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15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF SAN LUIS OBISPO – PASO ROBLES BRANCH –**
UNLIMITED

17 **KYLE HANSEN, INDIVIDUALLY**
18 **AND ON BEHALF OF ALL**
19 **OTHERS SIMILARLY**
SITUATED,

20 Plaintiff,

21 v.

22 **TINDER, INC.; AND, DOES 1-20,**
23 **INCLUSIVE,**

24 Defendant.

Case No.: 15CVP-0155

PLAINTIFF KYLE HANSEN’S
NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

DATE: April 10, 2018

TIME: 9:00 a.m.

DPT: P2

HONORABLE LINDA HURST

28 Case No.: 15CVP-0155

Hansen, et al. v. Tinder

PLAINTIFF KYLE HANSEN’S NOTICE OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT

ELECTRONICALLY
FILED
2/20/2018 11:26 AM

SAN LUIS OBISPO SUPERIOR COURT
BY: [Signature]
Aneely Bonada, Deputy Clerk

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiff KYLE HANSEN (“Hansen”) hereby files this Notice of Motion and Motion for Preliminary Approval of Class Action Settlement.

Pursuant to Cal. Code Civ. P. 382, Hansen requests that the Court preliminarily approve the Parties’ Class Action Settlement Agreement and enter the Preliminary Approval Order submitted with this motion.

By this motion, Plaintiffs request that the Court:

1. grant preliminary approval of the settlement reached in this action;
2. approve the proposed form of notice;
3. establish a schedule for the dissemination of notice to class members as well as deadlines for class members to object to, or opt out of, the settlement;
4. schedule a hearing for final approval of the settlement during which class members may be heard; and,
5. schedule a hearing for Hansen’s counsel’s application for an award of fees and litigation costs.

Hansen’s Motion is based on the accompanying Memorandum of Points and Authorities, supporting declarations and exhibits thereto, the pleadings and papers on file herein, and other such matter as may be presented to the Court at the time of the hearing.

Date: February 20, 2018

KAZEROUNI LAW GROUP, APC

By: 
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR HANSEN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff KYLE HANSEN (“Hansen”) submits this Motion for Preliminary
4 Approval of a proposed class action settlement (the “Settlement”) of this action
5 (the “Action”), which is unopposed by Defendant TINDER, INC. (“Tinder”).¹ The
6 terms of the Settlement are set forth in the Settlement Agreement and Release
7 (hereinafter the “Agreement” or “Agr.”) filed as Plaintiff’s Exhibit 1.²

8 The proposed Settlement provides to the 34,000 Class Members, depending
9 on their Tinder Plus subscription status, for either one free month of a Tinder Plus
10 subscription, or a one-time allotment of Super Likes of equivalent value. [Agr. §
11 3.1]. In return for this benefit, Hansen, on behalf of the proposed Class, will
12 dismiss the action and the Class will unconditionally release and discharge Tinder
13 and other related Released Parties from the Released Claims. [*Id.* at § 11].

14 While Hansen is confident of a favorable determination on the merits, he has
15 determined that the proposed Settlement provides significant benefits to, and is in
16 the best interests of, the Class Members. [*Id.* at Recitals ¶ F.; Declaration of
17 Matthew M. Loker (“Loker Decl.”), ¶ 23]. Hansen also believes that the
18 Settlement is appropriate because he recognizes the expense and amount of time
19 required to continue to pursue the Action, as well as the uncertainty, risk, and
20 difficulties of proof inherent in prosecuting such claims. [Loker Decl., ¶¶ 22-23;
21 Agr. Recitals ¶ F]. Similarly, as evidenced by the Agreement, Tinder has stated
22 that although it has substantial and meritorious defenses to Hansen’s claims, it has
23 determined that it is desirable to settle the Action as set forth in the Agreement. [*Id.*
24 at Recitals ¶ E]. “As a general proposition, class actions are favored in California.”
25 *Howard Gunty Profit Sharing Plan v. Superior Court*, 88 Cal. App. 4th 572, 578

26 _____
27 ¹ Hansen and Tinder are collectively referred to as the “Parties.”

28 ² Unless otherwise specified, defined terms used in this memorandum are intended
to have the meaning ascribed to those terms in the Agreement.

1 (2001). Indeed, “this state has a public policy which encourages the use of the class
2 action device.” *Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 473 (1981).

3 Accordingly, Hansen moves the Court for an order preliminarily approving
4 the proposed Settlement in this Action, directing dissemination of class e-mail
5 notice and exclusion request form, and scheduling a final approval hearing. The
6 motion is unopposed by Tinder. [Agr. Recitals ¶¶ E and F]. A proposed
7 Preliminary Approval Order and Final Approval Order is filed as Exhibit 1A and
8 1B, respectively, to the Agreement ([Proposed] Agreement is Exhibit 1). The
9 [Proposed] Settlement satisfies all of the criteria for preliminary approval.

