

**Hansen v. Tinder, Inc.**

Superior Court of California, County of San Luis Obispo  
April 11, 2018, Decided; April 11, 2018, Electronically Filed  
Case No.: 15CVP-0155

**Reporter**

2018 Cal. Super. LEXIS 123 \*

KYLE HANSEN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. TINDER, INC.; AND, DOES 1-20, INCLUSIVE, Defendant.

**Judges:** [\*1] HONORABLE LINDA S. HURST, SAN LUIS OBISPO SUPERIOR COURT JUDGE.

**Opinion by:** LINDA S. HURST

**Opinion**

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**PASO ROBLES BRANCH — UNLIMITED**

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

On April 9, 2018, this Court issued its Tentative Order Granting Plaintiff KYLE HANSEN's Motion for Preliminary Approval of Class Action Settlement. [See Exhibit A attached hereto]. Following oral argument on April 10, 2018, this Court hereby adopted said Tentative Order as its Final Order (with the exception of footnote 1) and approved the procedures in the Parties' Proposed Order attached hereto as Exhibit B. Moreover, the following schedule shall govern the remainder of this Action:

 [Go to table 1](#)

Dated: April 11, 2018

/s/ Linda S. Hurst

HONORABLE LINDA S. HURST

SAN LUIS OBISPO SUPERIOR COURT JUDGE

**Exhibit A**

In [\*2] The Case Of

*Kyle Hansen, Individually and on Behalf of All Others*

*Similarly Situated,*

v.

*Tinder, Inc.; and, Does 1-20, Inclusive,*

**15CVP-0155**

**KAZEROUNI LAW GROUP, APC**

**1303 East Grand Avenue, Suite 101**

**Arroyo Grande, CA 93420**

**(805) 335-8455**

*Kyle Hansen v. Tinder, Inc. 15-CVP-01522*

**Hearing: Motion for Preliminary Approval of Class Action Settlement**

**Date: April 10, 2018**

Kyle Hansen ("Plaintiff") as the representative plaintiff filed this class action against Tinder, Inc. ("Defendant"), a dating application service. Plaintiff alleges Defendant's membership agreement fails to include certain required clauses about cancellation of the membership. Plaintiff's first amended complaint includes causes of action for violation of [Civil Code section 1694](#) and [Business and Professions Code section 17200](#).

Plaintiff brings this unopposed motion for preliminary approval of class action settlement. Plaintiff moves the Court for an order: (1) granting preliminary approval of the settlement; (2) approving the proposed form of notice to the class; (3) establishing a schedule for disseminating the notice to the class members, as well as deadlines for class members to object to or opt out of the settlement; (4) scheduling a hearing for final approval of the settlement during which class [\*3] members may be heard; and (5) scheduling a hearing for Plaintiff's counsel's application for an award of fees and litigation costs.

There are three stages to the court's settlement approval process: (1) preliminary approval of the proposed settlement

at an informal hearing; (2) notice of the settlement to all affected class members; and (3) final approval after a formal hearing. As noted above, the instant motion seeks preliminary approval of the settlement.

The court may approve settlements reached before or after a class has been certified. (Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2017), Ch. 14-C, § 14:138.20, citing *Wershba v. Apple Computer, Inc.* (2001) 91Cal.App.4th 224, 240.) Here, the class was not certified prior to the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. ([Cal. Rules of Court, rule 3.769\(c\)](#); Weil & Brown, *supra*, at § 14:138.30.) The Parties have satisfied these requirements.

The purpose of preliminarily evaluating class action settlements is to determine whether the proposed settlement is within the "range of reasonableness" for possible approval, and whether [\*4] it is worthwhile to issue notice to the class and schedule a formal hearing. (Cabraser, *Cal. Class Actions and Coordinated Proceedings* (2d ed. 2017) § 14.02.) A presumption of fairness applies if there has been arm's length bargaining, investigation and discovery have been sufficient to allow counsel and the court to act intelligently, class counsel is experienced in similar litigation, and the percentage of class members who object to the settlement is small. (*In re Microsoft I—V Cases* (2006) 135 Cal.App.4th 706, 723; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146.)

Here, the Parties reached the proposed settlement through mediation with the Honorable Robert T. Altman (Ret.) (Loker Decl., ¶ 8.) Class counsel is experienced with this type of litigation and has sufficient discovery and data to make an informed decision. The Parties conclude that the settlement is fair, reasonable, adequate and in the best interest of the class.

