

1 Todd M. Friedman (SBN 216752)  
 2 Adrian R. Bacon (SBN 280332)  
 3 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**  
 4 21031 Ventura Blvd, #340  
 5 Woodland Hills, CA 91364  
 6 Telephone: (877) 619-8966  
 7 Facsimile: (866) 633-0028  
 8 tfriedman@toddfllaw.com  
 9 abacon@toddfllaw.com

*Attorneys for Plaintiff and all others similarly situated*

8 John P. Kristensen (SBN 224132)  
 9 **KRISTENSEN, LLP**  
 10 12450 Beatrice Street, Suite 200  
 11 Los Angeles, California 90066  
 12 Telephone: 310-507-7924  
 13 Fax: 310-507-7906  
 14 john@kristensenlaw.com

14 **THE UNITED STATES DISTRICT COURT**  
 15 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

15 LISA KIM, individually on behalf of  
 16 herself and all others similarly  
 17 situated,

18 Plaintiff,

19 vs.

20 TINDER, INC., a Delaware  
 21 corporation; MATCH GROUP, LLC,  
 22 a Delaware limited liability company;  
 23 MATCH GROUP, INC., a Delaware  
 24 corporation; and DOES 1 through 10,  
 25 inclusive, and each of them,

26 Defendants.

Case No.: 2:18-cv-3093- JFW-AS

**PLAINTIFF LISA KIM’S  
 AMENDED NOTICE OF  
 MOTION & MOTION FOR  
 PRELIMINARY APPROVAL OF  
 CLASS SETTLEMENT AND  
 CERTIFICATION OF  
 SETTLEMENT CLASS**

Date: November 1, 2021

Time: 1:30 p.m.

Courtroom: 7A

Hon. John F. Walter

1 **TO THIS HONORABLE COURT AND ALL PARTIES AND THEIR**  
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on November 1, 2021, at 1:30 p.m., in  
4 Department 7A of the United States District Court for the Central District of  
5 California, located at 350 West First Street, Los Angeles, California 90012,  
6 plaintiff Lisa Kim (“Plaintiff”), for herself and others similarly situated, will move  
7 for an order granting preliminary approval of the class action settlement and  
8 certification of the settlement class as detailed in Plaintiff’s memorandum of points  
9 and authorities.

10 This Motion is based upon this Notice, the accompanying Memorandum of  
11 Points and Authorities, the declaration and exhibits thereto, the Complaint, all  
12 other pleadings and papers on file in this action, and upon such other evidence and  
13 arguments as may be presented at the hearing on this matter.

14  
15 Dated: October 4, 2021

Respectfully submitted,

16 By:

/s/ Todd M. Friedman

18 Todd M. Friedman (SBN 216752)  
19 Adrian R. Bacon (SBN 280332)  
20 **LAW OFFICES OF TODD M. FRIEDMAN,**  
21 **P.C.**

22 John P. Kristensen (SBN 224132)  
23 **KRISTENSEN, LLP**

24 *Attorneys for Plaintiff and all other*  
25 *similarly situated.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7-3**

Plaintiff’s counsel certifies that prior to filing the instant motion, the parties, through counsel, met and conferred pertaining to the subject matter of the instant motion. Plaintiff filed a joint notice of compliance. See Dkt. No. 117. Defendants do not oppose this motion.

Dated: October 4, 2021

Respectfully submitted,

By: /s/ Todd M. Friedman

Todd M. Friedman (SBN 216752)  
Adrian R. Bacon (SBN 280332)  
**LAW OFFICES OF TODD M. FRIEDMAN,  
P.C.**

John P. Kristensen (SBN 224132)  
**KRISTENSEN, LLP**

*Attorneys for Plaintiff and all others  
situated.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF CONTENTS

I. INTRODUCTION ..... 1

II. STATEMENT OF FACTS..... 4

    A. Factual Background ..... 4

    B. Proceedings to Date ..... 5

III. THE SETTLEMENT ..... 7

    A. The Settlement Class..... 7

    B. Settlement Benefits.....7

    C. Scope of Release..... 9

    D. Opportunity to Opt Out and Object.....9

    E. Class Representatives’ Application for Incentive Awards..... 10

    F. Class Counsel’s Application for Fees, Costs, and Expenses..... 10

    G. The Modifications To Prior Settlement Presented in the Proposed Settlement Address The Ninth Circuit Concerns.....11

IV. ARGUMENT ..... 11

    A. Standard for Preliminary Approval of Class Action Settlement. .... 11

        1. Liability is Highly Contested and Both Sides Face Significant Challenges in Litigating this Case. .... 14

        2. Defendants' Agreement to Provide a Universal Participation Benefit, Along with Additional Cash/Cash Equivalent Payments to Class Members and Injunctive Relief, Provides a Fair and Substantial Benefit to the Class.....15

        3. The Settlement Was Reached As the Result of Arms-Length Negotiation, Without Collusion, With the Assistance of the Mediator. .... 17

        4. Experienced Counsel Have Determined That the Settlement Is Appropriate and Fair to the Class..... 17

    B. The Court Should Preliminarily Certify the Class for Purposes of Settlement. .... 18

        1. The Proposed Class Is Numerous..... 18

        2. The Commonality Requirement Is Satisfied, Because Common Questions of Law and Fact Exist..... 18

        3. The Typicality Requirement Is Met. .... 19

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4.	The Adequacy Requirement Is Satisfied.....	19
5.	Common Questions Predominate, Sufficient to Certify a Class for Settlement Purposes Only.....	20
6.	Class Treatment for Settlement Purposes is Superior to Individual Resolutions.....	21
C.	The Proposed Method of Class Notice Is Appropriate.....	22
D.	The Court Should Provisionally Appoint the Class Representative and Appoint Class Counsel.....	24
E.	The Court Should Appoint Epiq as the Settlement Administrator.....	25
F.	A Final Approval Hearing Should Be Scheduled.....	25
V.	CONCLUSION.....	25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF AUTHORITIES

**Cases**

*Amchem Prods. Inc. v. Woodward*, 521 U.S. 591, 620 (1997) .....21

*Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979) ..... 13

*Briggs v. United States*, Case No. C 07-05760 WHA, 2010 WL 1759457 (N.D. Cal. Apr. 30, 2010)..... 15

*Carter v. City of Los Angeles*, 224 Cal.App.4th 808 (2014) ..... 17

*Cf. Torrasi v. Tucson Electric Power Co.*, 8 F.3d 1370, 1374-75 (9th Cir. 1993)23

*Culinary/Bartenders Trust Fund*, 244 F.3d at 1163.....20,21

*Cullinane v. Uber Technology, Inc.* 893 F.3d 53 (1st Cir. 2018).....6

*Dennis v. Kellogg Co.*, 697 F.3d 858, 862-63 (9th Cir. 2012) ..... 16

*Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010) ..... 16

*Elkins v. Equitable Life Ins. of Iowa*, No. Civ A96-296-Civ-T-17B, 1998 WL 133741, at \*20 (M.D. Fla. Jan. 27, 1998) .....21

*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).12, 13, 18, 19, 22

*Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) ..... 18

*Hopson v. Hanesbrands Inc.*, Case No. CV-08-0844 EDL, 2009 WL 928133, at \*11 (N.D. Cal. Apr. 3, 2009)..... 15

*In re EasySaver Rewards Litig.*, 921 F. Supp. 2d 1040, 1049 (S.D. Cal. 2013)..16

*In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (E.D. Pa. 2000) ..... 16

*In re Mego Fin’l Corp. Sec. Litig.*, 213 F. 3d 454, 459 (9th Cir. 2000)..... 17

*In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. Jan. 9, 2008) ..... 16

*In re Prudential Sec. Inc. Ltd. Partnerships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995)..... 12