10 II. FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

11 Tinder operates a free eponymous dating app that offers consumers the
12 option to subscribe to Tinder Plus for access to premium features for a monthly
13 fee. [FAC, ¶¶ 14, 22]. Hansen, after downloading the free app, purchased a Tinder
14 plus subscription on May 13, 2015. [*Id.* ¶ 22]. Hansen alleges that at the time he
15 purchased a subscription to Tinder Plus, his contract with Tinder did not include
16 clauses required by the Dating Services Contract Act, Cal. Civ. Code § 1694, *et*
17 *seq.* (“DSCA”). [*Id.* at ¶ 23]. Specifically, Hansen alleges that the contract failed
18 to include a disclosure regarding how to cancel the subscription as required by Cal.
19 Civ. Code § 1694.2(b). [*Id.* at ¶ 24]. In addition, Hansen alleges that the contract
20 failed to include the name and address of the dating service operator to which the
21 notice of cancellation was to be mailed as required by Cal. Civ. Code § 1694.2(c).
22 [*Id.* at ¶ 25].

23 Hansen alleges that he decided to cancel his Tinder Plus subscription on
24 May 15, 2015—two days after he subscribed—but That Tinder refused to provide
25 him with a pro rata reimbursement for the unused portion of the one-month
26 subscription period. . [*Id.* at ¶ 28].

27 On May 27, 2015, Hansen filed a putative class action complaint against
28 Tinder. [Agr. Recitals ¶ B]. Following written and oral discovery, the Parties

1 utilized the services of the Honorable Robert T. Altman (Ret.) of ADR Services,
2 Inc. [Agr. Recitals ¶ D]. With Judge Altman’s assistance, the Parties reached the
3 proposed settlement currently pending before this Court. [Loker Decl., ¶ 8; Agr.
4 Recitals ¶ D].

5 **III. THE SETTLEMENT**

6 **A. THE SETTLEMENT CLASS**

7 The “Class” or “Class Members” means:

8 All persons within California who purchased a subscription for
9 Tinder Plus at any time during the period from March 2, 2015
and through June 11, 2015

10 [Agr. § 1.1]. The Class contains approximately 34,000 members. [*Id.* at § 1.2].
11 Class Members who do not timely and validly request exclusion from the
12 Settlement shall be bound by the Agreement and Final Judgment. [*Id.* at § 10.1].

13 **B. SETTLEMENT CONSIDERATION**

14 Under the Settlement, Tinder agrees to provide Class Members who do not
15 opt out of the Settlement with the following: (a) current Tinder Plus subscribers
16 will receive a one-time allotment of free Super Likes valued up to \$19.99; (b)
17 former Tinder Plus subscribers will receive one month of Tinder Plus without
18 charge. [Agr. § 3.1]. The subscription is valued up to \$19.99. [*Id.*]. Tinder will
19 also handle notice to the Class Members and any costs associated with
20 implementing the Settlement [*Id.* at § 4.1].

21 The Class Members have a long time period in which to request exclusion
22 from the Settlement; specifically, 60 sixty days from the date the Direct E-mail
23 Notice is sent (which is 90 days from the date the Court granting preliminary
24 approval of the class settlement). [*Id.* at § 6].

25 Class Members do not need to do anything to receive a free subscription, as
26 the Class Members are known by Tinder based upon Tinder’s business records and
27 will be receive this benefit unless they have opted out of the Settlement. [*See Id.* at
28 § 7]. Thus, the settlement is structured as an opt-out settlement, which is in line

1 with *Hypertouch, Inc. v. Superior Court*, 128 Cal. App. 4th 1527, 1542 (Cal. App.
2 1st Dist. 2005).

3 **C. CLASS NOTICE**

4 Notice of the Settlement will be given to the roughly 34,000 Class Members
5 by direct e-mail from Tinder. [Agr. §§ 5.2, 5.4; *see* Exhibit 1(C) (E-Mail Notice)].
6 This Direct E-Mail Notice provides a detailed summary of the Settlement and the
7 Release, including instructions on how to opt out or object. [*See* Exhibit 1(C)].

8 **D. SCOPE OF RELEASE**

9 The scope of release by all Class Members who do not exclude themselves
10 from the Settlement relinquishes Hansen's allegations in the First Amended
11 Complaint relating to the subject matter of this action. The release also covers
12 known and unknown claims and waives any contrary protections under California
13 Civil Code Section 1542 in connection with the Released Claims. [*Id.* at § 11].