The preliminary approval hearing is also appropriate for the certification of a settlement class if the class has not yet been certified. Under California law, the basic requirements to sustain a class action are an ascertainable class, a well-defined community of interest in the questions of law and fact involved, and substantial benefits from [\*5] certification that render proceeding as a class superior to the alternatives. ([Code Civ. Proc., § 382](#); Weil & Brown, *supra*, Ch. 14-C, § 14:11, *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

The proposed class herein consists of 34,000 class members, defined as "all persons within California who purchased a Tinder Plus subscription at any time between March 2, 2015 and June 11, 2015." (Mtn., p. 3, ll. 7-9.) The class members'

settlement is nonmonetary.<sup>1</sup> Depending on their subscription status, a class member will receive either: one free month of Tinder Plus, valued between \$9.99 and \$19.99; or, a one-time allotment of Super Likes, also valued between \$9.99 and \$19.99. (Loker Decl., ¶ 10.b.; Settlement Agreement, § 3.1.) Nonmonetary settlements, sometimes referred to as "coupon" settlements, are routinely held to be fair and reasonable, particularly where, as here, the settlement occurred after an arm's length negotiation with experienced counsel. (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 48, 54 [upholding nonmonetary settlement of one month free membership upgrade or one month free membership]; *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 580, 590 [settlement including Nordstrom merchandise vouchers upheld]; *In re Microsoft I—V Cases*, *supra*, 135 Cal.App.4th at pp. 710, 711-713 [affirming approval of settlement where 100 percent of settlement was paid in vouchers]; *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 247 [coupons were fair portion of settlement [\*6] also involving cash refunds, reimbursements, and reinstatement of free service] [disapproved of on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269]; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802, 1804 [\$400 coupon which could be applied against purchase price of new car, with no cash payable to the class members, was fair as settlement of claims that vehicles were defective].)

If the court has certified the action as a class action, notice must be given to the class members containing an explanation of the proposed settlement, procedures for class members to follow in filing written objections to the settlement, and procedures for arranging to appear at the settlement hearing to state any objections to the proposed settlement. ([Cal. Rules of Court, rule 3.769\(f\)](#); Weil & Brown, *supra*, Ch. 14-C, § 14:139.11.)

Here, the proposed notice will be provided to the class members via email, will contain a detailed summary of the settlement, and will provide Plaintiff's counsel's contact information. (Settlement Agreement, § 5.4.) Inasmuch as the class members needed an email address to subscribe to Defendant's service, the Court finds the members' receipt of the notice via email reasonable. (*Chavez v. Netflix, Inc.*, *supra*, 162 Cal.App.4th 43 at p. 57 [where class members conduct business with defendant over the internet, an email "summary notice" of the essential [\*7] terms of a proposed settlement, coupled with a link to a website with more

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<sup>1</sup> As part of the settlement, Tinder shall also establish a settlement fund in the amount of \$65,000 within 30 days of the final judgment in this action, representing the maximum amount to be paid to Plaintiff's counsel as attorneys' fees and litigation costs. (Loker Decl., ¶ 10.f.)

information, was "a sensible and efficient way of providing notice"].) Plaintiff's counsel will maintain the settlement documents on its website through the date of Final Approval. (Settlement Agreement, § 5.5.)

The motion for preliminary approval of class action settlement is granted. The Parties have satisfied the procedural requirements for preliminary approval of a class action settlement and the settlement amount appears fair and reasonable. The date for the final settlement approval shall be set at the hearing.

### Exhibit B

In The Case Of

*Kyle Hansen, Individually and on Behalf of All Others Similarly Situated,*

v.

*Tinder, Inc.; and, Does 1-20, Inclusive,*

**15CVP-0155**

**KAZEROUNI LAW GROUP, APC**

**1303 East Grand Avenue, Suite 101**

**Arroyo Grande, CA 93420**

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WHEREAS, a putative class action is pending in this Court entitled, *Kyle Hansen, Individually and on Behalf of All Others Similarly Situated v. Tinder Inc.; and, Does 1-20*, Case No.: 15CVP-0155 (the "Action");

WHEREAS, the Parties to the Action have agreed, subject to Court approval following notice to the proposed Class (as described in Paragraph 7 below) and [\*8] a hearing, to settle the Action upon the terms and conditions set forth in the Settlement Agreement entered into by the Parties (the "Agreement"), the Parties now request preliminary certification of a settlement Class and preliminary approval of the proposed class action settlement (the "Settlement");

WHEREAS, this Court has reviewed the Agreement, as well as the files, records and proceedings to date in the Action;

WHEREAS, for purposes of this Order, capitalized terms used below have the meaning ascribed to them in the Agreement, unless otherwise defined; and

WHEREAS, for purposes of the Action, this Court has subject

matter and personal jurisdiction over the Parties, including all Class Members.

NOW, THEREFORE, based on this Court's review of the Agreement and all of the files, records, and proceedings herein, the Court concludes, upon preliminary examination, that the Agreement and the Settlement appear fair, reasonable, and adequate, and within the range of reasonableness for preliminary approval, and that a hearing should and will be held after notice to the Class (as described in Paragraph 7 below) to confirm that the Agreement and the Settlement are fair, reasonable and adequate [\*9] and to determine whether the Settlement should be approved and final judgment entered in the Action based upon the Agreement.