*In re Wireless Facilities, Inc. Sec. Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal. 2008).....17, 18, 20

*Kirkorian v. Borelli*, 695 F.Supp. 446 (N.D. Cal.1988) ..... 13

*Lane v. Facebook, Inc.*, 709 F.3d 791, 793 (9th Cir. 2013) ..... 16

*Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).....24

1 *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) ..... 14

2 *Lo v. Oxnard European Motors, LLC*, 11CV1009 JLS MDD, 2012 WL 1932283,  
at \*1 (S.D. Cal. May 29, 2012) ..... 23

3 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*,  
4 244 F.3d 1152, 1162 (9th Cir. 2001)..... 20

5 *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) ..... 23

6 *McGill v. Citibank, N.A.*, 2 Cal.5th 945 (2017)..... 6

7 *Molski v. Gleich*, 318 F.3d 937, 954-55 (9th Cir. 2003) ..... 16

8 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ..... 22

9 *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011) ..... 16

10 *National Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal.  
2004)..... 16

11 *O’Connor v. Uber Technologies, Inc.*, 904 F.3d 1087 (9<sup>th</sup> Cir. 2018) ..... 14

12 *Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615 (9th Cir. 1982). 12, 13

13 *Philadelphia Hous. Auth. v. Am. Radiator & Standard Sanitary Corp.*, 323 F.  
14 Supp. 364, 372 (E.D. Pa. 1970)..... 13

15 *Schaffer v. Litton Loan Servicing, LP*, CV 05-07673 MMM JCX, 2012 WL  
10274679, at \*8 (C.D. Cal. Nov. 13, 2012) ..... 23

16 *Shames v. Hertz Corp.*, Case No. 07-CV-2174-MMA WMC, 2012 WL 5392159  
17 at \*13 (S.D. Cal. Nov. 5, 2012)..... 15

18 *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994) ..... 22

19 *Staton v. Boeing Co.*, 327 F.3d 938, 958 (9th Cir. 2003)..... 20

20 *Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 697 (M.D. Fla. 2005).. 22

21 *Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir.  
1989)..... 12

22 *Valentino v. Carter-Wallace*, 97 F.3d 1227, 1235-36 (9th Cir. 1996) ..... 21

23 *Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987) ..... 19

24 *West Va. v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1086 (2d Cir. 1971) ..... 13

25 *Zincser v. Accufix Research Institute, Inc.*, 253 F.3d 1188, 1189 (9th Cir. 2001)  
26 (citation omitted), *amended*, 273 F. 3d 1266 (9th Cir. 2001) ..... 20

27 **Statutes**

28 4 Herbert B. Newberg, *Newberg on Class Actions* § 11.25 *et seq.*, and § 13.64  
(4th ed. 2002 and Supp. 2004) (“*Newberg*”)..... 12

1 *Cal. Bus. & Prof. Code* §§ 17200, et seq. ....5

2 *Cal. Civ. Code* §§ 51, et seq.....5,16,17,19,20

3 *Manual for Complex Litigation* (Fourth) (Fed. Judicial Center 2004) (“*Manual*”)  
 § 21.63, et seq.,.....11, 12, 13

4 *Moore’s Federal Practice – Civil* § 23.165[3] (3d ed.) ..... 13

5 **Rules**

6 Fed. R. Civ. Proc. 23.....11, 18

7 Fed R. Civ. Proc. 23(a)(1).....18

8 Fed. R. Civ. Proc. 23 (a)(4).....19,20

9 Fed. R. Civ. Proc. 23(b)(3).....18,20,21,22

10 Fed. R. Civ. Proc. 23(c) .....20, 21

11 Fed. R. Civ. Proc, 23 (c)(2)(B).....22

12 Fed. R. Civ. Proc. 23(e)(1)(B).....22

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**MEMORANDUM OF POINTS & AUTHORITIES**

**I. INTRODUCTION**

Plaintiff Lisa Kim (“Plaintiff”), individually and on behalf of the “Settlement Class” (as defined below), submits this amended motion for preliminary approval of a proposed settlement (the “Settlement”) of this action (the “Litigation”) and of certification of the proposed Settlement Class. Defendants Tinder, Inc.,<sup>1</sup> Match Group, LLC, and Match Group, Inc. (“Defendants”) do not oppose this motion. (Plaintiff and Defendants are collectively referred to as the “Parties”). The terms of the Settlement are set forth in the Amended Class Action Settlement Agreement (hereinafter the “Agreement”).<sup>2</sup> (*See* Declaration of Todd M. Friedman (“*Friedman Decl.*”), Ex A.)

The Settlement resulted from the Parties’ participation in a Second all-day mediation session before the Honorable Louis M. Meisinger (Ret.) of Signature Resolution and subsequent settlement discussions, after the Ninth Circuit rejected the parties’ previous class action settlement approved by this Court. *See* Dkt. No. 109. The Settlement provides for a substantial financial benefit to each Settlement Class Member (“Member”). The Settlement Class consists of:

*Every person in California who subscribed to Tinder Plus or Tinder Gold during the Class Period and at the time of the subscription was at least 29 years old and was charged a higher rate than younger subscribers, except those who choose to opt out of the Settlement Class.*<sup>3</sup> (Agreement § 2.21.)

---

<sup>1</sup> Pursuant to a merger in 2017, Tinder, Inc.’s assets and liabilities were acquired by Match Group, LLC.

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

<sup>3</sup> The Class Period is from March 2, 2015 through March 1, 2019. (Agreement § 2.6.)

1           The compromise Settlement reached with the guidance of Judge Meisinger  
2 will create a Settlement Fund to be established by Defendants in the amount of  
3 \$5,200,000. (Agreement § 3.3.) In addition to the common fund monetary relief,  
4 Tinder will deposit (i) 50 free Super Likes (worth \$79.50, with each Super Like  
5 valued at its selling price of \$1.59), and (ii) one Boost (worth \$7, valued at its  
6 selling price of \$7) into the Tinder account of every Settlement Class Member who  
7 at that time has a Tinder account, so long as the email address associated with the  
8 account is the same as when the Member purchased Tinder Plus or Tinder Gold  
9 during the Class Period.<sup>4</sup> Defendants shall advise Settlement Class Members via  
10 the Class Notice that they must have an account in place in order to receive the  
11 deposit of Super Likes and Boost. (Agreement § 3.2.)

12           The Settlement requires Class Notice via email to each Member, explaining  
13 key terms of the Settlement, including benefits under the Settlement and how to  
14 opt out of or object to the Settlement. (*See* Agreement Ex 2.)

15           The proposed Claim Form requires each Member to provide contact and  
16 Tinder account information, an authorization for Defendants to obtain from Apple  
17 or Google, as applicable, verification that the Member had purchased a  
18 subscription to Tinder Plus or Tinder Gold and had not received a refund or  
19 chargeback, and confirmation under penalty of perjury that the Member resided in  
20 California when he or she purchased the subscription. (Agreement § 5.1 and Exs.  
21 2 and 3.)

22           In February 2019, as envisioned under the Former Agreement, for new  
23 subscriptions to Tinder Plus or Tinder Gold purchased in California, Tinder  
24 stopped offering a discounted price to subscribers under the age of 29. While the  
25 Former Agreement is no longer operable, Tinder agrees in the new Agreement to  
26 continue not offering a discounted price to users under the age of 29 who purchase

27 \_\_\_\_\_  
28 <sup>4</sup> Settlement Class members who no longer have active accounts will be able to  
activate their accounts and these benefits will be made available to them as well.