14 **E. OPPORTUNITY TO OPT OUT AND OBJECT**

15 Under the terms of the proposed Settlement, Class Members will have the
16 right to opt out of the Settlement or to object to its terms. [Agr. §§ 6 and 7]. The
17 deadline for doing both is ninety (90) days from the date the Court grants the
18 Motion for Preliminary Approval (i.e., 60 days from the date the Direct E-mail
19 Notice is sent out). [*Id.* at §§ 6 and 7]. Class Members who wish to opt out of the
20 Settlement may do so by completing and mailing an Exclusion Request (or letter)
21 to the Claims Administrator and include: 1) the name and number of this case; 2)
22 the Class Member's name, address, and telephone number; and 3) the Class
23 Member's physical signature. [*Id.* at § 6.2].

24 Those Class Members who intend to object to the terms of the Settlement
25 may do so by mailing objections to the Court, Class Counsel, and defense counsel
26 and must include: 1) the name and number of this case; 2) the Class Member's
27 name, address, and telephone number; 3) all arguments, citations, and evidence
28 supporting the objection; 4) a statement of whether the objecting Class Member

1 intends to appear at the hearing for final approval of the Settlement; 5)
2 identification of all previous cases in which the Class Members have objected to a
3 proposed class action settlement and provide Class Counsel with copies of such
4 objections; and 6) a statement of whether the objecting Class Member intends to
5 appear at the hearing with or without counsel. [*Id.* at § 7.2]. Class Members will
6 have ninety (90) days from the date the Court grants the Motion for Preliminary
7 Approval (i.e., 60 days from the date the Direct Mail Notice is sent out).

8 **F. TERMINATION OF SETTLEMENT**

9 The Settlement is terminated if: 1) the Court does not preliminarily or finally
10 approve the Settlement in substantially the same form as set forth in the
11 Agreement; 2) the Settlement is appealed and not approved in substantially the
12 same form as set forth in the Agreement; or, 3) more than 4% of the potential Class
13 Members opt out or object. [Agr. §§ 8 and 12].

14 **G. COSTS OF CLAIMS ADMINISTRATION**

15 The Agreement provides that Tinder will handle and pay for the costs of
16 Direct E-Mail Notice; and as Class Members will all receive one free month of
17 Tinder Plus, there is no claims process. [*Id.* at § 4].

18 **H. CLASS REPRESENTATIVE’S APPLICATION FOR INCENTIVE AWARD**

19 The proposed Settlement contemplates that Class Counsel will request an
20 incentive award for Hansen of one-year subscription to Tinder Plus, subject to
21 Court approval, within thirty (30) days following Preliminary Approval. [*Id.* at §
22 3.3]. Tinder has agreed not to oppose a request for such incentive award in this
23 agreed-upon amount. [*Id.*]. As was recently observed in *Cellphone Termination*
24 *Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010), “[i]ncentive awards are fairly
25 typical in class action cases.” Further, such “awards are discretionary, and are
26 intended to compensate class representatives for work done on behalf of the class,
27 to make up for financial or reputational risk undertaken in bringing the action,
28

1 and, sometimes, to recognize their willingness to act as a private attorney
2 general.” *Id.* at 1393-94 (internal citations omitted).

3 **I. CLASS COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES AND COSTS**

4 The proposed Settlement contemplates that Class Counsel shall be entitled to
5 apply to the Court for an award of attorneys’ fees, costs, and expenses to be paid
6 from the Settlement Fund. [*Id.* at § 3.2]. Tinder has agreed not to oppose such
7 application by Class Counsel so long as the amounts requested, including claims
8 and litigation costs, are not more than a total of \$65,000.00. [*Id.*]. No interest
9 shall accrue on any attorneys’ fees or costs awarded by the Court to Class Counsel.
10 Such attorneys’ fees and costs shall be paid within thirty (30) days after Final
11 Judgment and subject to the terms of the Agreement. [*Id.*].

12 **IV. THE COURT SHOULD CERTIFY THE PROPOSED**
13 **SETTLEMENT CLASS FOR PURPOSES OF IMPLEMENTING THE**
14 **SETTLEMENT**

15 Class action suits in California are appropriate "when the question is one of a
16 common or general interest ... or when the parties are numerous, and it is
17 impracticable to bring them all before the court." Cal. Civ. Proc. § 382; *see also*
18 *Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 470 (1981). Two requirements must
19 be met in order to sustain a class action: (1) there must be an ascertainable class; and
20 (2) there must be a "well defined community of interest in the questions of law and
21 fact involved affecting the parties to be represented." *Daar v. Yellow Cab. Co.*, 67
22 Cal. 2d 695, 704 (1967). In turn, a community of interest is established where (1)
23 there are predominant common questions of law or fact; (2) the representative
24 plaintiffs have "claims or defenses typical of the class"; and, (3) the representative
25 plaintiffs are able to adequately represent the class. *See Dunk v. Ford Motor Co.*, 48
26 Cal. App. 4th 1794, 1806 (1996).

