

1 **AMENDED CLASS ACTION SETTLEMENT AND RELEASE AGREEMENT**

2 **I. INTRODUCTION**

3 Subject to approval by the Superior Court of California, County of San Francisco (the
4 “Court”), this Amended Class Action Settlement and Release Agreement (hereafter, “Settlement
5 Agreement,” “Settlement” or “Agreement”) sets forth the full and final terms by which Eric Gruber,
6 Ever Gonzalez, and Jeremy Earls (the “Named Plaintiffs” or “Plaintiffs”), on behalf of themselves
7 and members of the Class and Subclass defined herein (“Class Members”), and defendant Yelp Inc.
8 (“Yelp” or “Defendant”) (Plaintiffs and Yelp are collectively referred to herein as the “Parties”) have
9 settled and resolved the claims that the Court certified for class treatment in its January 18, 2023
10 order in this Action.

11 **II. NATURE AND RESOLUTION OF THE CASE**

12 **A. Plaintiffs’ Claims**

13 Plaintiff Eric Gruber filed the original Class Action Complaint in this matter on October 12,
14 2016, and Plaintiffs filed the First Amended Complaint on August 8, 2022. The First Amended
15 Complaint alleges causes of action for: (1) alleged unlawful recording and intercepting of
16 communications in violation of Penal Code § 632.7; and (2) alleged unlawful recording of
17 confidential communications in violation of Penal Code § 632.

18 On January 18, 2023, the Court certified the following opt-out class and subclass for
19 Plaintiffs’ claim under Penal Code § 632.7:

20 (1) **Penal Code § 632.7 Class:** All individuals who, from October 12, 2015, to May 24,
21 2017 (the “Class Period”), while physically present in California and using a cellular device,
22 participated in an outbound telephone conversation with a sales representative of Yelp or its agent
23 who one-way recorded the conversation without first informing the individual that the conversation
24 was being recorded (the “Class”).

25 (2) **Penal Code § 632.7 Subclass:** All individuals who, during the Class Period, while
26 physically present in California and using a cellular device, participated *for the first time* in an
27 outbound telephone conversation with a sales representative of Yelp or their agent who one-way
28

1 recorded the conversation without first informing the individual that the conversation was being
2 recorded.

3 Yelp denies and continues to deny the allegations in Plaintiffs' complaints, including
4 allegations that Yelp is liable under the California Invasion of Privacy Act ("CIPA"), including
5 California Penal Code §§ 632.7 or 632, or any other applicable law, that Yelp has engaged in any
6 wrongful conduct; and that Yelp owes damages to anyone. Yelp further denies that the Named
7 Plaintiffs or Class Members are entitled to the relief requested.

8 **B. Litigation Proceedings**

9 Following Gruber's filing of the original complaint on October 12, 2016, Yelp filed an early
10 motion for summary judgment or summary adjudication in March 2017. One year later, after the
11 Parties litigated certain discovery disputes, the Court heard and took Yelp's summary judgment
12 motion under submission. In April 2018, the Honorable Mary E. Wiss granted Yelp's motion for
13 summary judgment. On June 20, 2018, Gruber filed a notice of appeal.

14 The First District Court of Appeal, Division Three, reversed the Court's summary judgment
15 ruling. It issued remittitur on January 28, 2021. Thereafter, the Parties resumed litigation in the trial
16 court. On February 22, 2021, the Court set an April 21, 2022 hearing date for Gruber's motion for
17 class certification and set a briefing schedule. On April 29, 2021, Yelp moved to amend its answer to
18 Gruber's complaint to add affirmative defenses of "arbitration" and free speech under the United
19 States Constitution and California Constitution. Gruber opposed the motion insofar as Yelp sought to
20 add the free speech defense to its answer. The Court granted Yelp's motion to amend in June 2021.

21 On September 27, 2021, the Court continued the hearing on Gruber's motion for class
22 certification from April 21, 2022 to September 22, 2022 and set a briefing schedule, including a
23 March 24, 2022, deadline for Gruber to file his motion and opening evidence, which Gruber timely
24 filed.