The Court has read and considered the Agreement, the Preliminary Approval Motion and the record.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Jurisdiction. The Court has jurisdiction over the subject matter of the Action and over all settling parties hereto.

2. Preliminary Approval of Proposed Settlement. The Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable and adequate and within the range of reasonableness for preliminary settlement approval. The Court finds that:

- (a) the Agreement resulted from arm's length negotiations; and
- (b) the Agreement is sufficient to warrant notice of the Settlement to persons in the Class and a full hearing on the approval of the Settlement.

3. Class Certification for Settlement Purposes Only. The Court conditionally certifies, for settlement purposes only, the following Class:

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

Defendant has identified, based on its records, approximately 34,000 such persons. [\*10]

In connection with this conditional certification, the Court makes the following preliminary findings:

- a. The Class appears to be so numerous that joinder of all members is impracticable;
- b. There appear to be questions of law or fact common to the Class for purposes of determining whether this Settlement should be approved;
- c. Plaintiff's claims appear to be typical of the claims being resolved through the proposed Settlement;

d. Plaintiff appears to be capable of fairly and adequately protecting the interests of the Class Members in connection with the proposed Settlement;

e. For purposes of determining whether the Settlement is fair, reasonable and adequate, common questions of law and fact appear to predominate over questions affecting only individual Class Members. Accordingly, the Class appears to be sufficiently cohesive to warrant settlement by representation; and

f. For purposes of settlement, certification of the Class appears to be superior to other available methods for the fair and efficient settlement of the claims of the Class Members.

4. Class Representative. Plaintiff Kyle Hansen is designated as class representative for the Class.

5. Class Counsel. The Court appoints Abbas [\*11] Kazerounian and Mathew M. Loker of Kazerouni Law Group, APC; and, Joshua B. Swigart as counsel for the Class. The Court finds that counsel are competent and capable of exercising all responsibilities as Class Counsel for the Class.

6. Settlement Hearing. A final approval hearing (the "Settlement Hearing") shall be held on September 25, 2018, as set forth in the notice to the Class, to determine whether the Agreement is fair, reasonable and adequate and should be approved. Papers in support of final approval of the Agreement, the incentive award to Plaintiff and Class Counsel's application for an award of attorneys' fees, costs and expenses (the "Fee Application") shall be filed with the Court according to the schedule set forth in Paragraph 10 below. The Settlement Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Class. After the Settlement Hearing, the Court may enter a settlement order and final judgment in accordance with the Agreement that will adjudicate the rights of the Class Members with respect to the Released Claims being settled.

7. Class Notice. Class Notice shall be provided within thirty (30) days following entry of this [\*12] Order.

(a) Direct E-Mailing. Defendant will send Notice to the Class via e-mail thirty (30) days after entry of the Preliminary Approval Order. Defendant shall file a declaration with the Court, as part of the final approval papers, confirming that these procedures were followed.

(b) Findings Concerning Class Notice. The Court finds that the foregoing program of Class Notice and the manner of its dissemination constitute the best practicable notice under the circumstances and are reasonably calculated to apprise Class Members of the

pendency of this Action and their right to object to the Settlement or exclude themselves from the Class. The Court further finds that the Class Notice program is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice and that it meets the requirements of due process.

(c) Approval of Opt-Out Process and Settlement Procedure. The opt-out and objection processes described in the Agreement are hereby approved. The Court preliminarily approves the process set forth in the Agreement for submitting, reviewing, approving and paying all claims as described in the Agreement. Opt-outs and objections, if any, shall [\*13] be received by ninety days (90) after the date of preliminary approval.

(d) Costs of Administration, Incentive Payments, and Attorney Fees. The Court also approves the process for handling the costs of Class Notice and compensation, the incentive payment, and Class Counsel's attorneys' fees and litigation costs.

8. Exclusion from The Class.

(a) As stated above, Class Members have the right to opt out of the Class and exclude themselves from the Settlement by mailing an exclusion request ("Exclusion Request") to Defendant. The Exclusion Request must be postmarked on or before the date specified in the Class Notice, which is 60 days from the date of providing Notice. Defendant will provide copies of any such exclusion requests to Class Counsel and its own counsel. All Class Members who do not opt out in accordance with the terms set forth herein will be bound by all proceedings, orders, and judgments in the Action, including without limitation any approval of the Settlement by the Court.

(b) Exclusion Requests must include the name and number of this case and the Class Member's name, address, and telephone number.

(c) No Exclusion Request will be valid unless all of the information described [\*14] above is included. No Class Member, or any person acting on behalf of or in concert or participation with that Class Member, may exclude any other Class Member from the Class.