27 This Action should be conditionally certified as a class action solely for the
28 purposes of settlement. *See Hernandez v. Vitamin Shoppe Industries, Inc.*, 174 Cal.

1 App. 4th 1441 (2009), 1456; *see also Wershba v. Apple Computer, Inc.*, 91 Cal. App.
2 4th 224, 240 (2001). The proposed Class definition encompasses all individuals who
3 subscribed to Tinder Plus during the time between March 2, 2015 and June 11, 2015.
4 [Agr. § 1.1]. The Class meets the requirements necessary for class certification
5 because there is a well-defined community of interest in the litigation and the Class,
6 which is numerous, is ascertainable through Tinder's records.

7 **A. NUMEROSITY**

8 The potential members of the Class as defined are so numerous that joinder of
9 all the members of the Class is impracticable. Cal. Civ. Proc. § 382. Based upon
10 Tinder's records, the parties agree that there are approximately 34,000 Class
11 Members. "No set number is required as a matter of law for the maintenance of the
12 class action"; it is enough that there is a common question of interests to "many"
13 persons. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (upholding a
14 class of 42); *see also Bowles v. Superior Court*, 44 Cal. 2d 574 (1955) (upholding a
15 class representing 10 individuals). Joinder of all Class Members in this instance
16 would simply be impractical. The proposed settlement Class of 34,000 individuals
17 therefore satisfies the numerosity requirement.

18 **B. COMMONALITY**

19 The test for predominance of common issues over individual issues does
20 not require that each and every issue in the case be identical for each and every
21 class member but, rather, "that questions of law or fact common to the class
22 predominate over the questions affecting the individual members" *Washington*
23 *Mutual Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001). A case should be
24 certified for class treatment if it appears that the defendant engaged in a common
25 course of conduct. *Vasquez v. Superior Court*, 4 Cal. 3d 800 (1971). Where, as
26 here, the central questions surrounding the defendant's liability are common to all
27 of the class members, the fact that some individual issues may exist will not
28 destroy the benefits of proceeding as a class action. *See B.W.I. Custom Kitchen v.*

1 *Owens-Illinois, Inc.*, 191 Cal. App. 3d 1341, 1347 (1987) (observing, “[w]e note
2 that it has never been the law in California that the class representative must have
3 identical interests with the class members. The only requirements are that
4 common questions of law and fact predominate and that the class representative
5 be similarly situated.” (quoting *Classen v. Weller*, 145 Cal. App. 3d 27 (1983))).

6 Many of the issues likely to be most vigorously contested in this dispute, as
7 noted, are common ones. Absent class treatment, each individual plaintiff would
8 present in separate, duplicative proceedings the same or essentially the same
9 arguments and evidence, including expert testimony. The result would be a
10 multiplicity of trials conducted at enormous expense to both the judicial system
11 and the litigants. *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 340
12 (2004); *see also Johnson v. Glaxo Smith Kline, Inc.*, 166 Cal.App.4th 1497, 1509-
13 10 (2008). As stated in Hansen’s Complaint, these common questions of law and
14 fact include, without limitation:

- 15 i) Whether Tinder’s contract contains a notice of consumers’ rights
16 to cancel said contract as required by Cal. Civ. Code § 1694.2(b);
- 17 ii) Whether Tinder’s contract contains the name and address of the
18 dating service operator to which a notice of cancellation should
19 be sent as required by Cal. Civ. Code § 1694.2(c);
- 20 iii) Whether Tinder’s contract is void;
- 21 iv) Whether Tinder’s contract is unenforceable;
- 22 v) Whether Hansen and the Class are entitled to damages as a result
23 of Tinder’s conduct;
- 24 vi) Whether Hansen and the Class are entitled to reasonable
25 attorneys’ fees;
- 26 vii) Whether Hansen and Class are entitled to declaratory relief,
27 injunctive relief and/or restitution under Cal. Bus. & Prof. Code §
28 17535; and,

1 viii) Whether such practice violates California Business and
2 Professions Code § 17200.

3 The proposed settlement Class of 34,000 individuals therefore satisfies the
4 commonality requirement.

5 **C. TYPICALITY**

6 Typicality requires that class representatives be members of the class they seek
7 to represent. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal. App. 3d 1341,
8 1347 (1987). A class representative's claim is typical if it arises from the same event,
9 practice or course of conduct that gives rise to claims of other class members, and if
10 his claims are based on the same legal theory. *Classen v. Weller*, 145 Cal. App.3d 27,
11 46-47 (1983).