1 a new subscription to Tinder Plus or Tinder Gold in California, including through  
2 and after the Benefit Deadline, subject to the following: (a) Tinder reserves the  
3 right to offer a youth discount to subscribers age 21 or younger; and (b) in the event  
4 of (i) the enactment of legislation in California subsequent to the date of this  
5 Agreement that specifically addresses age-based pricing and, reasonably  
6 interpreted, would permit age-based pricing by Tinder using other age cut-offs, (ii)  
7 the issuance subsequent to the date of this Agreement of an appellate decision by  
8 any court in California to the same effect, or (iii) the enactment of legislation in  
9 California subsequent to the date of this Agreement expressing a public policy in  
10 favor of or benefiting a particular age group, Tinder may implement age-based  
11 pricing in California consistent with such legislation or case law. (Agreement §  
12 3.4.)

13 Furthermore, Defendants have agreed to pay the costs of Notice and  
14 Settlement administration out of the Settlement Fund, and, subject to Court  
15 approval, a proposed award of attorneys' fees. Class Counsel will be requesting  
16 an award of \$1,200,000 in fees plus a reasonable cost reimbursement, out of the  
17 \$5,200,000 Settlement Fund. (Agreement §§ 5.5, 7.1-7.4.) However, the  
18 Settlement agreement contains no clear sailing provision and is subject to Court  
19 approval and the final approval stage. Plaintiff's counsel will NOT be asking for  
20 any additional fees beyond those which were requested under the prior Settlement,  
21 despite additional benefits having been negotiated and additional work having been  
22 performed. (Agreement at §7.1.)

23 While Plaintiff is confident of a favorable determination on the merits, she  
24 has determined that the Settlement provides significant benefits to the Class and is  
25 in the best interests of the Class. Plaintiff also believes that the Settlement is  
26 appropriate because Plaintiff recognizes the expense and amount of time required  
27 to continue to pursue the Litigation, as well as the uncertainty, risk, and difficulties  
28 of proof inherent in prosecuting such claims. Similarly, as evidenced by the

1 Agreement, Defendants believe that they have substantial and meritorious defenses  
2 to Plaintiff’s claims, but have determined that it is desirable to settle the Litigation  
3 on the terms set forth in the Agreement.

4 Plaintiff believes that the Settlement satisfies all of the criteria for  
5 preliminary approval. Accordingly, Plaintiff moves this Court for an order  
6 preliminarily approving the Settlement, provisionally certifying the Settlement  
7 Class pursuant to Federal Rule of Civil Procedure 23(b)(3) (“Rule 23(b)(3)”) for  
8 settlement purposes, directing dissemination of Class Notice, and scheduling a  
9 Final Approval Hearing.

10 **II. STATEMENT OF FACTS**

11 **A. Factual Background**

12 Tinder is a smartphone-based dating application that is used by consumers  
13 throughout the world, including California. The core functionality of the app  
14 enables users to view profiles of other users in the same geographic locale and to  
15 either indicate an interest in (i.e., to “like”) another user or, alternatively, indicate  
16 a lack of interest. If two users indicate an interest in each other’s profile, they can  
17 then communicate with each other through the app. The app also allows a user to  
18 indicate a heightened degree of interest in another user through a feature known as  
19 a “Super Like.” The app offers another premium feature called “Boost,” which  
20 allows a user to be one of the top profiles in their area for 30 minutes, increasing  
21 their chances for a match. Tinder has represented that approximately 35% of Class  
22 Members still have an active Tinder account, which Class Counsel are verifying in  
23 confirmatory discovery.

24 The app may be downloaded and used for free, but certain additional or  
25 premium features can only be accessed by purchasing a subscription to Tinder Plus  
26 or Tinder Gold. Such features include, among other things, unlimited likes  
27 (whereas the free version has a daily limit), no paid advertisements, the ability to  
28 undo dislikes, the ability to view profiles in other locales, and to ability to exert

1 more control over other variables involved in using the app. User of the app may  
2 purchase Super Likes for a typical price of \$1.59 cents each, and may purchase a  
3 Boost for \$7 each.

4 Plaintiff, a female user over the age of 29, alleges that when she and Class  
5 Members purchased Tinder premium services (Plus or Gold), Defendants  
6 discriminated against such consumers based on age, by charging more money for  
7 the same service for consumers age 29 and older. Plaintiff claims that Defendants'  
8 widespread and uniform conduct is in direct violation of the Unruh Civil Rights  
9 Act, *Cal. Civ. Code* §§ 51, et seq. ("Unruh Act"), which generally outlaws age  
10 discrimination by businesses operating in California. In addition, Plaintiff alleges  
11 that Defendants' pricing scheme violates the Unfair Competition Law, *Cal. Bus.*  
12 *& Prof. Code* §§ 17200, et seq. ("UCL"). Plaintiff sought three categories of relief:  
13 1) monetary relief under the Unruh Act in the form of statutory penalties; 2)  
14 restitutionary relief, i.e. a refund of the unlawful premiums charged to users age 29  
15 or older (\$10 per month per user); and 3) public injunctive relief putting a halt to  
16 Defendants' unlawful age-based price discrimination scheme. Defendants  
17 vigorously dispute Plaintiff's claims, dispute that Plaintiff will prevail on her  
18 current appeal of the Court's Order granting Defendants' motion to compel  
19 arbitration, and deny all charges of wrongdoing or liability asserted against them  
20 in the Litigation.

21 **B. Proceedings to Date**

22 On April 12, 2018, Plaintiff filed her class action lawsuit against Defendants,  
23 alleging that Defendants violated the Unruh Act. Defendants responded on June  
24 11, 2018 by filing filed a Motion to Compel Arbitration or Stay Under the  
25 *Colorado River* Abstention Doctrine. On June 22, 2018, Plaintiff filed her First  
26 Amended Complaint, adding the UCL cause of action for public injunctive relief.  
27 In their Motion, Defendants claimed that Plaintiff had entered into an arbitration  
28 agreement based on her alleged assent to the arbitration provision in Tinder app's

1 Term of Use through the use of “sign-up wrap” consent in order to access the app.  
 2 Defendants’ Motion to Compel Arbitration was granted on July 5, 2018, and the  
 3 Court compelled Plaintiff’s claims to arbitration.

4 On July 16, 2018, Plaintiff filed her appeal of the Court’s decision on the  
 5 Motion, based on her position that the Court did not appropriately consider  
 6 California Supreme Court precedent interpreting substantive California law in  
 7 *McGill v. Citibank, N.A.*, 2 Cal.5th 945 (2017), which states that claims for public  
 8 injunctive relief, such as the one brought in Plaintiff’s case under the UCL, cannot  
 9 be compelled to arbitration. In addition, Plaintiff would argue that the Court  
 10 disregarded recent relevant appellate case law, *Cullinane v. Uber Technology, Inc.*  
 11 893 F.3d 53 (1st Cir. 2018), which bore directly on whether there was appropriate  
 12 assent by Plaintiff and the Class Members to the Tinder app’s Term of Use.<sup>5</sup>

13 A mediation was scheduled for November 29, 2018, and the Parties  
 14 stipulated to continue the initial briefing deadlines in the appeal. The Parties  
 15 attended a mediation with Judge Meisinger on November 29, 2018. The Parties  
 16 did not resolve the case at the mediation but engaged in subsequent discussions  
 17 with Judge Meisinger. With his guidance, this Settlement was reached on  
 18 December 1, 2018. (*See Friedman Decl.*, ¶¶ 12-14.) On March 1, 2019, this  
 19 Honorable Court granted Plaintiff’s Motion for Preliminary Approval of Class  
 20 Settlement (Dkt. No. 60), and subsequently granted Final Approval on June 19,  
 21 2019, over an objection made by Rich Allison and Steve Frye (*see* Dkt. No.90),  
 22 who subsequently appealed the decision.