(d) Defendant will retain a copy of all Exclusion Requests. Not later than fourteen days before the Final Approval Hearing, Defendant shall file with the Court a declaration that lists all of the Exclusion Requests received.

9. Objections and Appearances.

(a) Any Class Member who has not timely submitted a valid Exclusion Request may, subject to the requirements

below, appear at the Final Approval Hearing to argue that the proposed Settlement should not be approved and/or to oppose the application of Class Counsel for an award of attorneys' fees and the incentive award to Plaintiff.

(b) In order to be heard at the Final Approval Hearing, the person must make any objection ("Objection") in writing and file a notice of appearance with the Court no later than ninety (90) days after the date of preliminary approval, or as the Court may otherwise direct. The Objection must also be mailed to Class Counsel and defense counsel.

(c) Any Objection filed with the Court must set forth the Class Member's full name, address, and [\*15] telephone number, and the reasons for the Objection, state whether the objecting Class Member intends to appear at the Final Approval Hearing on his or her own behalf or through counsel, set forth all arguments, citations and evidence supporting the Objection, and disclose every prior objection to a class action settlement ever made by the Class Member or Class Member's attorney, including the case name, case number, and disposition of the prior objection(s). Additionally, any documents supporting the Objection must also be attached to the Objection. Any Class Member who fails to comply with these provisions shall waive and forfeit any and all rights the Class Member may have to appear separately and/or object, and shall be bound by all proceedings, orders, and judgments in the Action, including without limitation any approval of the Settlement by the Court. Any Objections that are not timely filed and mailed shall be forever barred.

10. Further Papers in Support of Settlement and Fee Application. Any responses to Objections shall be filed with the Court within 120 days after the Preliminary Approval Order. Class Counsel's Motion for Attorneys' Fees, Costs, and Incentive Award shall [\*16] be filed within thirty (30) days after the Preliminary Approval Order, and the Motion for Final Approval of the Settlement shall be filed within one hundred and twenty (120) days after the Preliminary Approval Order.

11. Effect of Failure to Approve the Settlement. In the event the Settlement is not approved by the Court, or for any reason the Parties fail to obtain the Final Judgment as contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any reason, then the following shall apply:

(a) All orders and findings entered in connection with the Agreement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible

or discoverable in any other proceeding;

(b) The conditional certification of the Class pursuant to this Order shall be vacated automatically and void; no doctrine of waiver, estoppel or preclusion shall be asserted in any litigated certification proceedings in the Action; and the Agreement, its existence and any drafts thereof, and any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the [\*17] execution of the Agreement shall have no effect and shall not be admissible evidence for any purpose, including to establish any fact relevant to class certification or any alleged liability of Defendant for the matters alleged in the Action or for any other purpose;

(c) Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant or Plaintiff on any point of fact or law; and

(d) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders and public statements, may be used as evidence for any purpose whatsoever. In addition, neither the fact of, nor any documents relating to, Defendant's withdrawal from the Settlement, any failure of the Court to approve the Settlement and/or any Objections or interventions may be used as evidence for any purpose whatsoever.

12. Stay/Bar of Other Proceedings. All proceedings in this Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiff, all Class [\*18] Members, and all persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action, arbitration or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

13. Continuing Jurisdiction. The Court retains continuing and exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement, including the administration and enforcement of the Agreement.

14. Schedule. This case shall proceed pursuant to the following schedule:

 [Go to table2](#)

**Table1** ([Return to related document text](#))

<b>EVENT</b>	<b>DEADLINE</b>	<b>DATE</b>
Notice to be e-mailed by Tinder	30 days from date of Preliminary Approval	May 10, 2018
Motion for Attorneys' Fees; Litigation Costs; and, Incentive Award	30 days from date of Preliminary Approval	May 10, 2018
Deadline to Opt Out/Object	90 days from date of Preliminary Approval	July 9, 2018
Motion for Final Approval	120 days from date of Preliminary Approval	August 8, 2018
Hearing on Final Approval; and, Fee Petition		September 25, 2018

**Table1** ([Return to related document text](#))**Table2** ([Return to related document text](#))

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<b>EVENT</b>	<b>DEADLINE</b>	<b>DATE</b>
Notice to be e-mailed by Tinder	30 days from date of Preliminary Approval	May 10, 2018
Motion for Attorneys' Fees; Litigation Costs; and, Incentive Award	30 days from date of Preliminary Approval	May 10, 2018
Deadline to Opt Out/Object	90 days from date of Preliminary Approval	July 9, 2018
Motion for Final Approval	120 days from date of Preliminary Approval	August 8, 2018
Hearing on Final Approval; and, Fee Petition		September 25, 2018

**Table2** ([Return to related document text](#))

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