12 Here, Hansen's claims are typical of the claims of the members of the Class in
13 that Hansen is a member of the Class that Hansen seeks to represent. Hansen, like
14 members of the proposed Class, subscribed to Tinder Plus under the same conditions
15 as the Class Members. As such, Hansen is advancing the same claims and legal
16 theories on behalf of himself and all absent members of the Class and Tinder has no
17 defenses unique to the Hansen. Hansen's claim is thereby representative of, and co-
18 extensive with, the claims of the Class.

19 **D. ADEQUACY OF REPRESENTATION**

20 Adequacy of representation is met when the proposed class representative
21 has interests that are aligned with the class; when he has retained qualified counsel;
22 and, when he can vigorously prosecute class claims. *Cal Pak Delivery, Inc. v. United*
23 *Parcel Serv.*, 52 Cal. App.4th 1, 12 (1997). Moreover, adequacy of representation
24 consists of two components: (1) no disabling, irreconcilable conflict of interest
25 between the class representative and the class; and (2) the named representative
26 must be represented by counsel competent and experienced in the kind of
27 litigation to be undertaken. *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450
28 (1976); *Miller v. Woods*, 148 Cal. App. 3d 862, 874 (1983). With regard to

1 conflicts, “only a conflict that goes to the very subject matter of the litigation”
2 (*Richmond*, 29 Cal. 3d at 470) and which is “irreconcilable” (*Nat’l Solar Equip.*
3 *Owners’ Ass’n v. Grumman Corp.*, 235 Cal. App. 3d 1273, 1286 (1991)) will
4 disqualify a potential class representative. Likewise, the conflict must exist at the
5 time of class certification. *Nat’l Solar Equip. Owners’ Ass’n*, 235 Cal. App. 3d at
6 1285.

7 Here, counsel and Hansen adequately represent the class. Moreover, the
8 experience and views of Class Counsel warrant a preliminary finding by the Court
9 that the settlement is fair, adequate, and reasonable. Class Counsel are qualified
10 and highly experienced in consumer litigation. [See Class Counsel Declarations].
11 Moreover, Class Counsel were also designated as Class Counsel in two other
12 matters in the San Luis Obispo Superior Court in 2017. See *Burkhammer v. Allied*
13 *Interstate, LLC*, 2017 Cal. Super. LEXIS 109 (Sup. Ct. San Luis Obispo Oct. 30,
14 2017); and, *Moreno-Peralta v. TRS Recovery Services, Inc.*, 2017 Cal. Super.
15 LEXIS 548 (Sup. Ct. San Luis Obispo Oct. 30, 2017).

16 In addition, Class Counsel have litigated this case for nearly two years,
17 having propounded and responded to written discovery, taken depositions, and
18 exchanged documents. With the benefit of said litigation, the Parties utilized a
19 third-party neutral to finalize the proposed terms of this settlement. [Agr. Recitals
20 ¶ D]. Thus, counsel for each side are fully aware of the potential benefits and risks
21 of settlement compared to proceeding with litigation and have determined
22 settlement to be the in the best interest of the Class. [Agr. Recitals ¶¶ E and F].
23 As such, the Court should defer to the views of counsel and preliminarily approve
24 the Settlement.

25 **E. SUPERIORITY OF CLASS ACTION**

26 Given that Hansen meets each of the elements for class certification, it is clear
27 that a class action settlement is the superior method of resolving the Class Members'
28 claims. See *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th at 339-40; *Bell v.*

1 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 745-746. In other words, a class-
2 action is superior to all other available means for the fair and efficient adjudication of
3 this controversy.

4 Individualized litigation would create the danger of inconsistent or
5 contradictory judgments arising from the same set of facts. Individualized litigation
6 would also increase the delay and expense to all Parties. The damages or other
7 financial detriment suffered by individual Class Members may be relatively small
8 compared to the burden and expense that would be entailed by another course of
9 action. The injury suffered by each individual member of the proposed class is
10 relatively small given the statutory damages limitation in comparison to the burden
11 and expense of individual prosecution of the complex and extensive litigation raised
12 by Tinder's alleged conduct. Furthermore, individualized litigation increases the
13 delay and expense to all parties and to the court system. By contrast, the class action
14 device presents far fewer management difficulties, and provides the benefits of single
15 adjudication, economy of scale, and comprehensive supervision by a single court.
16 Therefore, a class action is superior.

17 The proposed Class easily meets the requirements for class certification;
18 however, if the Settlement ultimately fails to be approved, Tinder will maintain its
19 right to oppose the certification of the Class. Thus, conditional certification for
20 settlement purposes is proper and not detrimental to the interests of any Party.