23 On August 17, 2021, in a narrow 2-1 Decision with a strong and lengthy  
 24 Dissent, the 9<sup>th</sup> Circuit Court of Appeals reversed the order granting Final Approval

---

25 <sup>5</sup> The *Cullinane* opinion was rendered the same day Plaintiff’s opposition to  
 26 Defendants’ Motion was due, leaving Plaintiff no time to incorporate arguments  
 27 and facts related to the on-point case into her opposition. The Court did not consider  
 28 Plaintiff’s Notice of the new case, and denied Plaintiff’s Ex Parte Application to  
 provide supplemental briefing as a result of the new opinion.

1 and For Attorneys’ Fees, primarily taking issue with the clear sailing provision on  
2 attorneys’ fees, and the valuation method used to assess the fairness of the  
3 Settlement as a whole. (*See* Dkt. No. 109.) Following remand to this Court, the  
4 Parties attended another all-day mediation with Judge Meisinger on September 3,  
5 2021, in order to improve upon the settlement. Although the case did not settle on  
6 that day, after subsequent discussions, with the guidance of the mediator, the  
7 Parties agreed to resolve this matter further and entered into a second settlement  
8 agreement. (*Friedman Decl.*, Ex A.)

9 As set forth below, Plaintiff respectfully requests that the Court approve the  
10 Settlement.

11 **III. THE SETTLEMENT**

12 **A. The Settlement Class.**

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

14 *“Every California subscriber to Tinder Plus or Tinder Gold*  
15 *during the Class Period who at the time of subscribing was at*  
16 *least 29 years old and was charged a higher rate than*  
17 *younger subscribers, except those who choose to opt out of*  
18 *the Settlement Class.”* (Agreement § 2.21.)

19 The Class Period is from March 2, 2015 through March 1, 2019. (*Id.* § 2.6.)  
20 Defendants maintain email addresses for the vast majority of users of the app, and  
21 based on data provided by Defendants and their counsel, the Class contains  
22 approximately 240,000 Members. (*See Friedman Decl.*, ¶¶ 25.)

23 **B. Settlement Benefits.**

24 Under the Settlement, Defendants agree to create a Settlement Fund in the  
25 amount of \$5,200,000. (Agreement § 3.3.) In addition to the common fund  
26 monetary relief, Defendant will deposit (i) 50 free Super Likes (worth \$79.50, with  
27 each Super Like valued at its selling price of \$1.59), and (ii) one Boost (worth \$7,  
28 valued at its selling price of \$7) into the Tinder account of every Settlement Class

1 Member who at that time has a Tinder account, so long as the email address  
2 associated with the account is the same as when the Member purchased Tinder Plus  
3 or Tinder Gold during the Class Period. Defendants have represented that 35% of  
4 Class Members still have a Tinder account, and Class Counsel intends to serve an  
5 interrogatory on Defendants to confirm. Class Members without active accounts  
6 will still be eligible for the automatic benefits, upon reactivation of their account.  
7 The proposed Class Notice advises Settlement Class Members that they must have  
8 an account in place in order to receive the deposit of Super Likes and Boost.  
9 (Agreement § 3.2.)

10 Pursuant to the Agreement, Class Notice will be sent via email to the  
11 approximately 240,000 persons in the Settlement Class. (Agreement § 1.4, 4.3-4.4;  
12 Ex A-2.)

13 The Class Notice will explain that every Settlement Class Member, in  
14 addition to receiving a deposit of Super Likes and Boost, is eligible to apply for a  
15 monetary payment by submitting a Claim Form. The payment will be in an amount  
16 equivalent to a pro rata share of the Settlement Fund, net of costs of administration,  
17 attorneys' fees, costs, and incentive award. The Agreement provisionally sets the  
18 payment at \$50 per valid claim, but that amount could increase pro rata, without  
19 limit, or decrease pro rata, to a floor of \$30, depending on the number of Claim  
20 Forms submitted and the amount of net funds in the Settlement Fund. Defendants  
21 have agreed to supplement the Settlement Fund if necessary to satisfy the \$30  
22 floor.<sup>6</sup> Settlement payments will made in the form of a check that will be mailed  
23 by the Settlement Administrator. (Agreement § 3.3.)

24 Moreover, out of the common fund, Defendants have agreed to retain a

25 \_\_\_\_\_  
26 <sup>6</sup> Class Counsel anticipate that the claims' participation rate would have to exceed  
27 50%, which is uncharacteristically high for settlements of this nature, in order for  
28 the floor to be triggered. However, it was important to Class Counsel to guarantee  
that Class Members received equal if not greater financial incentive to participate  
in this settlement than in the prior settlement that was subject to the appeal.



1 Settlement Administrator and to pay for any and all costs associated with  
2 administering the Settlement, including Class and CAFA Notice, handling of  
3 claims and the distribution of monetary payments to Members who choose that  
4 option, and developing and maintaining the Settlement Website. (Agreement §§  
5 4.3-4.5, 5.4.)

6 CAFA notice will provided within 10 days after the filing of this motion.  
7 (Agreement § 4.1.) The Settlement Administrator, by reason of the Former  
8 Agreement and settlement, already has information necessary to provide e-mail  
9 notice to the Class, which Defendants will update as appropriate.<sup>7</sup> (*Id.* §§ 4.3, 4.4).  
10 Similarly, there is already a Settlement Website by reason of the previous  
11 settlement, which the Settlement Administrator will update and ensure that it  
12 contains relevant documents pertaining to the Settlement including the Settlement  
13 Agreement, the Claim Form, the Class Notice, and the Preliminary Approval  
14 Order. (Agreement § 4.5.)

15 **C. Scope of Release.**

16 The Agreement provides that Members who do not request exclusion from  
17 the Settlement will release any and all claims, known or unknown, against the  
18 Releasees based in any manner on the allegation that subscribers to Tinder Plus or  
19 Tinder Gold were charged a higher price depending on their age. (Agreement §  
20 8.1.)

21 **D. Opportunity to Opt Out and Object.**

22 Under the terms of the proposed Settlement, Members will have the right to  
23 opt out of the Settlement or object to its terms. A Member who wishes to opt out  
24 of the Settlement must, no later than 30 days after the Class Notice Date, mail an  
25

---

26 <sup>7</sup> Email is the best notice practicable because Defendants generally maintain email  
27 address data for Class Members but not physical addresses or other information  
28 (such as landline phone numbers) that would permit Class Counsel to efficiently  
conduct a reverse lookup and send mail notice.

1 opt-out request to counsel for the Parties. (Agreement § 4.8.) A Member who does  
2 not opt out and who wishes to object to the Settlement may do so by filing with the  
3 Court and mailing to counsel for the Parties, no later than 30 days after the Class  
4 Notice Date, a notice of objection and/or request to be heard at the Final Approval  
5 Hearing. (Agreement § 4.7.) Any such notice must include the case name and  
6 number, the Member’s name and contact information and the email address or  
7 phone number associated with the Member’s Tinder account, a statement of all  
8 grounds and legal support for the objection and copies of any supporting  
9 documentation, a list of other cases in which the Member has objected to a class  
10 action settlement, and an affirmation under penalty of perjury that the Member had  
11 purchased a subscription to Tinder Plus or Tinder Gold during the Class Period at  
12 a time when the Member was at least 29 years old and resided in California. (*Id.*)

13 **E. Class Representative’s Application for Incentive Awards.**

14 Plaintiff may request an incentive award, which Defendants may oppose.  
15 (Agreement § 7.2.) If awarded, the payment will be made out of the Settlement  
16 Fund. (*Id.* § 2.22.)

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

18 Class Counsel may request an award of attorneys’ fees plus reasonable  
19 costs, which Defendants may oppose—there is no so-called “clear-sailing”  
20 provision. (Agreement § 7.1.) If awarded, the payment will be made out of the  
21 Settlement Fund. (*Id.* § 2.22.)