25 In the interim, the Parties engaged in discovery and brought discovery disputes before the
26 Court. On February 24, 2022, the Court issued an order adopting a form of *Belaire-West* notice and
27 setting forth a procedure for disseminating notice to the class. On February 25, 2022, Yelp filed a
28 petition for writ of mandate with the First District Court of Appeal, seeking a stay of the Court's

1 order regarding *Belair-West* notice during the pendency of its petition. On March 7, 2022, the First
2 District entered an order summarily denying Yelp's petition.

3 Gruber filed his motion for class certification on March 24, 2022. By May 31, 2022, Yelp
4 had completed the filing of its opposition to the motion for class certification. On July 31, 2022,
5 Gruber filed his reply in support of his motion for class certification.

6 On June 21, 2022, Gruber filed a motion for leave to file a first amended complaint that
7 principally added additional named plaintiffs and class representatives, including Gonzalez and
8 Earls. On July 21, 2022, Yelp opposed the motion. By Order dated August 2, 2022, the Court
9 granted Gruber's motion, and on August 8, 2022, Plaintiffs filed their first amended complaint,
10 which Yelp subsequently answered.¹ The Parties thereafter submitted supplemental briefing on the
11 typicality and adequacy of Gonzalez and Earls as class representatives. On August 18, 2022, the
12 Court continued the hearing on Plaintiffs' motion for class certification from September 22, 2022, to
13 December 9, 2022.

14 The Parties' class certification briefing was substantial. Plaintiffs' motion for class
15 certification relied on, *inter alia*, Gruber's declaration, Yelp's company documents, deposition
16 testimony of Yelp witnesses, call data, and expert declarations from class action administrator Anya
17 Verkhovskaya, information technology consultant Jeffrey A. Hansen, and telecommunications
18 technology consultant Randall A. Snyder.

19 Yelp opposed Plaintiffs' motion and submitted expert declarations from technology and
20 telecommunications consultant Jan Kostyun, survey consultant Bruce Isaacson, and automated
21 speech recognition expert Wayne Ramprasad. Yelp also moved to exclude Plaintiffs' experts
22 Verkhovskaya, Hansen, and Snyder. Plaintiffs opposed Yelp's motions to exclude and filed a reply
23 in support of class certification that relied on additional evidence including the expert declaration of
24 speech processing and deep learning researcher DeLiang Wang.

25 The Court heard oral argument on Plaintiffs' class certification motion on December 13,
26 2022. On January 18, 2023, the Court denied Yelp's motions to exclude and granted Plaintiffs'

27 _____
28 ¹ Named plaintiff Cheryl Skidmore, named in the first amended complaint, voluntarily dismissed her claims against Yelp
before the Court decided Plaintiffs' class certification motion.

1 motion for class certification. Yelp petitioned the Court of Appeal to vacate the Court's class
2 certification decision, but the Court of Appeal summarily denied Yelp's writ petition. Yelp filed a
3 petition for review in the California Supreme Court, which Yelp subsequently withdrew because of
4 the Parties' settlement.

5 On January 12, 2023, Yelp filed a motion for summary adjudication of (a) Plaintiffs' first
6 cause of action under California Penal Code § 632.7 on the grounds that the telephones used by Yelp
7 representatives during any and all of the calls at issue were not cellular radio telephones, cordless
8 telephones, or landline telephones, and (b) Plaintiffs' first cause of action under California Penal
9 Code § 632.7 and second cause of action under California Penal Code § 632 as to certain call
10 recordings on the basis that imposing liability would unconstitutionally infringe upon Yelp's right to
11 free speech under the First Amendment and California Constitution and unconstitutionally violate
12 Yelp's due process rights under the 14th Amendment and California Constitution. On March 17,
13 2023, Plaintiffs filed an opposition to Yelp's motion, and on April 21, 2023, Yelp filed its reply in
14 support of the motion. In connection with the briefing on Yelp's motion, Yelp submitted the expert
15 declaration of VoIP consultant Seamus Gilchrist and Plaintiffs submitted the expert declaration of
16 VoIP consultant Thomas Ladd. The Court heard the motion on June 28, 2023, and took the motion
17 under submission pending a scheduled mediation. The Parties agreed to settle this matter before the
18 Court decided Yelp's motion for summary adjudication.