21 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE**
22 **SETTLEMENT**

23 The settlement of a class action requires approval of the Court. Cal. Rules
24 of Court, Rule 3.769. In determining whether to approve or reject a proposed
25 settlement, the Court has broad discretion. *Wershba v. Apple Computer, Inc.*, 91
26 Cal. App. 4th 434, 438 (2001). At the preliminary approval stage – which
27 precedes dissemination of notice to class members and a formal fairness hearing –
28 the Court need only decide whether the proposed settlement falls within a range of

1 possible final approval. *Koz v. Kellogg Co.*, 2013 U.S. Dist. LEXIS 64577, at *13
2 (S.D. Cal. 2013); *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079-1080
3 (N.D. Cal. 2007).³

4 The law favors settlement, particularly in class actions where substantial
5 resources will be conserved by avoiding the cost of litigation: “In reviewing the
6 fairness of a class action settlement, “[d]ue regard ... should be given to what is
7 otherwise a private consensual agreement between the parties. The inquiry must be
8 limited to the extent necessary to reach a reasoned judgment that the agreement is
9 not the product of fraud or overreaching by, or collusion between, the negotiating
10 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate
11 to all concerned.” *Cellphone, supra*, 186 Cal. App. at 1389 (internal citations and
12 quotations omitted).

13 A class settlement will be approved if the settlement is found to be fair,
14 adequate, and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801
15 (1996). In making this determination, courts consider several factors, including
16 “the strength of the [Hansen’s] case, the risk, expense, complexity and likely
17 duration of further litigation, the risk of maintaining class action status through
18 trial, the amount offered in settlement, and the extent of discovery completed and
19 the stage of the proceedings, the experience and views of counsel, the presence of a
20 governmental participant, and the reaction of the class members to the proposed
21 settlement.” *Id.* The above factors are not exhaustive, and the court “is free to
22 engage in a balancing and weighing of factors depending on the circumstances of
23 each case.” *Wershba, supra*, 91 Cal. App. 4th at 245.

24 _____
25 ³ See generally, Judicial Council of California, *Deskbook on the Management of*
26 *Complex Civil Litigation* § 3.76[2] (2012) (settlement approval is a three-step
27 process, where the court first rules on a preliminary approval motion, making a
28 preliminary finding that the terms and conditions are fair, adequate, and
reasonable; notice is then given to the class members; and finally the court holds a
final approval hearing).

1 **A. THE SETTLEMENT AGREEMENT IS ENTITLED TO A PRESUMPTION OF**
2 **FAIRNESS**

3 The Manual for Complex Litigation (Fourth) (2004) (“Manual”), section
4 21.632, characterizes preliminary approval as an “initial evaluation” of the fairness
5 of the proposed settlement by the court on the basis of written submissions and
6 informal presentation from the settling parties. Generally, a presumption of
7 fairness exists where: (1) the settlement is reached through arm’s length
8 bargaining; (2) investigation and discovery are sufficient to allow counsel and the
9 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
10 percentage of objectors is small. *Dunk, supra*, 48 Cal. App. 4th at 1802. The
11 proposed settlement here satisfies the above three requirements, and the number of
12 expected objections is small, if any.

13 First, this settlement was reached after arm’s length negotiations, including a
14 full-day mediation with Judge Altman. [Agr. Recitals, ¶ D; Loker Declaration ¶ 8].

15 Second, the parties have litigated the action for nearly two years,
16 propounding and responding to extensive written discovery, taking depositions,
17 and exchanging documents. Through this litigation, the Parties are fully aware of
18 the risks and benefits of continued litigation.

19 Third, Class Counsel is highly experienced in prosecuting consumer class
20 actions, having litigated over 400 such class action lawsuits. [Loker Declaration, ¶¶
21 27-40].

22 Fourth, given the benefits of this Settlement, Hansen does not anticipate that
23 there will be many legitimate objections to the Settlement since all subscribers to
24 Tinder Plus who were exposed to the allegedly unlawful conduct are members of
25 the Class and will receive either a free one-month subscription or a free allotment
26 of Super Likes of equivalent value.

1 **B. THE CURRENT SETTLEMENT IS “FAIR, ADEQUATE AND REASONABLE.”**

2 Beyond the presumption of fairness, the Agreement is clearly “fair, adequate
3 and reasonable” under any standard. In making a fairness determination, courts
4 consider a number of factors, including: (1) the strength of the plaintiff’s case; (2)
5 the risk, expense, complexity, and likely duration of further litigation; (3) the risk
6 of maintaining class action status through trial; (4) the benefits conferred by
7 settlement; (5) the experience and views of counsel; (6) the extent of discovery
8 completed and the state of the proceedings; and (7) the reaction of class members
9 to the proposed settlement. *See Dunk*, 48 Cal. App. 4th at 1802. As discussed
10 below, all of the foregoing factors are satisfied in the Agreement.