22 Class Counsel intends to request fees in the amount of \$1,200,000, under the  
23 lodestar and percentage of the fund methods. Class Counsel will not be asking for  
24 any additional fees for additional work performed on this Settlement, despite the  
25 increased value of the Settlement and additional hours spend since the Previous  
26 Order Granting Final Approval and Motion for Fees and Costs.

1                   **G. The Modifications To Prior Settlement Presented in the Proposed**  
2                   **Settlement Address The Ninth Circuit’s Concerns**

3                   The Settlement reached by the Parties with the assistance of Judge Meisinger  
4 addresses the concerns raised by the Ninth Circuit regarding the terms of the prior  
5 Settlement approved by the Court. The Ninth Circuit was concerned with the  
6 appearance of possible collusion due to the presence of a clear sailing provision on  
7 the separately-negotiated attorneys’ fees provision. That provision has been  
8 removed entirely. The Ninth Circuit was also concerned with the valuation of the  
9 settlement as presented by the Parties. That too has been modified, with the  
10 injunctive relief claims remaining the same (but not subject to valuation), the  
11 automatic benefits having been improved (with an additional Boost feature being  
12 added, and with existing benefits being of a now-higher expense due to the passage  
13 of time), and with the monetary component being revised to a common fund, with  
14 a floor of benefits to claimants, and a pro rata share of net benefits to valid  
15 claimants. The valuation of these claims are described herein. It is important to  
16 note that none of the concerns of the Ninth Circuit raised by its Order are present  
17 in this proposed Settlement.

18                   **IV. ARGUMENT**

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

20                   A class action may not be dismissed, compromised or settled without the  
21 approval of the court. Fed. R. Civ. Proc. 23(e). Judicial proceedings under Rule 23  
22 have led to a defined procedure and specific criteria for settlement approval in class  
23 action settlements, described in the *Manual for Complex Litigation* (Fourth) (Fed.  
24 Judicial Center 2004) (“*Manual*”) § 21.63, *et seq.*, including preliminary approval,  
25 dissemination of notice to class members, and a fairness hearing. *Manual*,  
26 §§ 21.632, 21.633, 21.634. The purpose of the Court’s preliminary evaluation of  
27 the settlement is to determine whether it is within the “range of reasonableness,”  
28 and thus whether notice to the class of the terms and conditions of the settlement,

1 and the scheduling of a formal fairness hearing, are worthwhile. *See* 4 Herbert B.  
2 Newberg, *Newberg on Class Actions* § 11.25 *et seq.*, and § 13.64 (4th ed. 2002 and  
3 Supp. 2004) (“*Newberg*”). The Court is not required to undertake an in-depth  
4 consideration of the relevant factors for final approval. Instead, the “judge must  
5 make a preliminary determination on the fairness, reasonableness, and adequacy  
6 of the settlement terms and must direct the preparation of notice of the certification,  
7 proposed settlement, and date of the final fairness hearing.” *Manual*, § 21.632 (4th  
8 ed. 2004).

9 As a matter of public policy, settlement is a strongly favored method for  
10 resolving disputes. *See Utility Reform Project v. Bonneville Power Admin.*, 869  
11 F.2d 437, 443 (9th Cir. 1989). This is especially true in class actions such as this.  
12 *See Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615 (9th Cir. 1982). As  
13 a result, courts should exercise their discretion to approve settlements “in  
14 recognition of the policy encouraging settlement of disputed claims.” *In re*  
15 *Prudential Sec. Inc. Ltd. Partnerships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995).  
16 To make the preliminary fairness determination, courts may consider several  
17 relevant factors, including “the strength of the plaintiff’s case; the risk, expense,  
18 complexity, and likely duration of further litigation; the risk of maintaining class  
19 action status through trial; the amount offered in settlement; the extent of discovery  
20 completed and the stage of the proceedings; [and] the experience and views of  
21 counsel . . . .” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)  
22 (“*Hanlon*”). Furthermore, courts must give “proper deference to the private  
23 consensual decision of the parties,” since “the court’s intrusion upon what is  
24 otherwise a private consensual agreement negotiated between the parties to a  
25 lawsuit must be limited to the extent necessary to reach a reasoned judgment that  
26 the agreement is not the product of fraud or overreaching by, or collusion between,  
27 the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable  
28 and adequate to all concerned.” *Id.* at 1027.

1 Preliminary approval does not require the Court to make a final  
2 determination that the settlement is fair, reasonable, and adequate. Rather, that  
3 decision is made only at the final approval stage, after notice of the settlement has  
4 been given to the class members and they have had an opportunity to voice their  
5 views of the settlement or to exclude themselves from the settlement. *See* 5 James  
6 Wm. Moore, *Moore's Federal Practice – Civil* § 23.165[3] (3d ed.) Thus, in  
7 considering a potential settlement, the Court need not reach any ultimate  
8 conclusions on the issues of fact and law which underlie the merits of the dispute,  
9 *West Va. v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1086 (2d Cir. 1971), and need not  
10 engage in a trial on the merits, *Officers for Justice v. Civil Service Comm'n*, 688  
11 F.2d at 625. Preliminary approval is merely the prerequisite to giving notice so  
12 that “the proposed settlement . . . may be submitted to members of the prospective  
13 class for their acceptance or rejection.” *Philadelphia Hous. Auth. v. Am. Radiator*  
14 *& Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970).

15 Preliminary approval of the settlement should be granted if, as here, there  
16 are no “reservations about the settlement, such as unduly preferential treatment of  
17 class representatives or segments of the class, inadequate compensation or harms  
18 to the classes, the need for subclasses, or excessive compensation for attorneys.”  
19 *Manual for Complex Litigation* § 21.632, at 321 (4th ed. 2004). Furthermore, the  
20 opinion of experienced counsel supporting the settlement is entitled to considerable  
21 weight. *See, e.g., Kirkorian v. Borelli*, 695 F.Supp. 446 (N.D. Cal.1988) (opinion  
22 of experienced counsel carries significant weight in the court’s determination of  
23 the reasonableness of the settlement); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610,  
24 622 (N.D. Cal. 1979). (Recommendations of plaintiffs’ counsel should be given a  
25 presumption of reasonableness).

26 The decision to approve or reject a proposed settlement “is committed to the  
27 sound discretion of the trial judge[.]” *See Hanlon*, 150 F.3d at 1026. This  
28 discretion is to be exercised “in light of the strong judicial policy that favors

1 settlements, particularly where complex class action litigation is concerned,”  
2 which minimizes substantial litigation expenses for both sides and conserves  
3 judicial resources. *See Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th  
4 Cir. 1998) (quotations omitted). Based on these standards, Plaintiff respectfully  
5 submits that, for the reasons detailed below, the Court should preliminarily approve  
6 the proposed Settlement as fair, reasonable and adequate.

7  
8 **1. Liability is Highly Contested and Both Sides Face  
Significant Challenges in Litigating this Case.**

9 Defendants have vigorously contested the claims asserted by Plaintiff in this  
10 Litigation. While both sides strongly believe in the merits of their respective cases,  
11 there are risks to both sides in continuing the Litigation. (*See Friedman Decl*, ¶¶  
12 37-41.) If the Litigation were to continue, the primary initial challenge for Plaintiff  
13 would be overcoming the pending appeal. Defendants represented that over 95%  
14 of the Class Members entered into arbitration agreements such as the one entered  
15 into by Plaintiff. (*Id.* at ¶ 25.) The Ninth Circuit has recently held that such  
16 agreements can be a bar to class certification under the right circumstances. *See*  
17 *O’Connor v. Uber Technologies, Inc.*, 904 F.3d 1087 (9<sup>th</sup> Cir. 2018).<sup>8</sup> Even if  
18 Plaintiff won her appeal, Defendants would likely challenge any class certification  
19 motion made by Plaintiff, thereby placing in doubt whether certification of a class  
20 could be obtained and/or maintained in the Litigation. Also, additional substantive  
21 challenges to the claims might be raised, including a challenge on summary  
22 judgment. In considering the Settlement, Plaintiff and Class Counsel carefully  
23 balanced the risks of continuing to engage in protracted and contentious litigation,  
24 against the benefits to the Class. As a result, Class Counsel supports the Settlement  
25 and seek its Preliminary Approval. (*See Friedman Decl*, ¶¶ 37-55.)

