Rava that force him to keep a shotgun next to his bed according to his sworn declaration. Bacon Decl.

[8] Mr. Rava almost certainly received an unethical kickback out of these fees.

Ex A Rava Decl. at ¶¶ 9-16. Class Counsel takes no pleasure in pointing this out but are obligated to do so to protect the Class from a bad faith objection from a vexatious litigant with ulterior motives.

Frye and Rava are objecting because they harbor personal animus towards Class Counsel. Their objection lacks merit. The Court should not only overrule it but should also expressly find it to be in bad faith, because it is, lest they do this again in other legitimate hard fought settlements.

III. CONCLUSION

The tail end of the notice and claims process only further supports the strength of this Settlement and reasons for this Court to grant Final Approval. For the reasons set forth herein and in the Motion for Final Approval, Plaintiff respectfully request that the Court approve the proposed settlement, sign the proposed Final Approval Order, and enter judgment.

Respectfully submitted,

Dated: October 29, 2021

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

By: _____

Todd M. Friedman
Adrian R. Bacon
Attorneys for Plaintiff

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 October 29, 2021, I served the following document(s) described as:

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL; DECLARATION OF ADRIAN R. BACON; AFFIDAVIT OF RYAN ALDRIDGE; DECLARATION OF RONEN BENCHETRIT; PROPOSED ORDER AND JUDGMENT, on all interested parties in this action by placing:

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

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

[ ] BY FACSIMILE – The facsimile machine us

[X] BY EMAIL

[X] STATE – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 29, 2021, at Los Angeles, California.

By: _____
Thomas Wheeler