11 **1. *The Strength of Hansen’s Case***

12 Hansen believes he has a very strong case; however, Tinder has and would
13 continue to vigorously contest liability and damages should litigation continue. In
14 addition, Tinder planned on filing its own motion for summary judgment. Thus,
15 the outcome of the case is by no means certain absent a settlement.

16 **2. *The Risk, Expense, Complexity and Likely Duration of Further***
17 ***Litigation***

18 Hansen believes that the claims asserted in the Action are meritorious and
19 Tinder continues to deny that Hansen is entitled to any form of damages or relief
20 based on the conduct alleged. Given the Parties’ positions on this case and the fact
21 that the Action has been litigated for nearly two years, continued litigation would
22 be protracted, unduly burdensome, and expensive. Thus, it is desirable, fair, and
23 beneficial to the Class that the Action now be fully and finally compromised.

24 **3. *The Risks of Maintaining Class Action Status Through Trial***

25 Tinder has made it clear that it intends to vigorously defend the Action
26 should litigation continue. Tinder denies that it committed any wrongful act or
27 violated any law or duty and maintains that it has meritorious defenses to all claims
28 alleged in the Action. Given the delicate nature of class actions, the risks of

1 maintaining this Action through trial are high. If Tinder were to prevail on its
2 defenses, the Class Members would receive nothing. Therefore, the benefits of
3 Settlement far outweigh the risks of continued litigation and the Settlement is an
4 excellent result.

5 ***4. The Benefits Conferred By Settlement***

6 The benefits conferred by the Settlement for the Class clearly outweigh the
7 potential benefits and risks of proceeding with the class action. Each Class
8 Member will receive either an equal award valued up to \$19.99 in the form of
9 one-free month for a subscription to Tinder Plus, or a free allotment of Super
10 Likes of equivalent value. Therefore, the Settlement provides a significant benefit
11 without the risks and inherent delays of an adverse jury verdict, trial decision, or
12 potential appeal.

13 ***5. The Experience and Views of Counsel***

14 Although recommendations of counsel proposing the Settlement are not
15 conclusive, the Court can properly take them under consideration, particularly if
16 they have been involved in litigation for some period of time, appear to be
17 competent, have experience with this type of litigation, and discovery has
18 commenced. *See* 2 H. Newberg, *Newberg on Class Actions* § 11.47 (2d ed. 1985).
19 Indeed, courts do not substitute their judgment for that of the proponents,
20 especially when experienced counsel familiar with the litigation have reached a
21 settlement. *See, e.g., Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990) (citing
22 *Newberg on Class Actions*, §11.44). Rather, courts presume the absence of fraud
23 or collusion in the negotiation of a settlement unless evidence to the contrary is
24 offered. In short, there is a presumption that negotiations were conducted in good
25 faith. *See Newberg on Class Actions* § 11.51; *In re Chicken Antitrust Litig.*, 560 F.
26 Supp. 957 (N.D. Cal. 1980).

27 Here, the experience of counsel is addressed above in § IV(D) of this
28 Motion. Moreover, Counsel also believes this to be a strong settlement given

1 Tinder’s arguments against certification and the merits of this action.

2 **6. *The Extent of Discovery Completed and the State of the Proceedings***

3 As discussed above, extensive discovery has been completed in the two
4 years since the filing of the Complaint, including sets of written discovery, the
5 deposition of Tinder’s person most knowledgeable, as well as the exchange of
6 documents. Class Counsel are fully aware of the potential benefits and risks of this
7 case, and are confident that this Settlement is in the best interests of the Class.

8 **7. *The Reaction of Class Members to the Proposed Settlement***

9 Class Counsel believe Class Members will be satisfied with the proposed
10 settlement. The Settlement guarantees that each Class Member will be awarded a
11 free month on Tinder Plus without the risks and delay of further litigation and trial.
12 Class Members need not take any action in order to receive the settlement
13 payment. [Agr. § 4]. Therefore, Class Counsel are confident that Class Members
14 would react approvingly to the Settlement.