26  
27 <sup>8</sup> Notably, Class Counsel have a decorated history of successfully litigating class  
28 actions on appeal in federal court on motions to compel arbitration, and are  
eminently qualified to assess this risk.

1 Similarly, Defendants believe that they have strong and meritorious defenses  
2 not only in the Litigation as a whole, as well as on the appeal, but also as to class  
3 certification and the amount of damages sought. However, Defendants recognize  
4 that if a class were certified, there is some risk of a damages award substantially  
5 higher than the value of the Settlement. The negotiated Settlement reflects a  
6 compromise between avoiding that risk and the risk that the Class might not  
7 recover. Because of the costs, risks to both sides, and delays of continued  
8 litigation, the Settlement presents a fair and reasonable alternative to continuing to  
9 pursue the Litigation.

10 **2. Defendants' Agreement to Provide a Common Fund**  
11 **Settlement, along with Universal Participation Benefit, and**  
12 **Injunctive Relief, Provides a Fair and Substantial Benefit**  
13 **to the Class.**

14 As set forth above, Defendants have agreed to create a \$5,200,000, non-  
15 reversionary cash Settlement Fund, along with other substantial non-monetary and  
16 injunctive benefits to the Class Members after being sent email notice to the email  
17 address they used recently for their Tinder account.

18 As a result, it is anticipated that the vast majority of the Settlement will  
19 provide direct and meaningful benefits to the Settlement Class. *See Shames v.*  
20 *Hertz Corp.*, Case No. 07-CV-2174-MMA WMC, 2012 WL 5392159 at \*13 (S.D.  
21 Cal. Nov. 5, 2012) (settlement was fair where the parties “negotiated a settlement  
22 that provide[d] direct payment to class members”); *Hopson v. Hanesbrands Inc.*,  
23 Case No. CV-08-0844 EDL, 2009 WL 928133, at \*11 (N.D. Cal. Apr. 3, 2009)  
24 (“the benefits can be accurately traced because they are monetary payments  
25 directly to Class Members”); *Briggs v. United States*, Case No. C 07-05760 WHA,  
26 2010 WL 1759457 (N.D. Cal. Apr. 30, 2010) (settlement agreement was fair where  
27 it did not require class members to file claim forms).  
28

1           This Settlement intentionally avoids providing significant benefits to a *cy*  
2 *pres* recipient at the expense of the class. *See Dennis v. Kellogg Co.*, 697 F.3d 858,  
3 862-63 (9th Cir. 2012) (the amount of a *cy pres* award “must be examined with  
4 great care to eliminate the possibility that it serves only the ‘self-interests’ of the  
5 attorneys and the parties, and not the class”); *Lane v. Facebook, Inc.*, 709 F.3d 791,  
6 793 (9th Cir. 2013) (“We require district judges to be reasonably certain that class  
7 members will benefit before approving a *cy pres* settlement.”); *In re EasySaver*  
8 *Rewards Litig.*, 921 F. Supp. 2d 1040, 1049 (S.D. Cal. 2013).<sup>9</sup>

9           The settlement award that each Settlement Class Member will receive is fair,  
10 appropriate, and reasonable given the purposes of the Unruh Act and UCL and in  
11 light of the anticipated risk, expense, and uncertainty of continued litigation.  
12 Although the Unruh Act provides for statutory damages of \$4,000 per violation, it  
13 is well-settled that a proposed settlement may be acceptable even though it  
14 amounts to a percentage of the potential recovery that might be available to the  
15 class members at trial. *See e.g., National Rural Tele. Coop. v. DIRECTV, Inc.*, 221  
16 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may  
17 be acceptable even though it amounts to only a fraction of the potential recovery”);  
18 *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (E.D. Pa. 2000)  
19 (“the fact that a proposed settlement constitutes a relatively small percentage of the  
20 most optimistic estimate does not, in itself, weigh against the settlement; rather,  
21 the percentage should be considered in light of the strength of the claims”); *In re*  
22 *Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. Jan. 9, 2008) (court-

---

23  
24 <sup>9</sup> Courts favor direct payment to class members over *cy pres* distributions. *See*  
25 *Molski v. Gleich*, 318 F.3d 937, 954-55 (9th Cir. 2003) *overruled on other grounds*  
26 *by Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010) (*cy pres* provision  
27 is a disfavored substitute for distribution of benefits directly to class members);  
28 *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011) (“[T]he *cy pres*  
doctrine—unbridled by a driving nexus between the plaintiff class and the *cy pres*  
beneficiaries—poses many nascent dangers to the fairness of the distribution  
process.”).



1 approved settlement amount that was small fraction of the maximum potential  
2 recovery); *In re Mego Fin'l Corp. Sec. Litig.*, 213 F. 3d 454, 459 (9th Cir. 2000).  
3 California Appellate Courts have upheld the reasonableness of Unruh Act class  
4 action settlements which provided for no monetary relief, but rather only injunctive  
5 relief. *See Carter v. City of Los Angeles*, 224 Cal.App.4th 808 (2014) (injunction  
6 only class settlement under Unruh Act upheld as fair and reasonable, however  
7 overturning district court order based solely on the fact that non-opt out provision  
8 violated due process).

9 Thus, the Settlement provides substantial benefit to the Class Members, as  
10 they will receive meaningful monetary recovery with no burden and no expense.

11 **3. The Settlement Was Reached As the Result of Arms-Length**  
12 **Negotiation, Without Collusion, With the Assistance of the**  
13 **Mediator.**

14 The Settlement is the result of intensive arms'-length negotiation, including  
15 a second all-day mediation session before the Hon. Louis Meisinger. The Parties  
16 also engaged in subsequent negotiations through Judge Meisinger by email and  
17 phone. With the guidance of Judge Meisinger, and working independently of the  
18 Court, the Parties were able to reach a second proposed resolution of this case.  
19 Class Counsel are satisfied that the information provided about the number of Class  
20 Members is accurate. The time and effort spent examining and investigating the  
21 claims militate in favor of preliminary approval of the proposed Settlement, as the  
22 process strongly indicates that there was no collusion. *See In re Wireless Facilities,*  
23 *Inc. Sec. Litig. II*, 253 F.R.D. 607, 610 (S.D. Cal. 2008) ("Settlements that follow  
24 sufficient discovery and genuine arms-length negotiation are presumed fair.").

25 **4. Experienced Counsel Have Determined That the**  
26 **Settlement Is Appropriate and Fair to the Class.**

27 Plaintiff is represented by counsel experienced in complex class action  
28 litigation. Class Counsel have extensive experience in class actions, as well as

1 particular expertise in class actions relating to consumer protection. (*See Friedman*  
2 *Decl.*, ¶¶ 42-54.) Class Counsel believe that the Settlement is fair, reasonable and  
3 adequate. Their opinions should be given deference by The Court.

4 **B. The Court Should Preliminarily Certify the Class for Purposes**  
5 **of Settlement.**

6 Courts have long acknowledged the propriety of class certification for  
7 purposes of a class action settlement. *See In re Wireless Facilities*, 253 F.R.D. at  
8 610 (“Parties may settle a class action before class certification and stipulate that a  
9 defined class be conditionally certified for settlement purposes”). Certification of  
10 a class for settlement purposes requires a determination that certain requirements  
11 of Rule 23 are met. *Id.* As explained below, class certification for settlement  
12 purposes is appropriate here under Rule 23(a) and Rule 23(b)(3).

13 **1. The Proposed Class Is Numerous.**

14 Class certification under Rule 23(a)(1) is appropriate where a class contains  
15 so many members that joinder of all would be impracticable. “Impracticability  
16 does not mean ‘impossibility,’ but only the difficulty or inconvenience of joining  
17 all members of the class.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d  
18 909, 913-14 (9th Cir. 1964) (citation omitted). Here, the Settlement Class consists  
19 of 230,000 Class Members who subscribed to Tinder Plus or Tinder Gold when  
20 they were at least 29 years old and paid a higher price than subscribers under the  
21 age of 29. Thus, the proposed Class is sufficiently numerous for purposes of  
22 certifying a settlement class.

23 **2. The Commonality Requirement Is Satisfied, Because**  
24 **Common Questions of Law and Fact Exist.**

25 The commonality requirement is met if there are questions of law and fact  
26 common to the class. *Hanlon*, 150 F.3d at 1019 (“The existence of shared legal  
27 issues with divergent factual predicates is sufficient, as is a common core of salient  
28 facts coupled with disparate legal remedies within the class.”). Here, for purposes

1 of settlement, the proposed Members’ claims stem from the same factual  
2 circumstances, that Members age 29 or older who subscribed to Tinder Plus or  
3 Tinder Gold paid a higher price than those under the age of 29.

4 Plaintiff’s claims also present questions of law that are common to all  
5 members of the Class for settlement purposes, including: (1) whether Defendants  
6 violated the Unruh Act; (2) whether Defendants willfully or knowingly violated  
7 the UCL; and (3) whether the Member is subject to the arbitration agreement in the  
8 Tinder Terms of Use. The Members all seek the same remedy. Under these  
9 circumstances, the commonality requirement is satisfied for purposes of certifying  
10 a settlement class. *See Hanlon*, 150 F. 3d at 1019-20.

### 11 **3. The Typicality Requirement Is Met.**

12 The typicality requirement is met if the claims of the named representatives  
13 are typical of those of the class, though “they need not be substantially identical.”  
14 *Hanlon*, 150 F.3d at 1020. For purposes of settlement, Plaintiff’s claims are typical  
15 of the class because they arise from the same factual basis – that Members age 29  
16 or older who subscribed to Tinder Plus or Tinder Gold paid a higher price than  
17 those under the age of 29. *See Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D.  
18 Cal. 1987). The Class Representative claims that she was over the age of 29 when  
19 she subscribed to Tinder Plus in California, paying a higher price for the service  
20 than other Tinder subscribers under the age of 29. Accordingly, the Class  
21 Representative’s claims are typical of those of the Settlement Class. Thus, the  
22 typicality requirement is satisfied for purposes of certifying a settlement class.

### 23 **4. The Adequacy Requirement Is Satisfied.**

24 Rule 23(a)(4) is satisfied if “the representative parties will fairly and  
25 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The Court  
26 must measure the adequacy of representation by two standards: “(1) Do the  
27 representative plaintiffs and their counsel have any conflicts of interest with other  
28 class members, and (2) will the representative plaintiffs and their counsel prosecute

1 the action vigorously on behalf of the class?” *In re Wireless Facilities*, 253 F.R.D.  
2 at 611 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 958 (9th Cir. 2003)).

3 Plaintiff and Class Counsel have no conflicts of interest with other Class  
4 Members because, for purposes of the Settlement, Plaintiff’s claims are typical of  
5 those of other Settlement Class Members. In addition, Plaintiff and Class Counsel  
6 have been prosecuting this Litigation vigorously on behalf of the Class. Plaintiff  
7 and Class Members share the common goal of protecting and improving consumer  
8 and privacy rights throughout California, and there is no conflict among them.  
9 Class Counsel have extensive experience in business and corporate litigation,  
10 including the prosecution of class actions seeking to protect privacy and consumer  
11 rights. Class Counsel is qualified to represent the interests of the Class. Rule  
12 23(a)(4) is therefore satisfied for purposes of certifying a settlement class.

13 **5. Common Questions Predominate, Sufficient to Certify a**  
14 **Class for Settlement Purposes Only.**

15 Class certification under Rule 23(b)(3) is appropriate where “questions of  
16 law or fact common to class members predominate over any questions affecting  
17 only individual members.” Fed. R. Civ. P. 23(b)(3). The inquiry focuses on  
18 whether the class is “sufficiently cohesive to warrant adjudication by  
19 representation.” *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las*  
20 *Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Central to this question  
21 is “the notion that the adjudication of common issues will help achieve judicial  
22 economy.” *Zincser v. Accufix Research Institute, Inc.*, 253 F.3d 1188, 1189 (9th  
23 Cir. 2001) (citation omitted), *amended*, 273 F. 3d 1266 (9th Cir. 2001).

24 Here the central inquiry for purposes of the proposed Settlement is whether  
25 Defendants violated the Unruh Act and the UCL with their pricing scheme. “When  
26 common questions present a significant aspect of the case and they can be resolved  
27 for all members of the class in a single adjudication, there is clear justification for  
28

1 handling the dispute on a representative rather than on an individual basis.”  
2 *Hanlon*, 150 F.3d at 1022.

3 **6. Class Treatment for Settlement Purposes is Superior to**  
4 **Individual Resolutions.**

5 To determine whether the superiority requirements of Rule 23(b)(3) are  
6 satisfied, a court must compare a class action with alternative methods for  
7 adjudicating the parties’ claims. Lack of a viable alternative to a class action  
8 necessarily means that a class action satisfies the superiority requirement. “[I]f a  
9 comparable evaluation of other procedures reveals no other realistic possibilities,  
10 [the] superiority portion of Rule 23(b)(3) has been satisfied.” *Culinary/Bartenders*  
11 *Trust Fund*, 244 F.3d at 1163. *See also, Valentino v. Carter-Wallace*, 97 F.3d  
12 1227, 1235-36 (9th Cir. 1996) (“a class action is a superior method for managing  
13 litigation if no realistic alternative exists”).

14 Consideration of the factors listed in Rule 23(b)(3) supports the conclusion  
15 that, for purposes of a settlement class, certification is appropriate. Ordinarily,  
16 these factors are (A) the interest of members of the class in individually controlling  
17 the prosecution or defense of separate actions; (B) the extent and nature of any  
18 litigation concerning the controversy already commenced by or against members  
19 of the class; (C) the desirability or undesirability of concentrating the litigation of  
20 the claims in the particular forum; and (D) the difficulties likely to be encountered  
21 in the management of a class action. Fed. R. Civ. P. 23(b)(3).

22 However, when a court reviews a class action settlement, the fourth factor  
23 does not apply. In deciding whether to certify a settlement class action, a district  
24 court “need not inquire whether the case, if tried, would present intractable  
25 management problems.” *Amchem Prods. Inc. v. Woodward*, 521 U.S. 591, 620  
26 (1997). “With the settlement in hand, the desirability of concentrating the litigation  
27 in one forum is obvious . . . .” *Elkins v. Equitable Life Ins. of Iowa*, No. Civ A96-  
28 296-Civ-T-17B, 1998 WL 133741, at \*20 (M.D. Fla. Jan. 27, 1998); *see also*

1 *Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 697 (M.D. Fla. 2005) (Rule  
2 23(b)(3)(C) and (D) factors are “conceptually irrelevant in the context of  
3 settlement”) (citation omitted). Here, the Rule 23(b)(3)(A), (B) and (C) factors  
4 all favor class certification.