15 **VI. THE PROPOSED NOTICE TO THE CERTIFIED CLASS IS APPROPRIATE**

16 The proposed notice plan is appropriate under California law and is the best
17 notice practicable for this Class. If a class action is to be effective, “members of
18 the class must receive the ‘best notice practicable under the circumstances,
19 including individual notice to all members who can be identified through
20 reasonable effort.’” *Home Sav. & Loan Ass’n v. Sup. Ct.*, 42 Cal. App. 3d 1006,
21 1012 (1975), quoting Federal Rules of Civil Procedure, Rule 23(c). The standard
22 in California for class notice is whether the notice “has a reasonable chance of
23 reaching a substantial percentage of the class members.” *Wershba v. Apple*
24 *Computer, Inc.*, 91 Cal. App. 4th 224, 251 (2001), quoting *Cartt v. Super. Ct.*, 50
25 Cal. App. 3d 960, 974 (1975).

26 Here, Tinder will e-mail notice to all 34,000 Class Members. [Agr. § 8.1;
27 and, Exhibit 1(C)]. This e-mailing of said Notice shall occur within 30 days after
28 entry of the Preliminary Approval Order. [*Id.* at § 8.1.3]. Direct E-Mail Notice is

1 considered highly effective in this situation since consumers are required to
2 provide a valid e-mail in order to sign up for Tinder Plus. Further, Class Counsel’s
3 telephone number will be provided to the Class Members and Class Counsel will
4 make themselves available to answer Class Members’ inquiries regarding the
5 Settlement.

6 **VII. CLASS REPRESENTATIVES AND CLASS COUNSEL**

7 “[T]wo criteria for determining the adequacy of representation have been
8 recognized. First, the named representatives must appear able to prosecute the
9 action vigorously through qualified counsel, and second, the representatives must
10 not have antagonistic or conflicting interests with the unnamed members of the
11 class.” *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

12 In this case, the adequacy of representation requirement is satisfied. Also,
13 for settlement purposes, the Parties jointly request that Hansen be confirmed as the
14 Class Representative.

15 The Parties have agreed that Joshua B Swigart of Hyde & Swigart, Abbas
16 Kazerounian and Matthew Loker of the Kazerouni Law Group, A.P.C., should be
17 confirmed as Class Counsel for Hansen and for all other purposes of the
18 Settlement. [See Agr. § 2.2]. Hansen’s counsel all have extensive experience
19 sufficient to be appointed as Class Counsel here. [See Class Counsel
20 Declarations]. Hansen understands the obligations of serving as a class
21 representative, has adequately represented the interests of the putative class, and
22 has retained experienced counsel. [Id.]. Hansen has no antagonistic or conflicting
23 interests with the Class Members. [Id.].

24 Moreover, Hansen and the Class Members seek the same relief, which
25 includes statutory damages for Tinder’s alleged unlawful actions as well as
26 injunctive relief.

27 Considering the overwhelming similarity of claims, there is no potential for
28 conflicting interests.

VIII. THE FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the formal Final Approval Hearing. Pursuant to California Rules of Court, rule 3.769(e), should the Court grant preliminary approval, its order must state the time, date, and place of the final approval hearing. This hearing allows the Court to hear all evidence and the arguments necessary to determine whether the settlement is fair, adequate, and reasonable. Hansen request that the hearing be held not before 90 days after the date of entry of the Preliminary Approval Order to allow sufficient time for Class Members to opt-out or object to the Settlement.

IX. CONCLUSION

For all the foregoing reasons, Hansen respectfully requests that the Court enter an order preliminarily approving the proposed Settlement, and for settlement purposes confirm Hansen as Class Representative, and confirm Abbas Kazerounian, Joshua B. Swigart and Matthew M. Loker as Class Counsel. Moreover, Hansen believes that the following schedule shall govern the remainder of this Action:

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EVENT	DEADLINE
Notice to be e-mailed by Tinder	30 days from date of Preliminary Approval
Motion for Attorneys' Fees; Litigation Costs; and, Incentive Award	30 days from date of Preliminary Approval
Deadline to Opt Out/Object	90 days from date of Preliminary Approval
Motion for Final Approval	120 days from date of Preliminary Approval

Dated: February 20, 2018

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By:



MATTHEW M. LOKER, ESQ.
 ATTORNEY FOR HANSEN

KAZEROUNI LAW GROUP, APC
245 FISCHER AVENUE, UNIT D1
COSTA MESA, CA 92626

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Kazerouni Law Group, APC, 1303 East Grand Avenue, Suite 101, Arroyo Grande, CA 93420. On February 20, 2018, I served the within document(s):

MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

- E-MAIL - by transmitting via e-mail the document(s) listed above to the e-mail address(es) set forth below on this date before 11:59 p.m.
- MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below.
- PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via.
- ONE LEGAL - by transmitting electronically the document(s) listed above to the electronic case filing system on this date before 5:00 p.m.

Christopher A. Rheinheimer, Esq.
MANATT, PHELPS & PHILLIPS, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 20, 2018, at Arroyo Grande, California.


MATTHEW M. LOKER