5 **C. The Proposed Method of Class Notice Is Appropriate.**

6 Rule 23(c)(2)(B) provides that, in any case certified under Rule 23(b)(3), the  
7 court must order the “best notice practicable” under the circumstances. Rule  
8 23(c)(2)(B) does not require “actual notice” or that a notice be “actually received.”  
9 *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Notice need only be given  
10 in a manner “reasonably calculated, under all the circumstances, to apprise  
11 interested parties of the pendency of the action and afford them an opportunity to  
12 present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.  
13 306, 314 (1950). “Adequate notice is critical to court approval of a class settlement  
14 under Rule 23(e).” *Hanlon*, 150 F.3d at 1025.

15 Pursuant to Fed. R. Civ. P. 23(e)(1)(B), “[t]he court must direct notice in a  
16 reasonable manner to all class members who would be bound by the proposal.”  
17 Rule 23(c)(2)(B) also sets forth requirements as to the content of the notice. The  
18 notice must concisely and clearly state in plain, easily understood language: (i) the  
19 nature of the action; (ii) the definition of the class; (iii) the class claims, issues, or  
20 defenses; (iv) that a class member may enter an appearance through counsel if the  
21 member so desires; (v) that the court will exclude from the class any member who  
22 requests exclusion, stating when and how members may elect to be excluded; (vi)  
23 the time and manner for requesting exclusion; and (vii) the binding effect of a class  
24 judgment on class members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B).

25 The Settlement Administrator shall disseminate or arrange for the  
26 dissemination of Class Notice sent via email is in a form materially consistent with  
27 Exhibit 2 to the Agreement. The Class Notice here satisfies each of the  
28 requirements of Rule 23(c)(2)(B) above. Further, direct notice has been held to be

1 adequate notice to a Settlement Class. *See Schaffer v. Litton Loan Servicing, LP*,  
2 CV 05-07673 MMM JCX, 2012 WL 10274679, at \*8 (C.D. Cal. Nov. 13, 2012)  
3 (approving notice plan where class members were sent direct notice informing  
4 them and directing them to a settlement website); *Lo v. Oxnard European Motors,*  
5 *LLC*, 11CV1009 JLS MDD, 2012 WL 1932283, at \*1 (S.D. Cal. May 29, 2012)  
6 (final approval of class settlement using direct notice and settlement website).

7 Defendants possess email addresses for users of the Tinder app in California  
8 as well as information that indicates whether subscribers to Tinder Plus or Tinder  
9 Gold were at least 29 years old and paid a higher price than younger subscribers.  
10 Defendants do not possess physical addresses or landline phone numbers for such  
11 individuals. The Settlement Administrator will be able to send emails directly to  
12 each of the Class Members at the address that they recently used in conjunction  
13 with their Tinder account.

14 Further notice will be provided through the Settlement Website, which will  
15 be accessible by the time of the email Class Notice and will post, among other  
16 documents, the Agreement, a copy of the Notice (Ex. 2 to the Agreement), and the  
17 Preliminary Approval Order. Thus, through email Class Notice and the Settlement  
18 Website, Members will have ample notice of the Settlement and its terms, and they  
19 will have 30 days from the time of Class Notice to opt out of or object to the  
20 Settlement. *Cf. Torrisi v. Tucson Electric Power Co.*, 8 F.3d 1370, 1374-75 (9th  
21 Cir. 1993) (31 days is more than sufficient, as Class as a whole had notice adequate  
22 to flush out whatever objections might reasonably be related to the settlement)  
23 *citing Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977)  
24 (approving timing of notice which was mailed 26 days before the deadline for  
25 opting out of the settlement). Further, the Settlement Website shall be maintained  
26 and accessible to Settlement Class Members during this time and through the  
27 conclusion of the settlement proceedings in this case.

28 This notice program was designed to meaningfully reach the largest number

1 of Settlement Class Members possible by direct notice. In this age, email is often  
2 the best way to reach people, and is certainly the most cost-effective manner of  
3 direct notice in the case at bar, given Defendants’ data constraints. Such direct  
4 notice is likely to be very successful in reaching the Settlement Class, and it is also  
5 the best practical notice under the circumstances since only email addresses are  
6 known. By emailing the Class Notice and making the Class Notice available on  
7 the Settlement Website, the notice plan satisfies the requirements of due process  
8 and constitutes the best notice practicable under the circumstances.

9 The Settlement Administrator shall prepare and file a declaration prior to the  
10 Final Approval Hearing certifying that the notice program has been properly  
11 administered in accordance with this Agreement, this Court’s Orders, and as  
12 described herein.

13 **D. The Court Should Provisionally Appoint the Class**  
14 **Representative and Appoint Class Counsel.**

15 “[T]wo criteria for determining the adequacy of representation have been  
16 recognized. First, the named representatives must appear able to prosecute the  
17 action vigorously through qualified counsel, and second, the representatives must  
18 not have antagonistic or conflicting interests with the unnamed members of the  
19 class.” *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).  
20 The adequacy of representation requirement is met here. For settlement purposes,  
21 Class Counsel moves for Plaintiff Lisa Kim to be preliminarily appointed as the  
22 Class Representative. Class Counsel requests that the Law Offices of Todd M.  
23 Friedman and Kristensen, LLP preliminarily be appointed as Class Counsel for  
24 purposes of the Settlement. Plaintiff’s counsel has extensive experience sufficient  
25 to be appointed as Class Counsel. Plaintiff Lisa Kim understands the obligations  
26 of serving as a class representative, has adequately represented the interests of the  
27 putative class, and has retained experienced counsel. Plaintiff has no antagonistic  
28 or conflicting interests with the Settlement Class, and all members of the



1 Settlement Class are eligible to receive the same benefits.

2 **E. The Court Should Appoint Epiq as the Settlement**  
3 **Administrator.**

4 Plaintiff proposes that the Court appoint Epiq Class Action & Claims  
5 Solutions, Inc. (“Epiq,”) to serve as the Settlement Administrator. Epiq specializes  
6 in providing administrative services in class action litigation, and has extensive  
7 experience in administering consumer protection and privacy class action  
8 settlements. Defendants do not oppose this request.

9 **F. A Final Approval Hearing Should Be Scheduled.**

10 The last step in the settlement approval process is the formal fairness or Final  
11 Approval Hearing, at which time the Court will hear all evidence and argument,  
12 for and against, the proposed Settlement. Plaintiff requests that the Court grant  
13 preliminary approval of the Settlement and schedule a Final Approval Hearing to  
14 be held not before 70 days after the date of entry of the Preliminary Approval  
15 Order, in order to allow sufficient time for developing the Settlement Website and  
16 providing Class Notice via email, and to allow Class Members time submit  
17 exclusion requests and objections.

18 **V. CONCLUSION**

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

22 Dated: October 4, 2021

Respectfully submitted,

23  
24 By: /s/ Todd M. Friedman

Todd M. Friedman (SBN 216752)

Adrian R. Bacon (SBN 280332)

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

25  
26  
27  
28

**PROOF OF SERVICE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 21550 Oxnard St., Suite 780, Woodland Hills, CA 91367.

On October 4, 2021, I served the following document(s) described as: **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on all interested parties in this action by placing:

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

Alexandra Hill  
ahill@manatt.com  
Donald R. Brown  
dbrown@manatt.com  
Robert H. Platt  
rplatt@manatt.com  
Manatt Phelps and Phillips LLP  
11355 West Olympic Boulevard  
Los Angeles, CA 90064-1614

**BY CM/ECF:** I transmitted the document(s) listed above electronically to the e-mail addresses listed above. I am readily familiar with the Court’s CM/ECF system and the transmission was reported as complete, without error.

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 4, 2021, at Woodland Hills, California.

By: /s/ Todd M. Friedman

Todd M. Friedman