19 **C. Settlement Negotiations**

20 Class Counsel and counsel for Yelp recognize the costs and risks of prosecuting this
21 litigation through continued motion practice, any eventual trial, and appeal. Class Counsel believe
22 that it is in the interest of all Class Members to finally and completely resolve the certified claims of
23 the Class Members against Yelp. Class Counsel and the Named Plaintiffs believe that the terms of
24 the Settlement Agreement are in the best interests of the Class and are fair, reasonable, and adequate.
25 Yelp wishes to bring the litigation to a conclusion on the terms set forth in this Settlement
26 Agreement.

27 Experienced mediator Mark LeHocky supervised a mediation session between the Parties on
28 July 13, 2023. Counsel for the Parties retained Mr. LeHocky for his expertise in mediating complex

1 litigation disputes, including consumer class actions. The Parties did not agree to a settlement during
2 the mediation, but at the conclusion of the mediation they agreed to evaluate a mediator’s proposal
3 from Mr. LeHocky. The Parties received Mr. LeHocky’s proposal on July 14, 2023, and each side
4 agreed to the proposal by July 18, 2023. The Parties subsequently executed a written Memorandum
5 of Understanding (“MOU”). At all times during this process, counsel bargained vigorously and at
6 arm’s-length on behalf of their clients.

7 Without any admission or concession by Yelp of any liability or wrongdoing with respect to
8 the allegations in Plaintiffs’ original and amended class action complaints, all released claims shall
9 be finally and fully compromised, settled, and released subject to the terms and conditions of this
10 Settlement Agreement, which were the subject of extensive negotiation and ultimate agreement by
11 the Parties.

12 **III. GENERAL TERMS OF THE SETTLEMENT AGREEMENT**

13 **A. Definitions**

14 In addition to terms identified and defined elsewhere in this Settlement Agreement, and as
15 used in this Settlement Agreement, the terms below shall have the following meanings:

16 1. “Action” means *Gruber v. Yelp Inc.*, San Francisco County Superior Court Case No.
17 CGC 16-554784, including the original and amended class action complaints and the claims and
18 allegations contained therein.

19 2. “Attorneys’ Fees and Expenses” or “Class Counsel Award” means the settlement
20 amounts approved and awarded by the Court for payment to Class Counsel, including attorneys’
21 fees, costs, and litigation expenses, as described in Section VIII herein. The Class Counsel Award
22 shall be paid from, and not in addition to, the Gross Settlement Amount. The Settlement
23 Administrator shall report Attorney’s Fees and Expenses on an IRS Form 1099.

24 3. “Class” means all individuals who, during the Class Period, while physically present
25 in California and using a cellular device, participated in an outbound telephone conversation with a
26 sales representative of Yelp or its agent who one-way recorded the conversation without first
27 informing the individual that the conversation was being recorded. “Subclass” means all individuals
28 who, during the Class Period, while physically present in California and using a cellular device,

1 participated *for the first time* in an outbound telephone conversation with a sales representative of
2 Yelp or their agent who one-way recorded the conversation without first informing the individual
3 that the conversation was being recorded.²

4 4. “Class Counsel” means Matthew H. Fisher and Matthew S. Da Vega of Da Vega Fisher
5 Mechtenberg LLP, Michael J. Jaurigue of the Jaurigue Law Group, and Zareh A. Jaltorossian of KP
6 Law and/or the law firms of Da Vega Fisher Mechtenberg LLP, Jaurigue Law Group, and KP Law.

7 5. “Class Members” means members of the Class and Subclass. The Parties shall use
8 data provided by Yelp, as filtered and restated in Exhibit 10 to the March 23, 2022 Declaration of
9 Plaintiffs’ Expert, Anya Verkhovskaya, in support of Plaintiffs’ motion for class certification
10 (“Verkhovskaya Declaration”), to estimate and ascertain the total number of Class Members and
11 their names and addresses and how many calls from Yelp each Class Member received on his or her
12 cell phone number that was subject to one-sided recording. Based on the Verkhovskaya Declaration,
13 the Parties estimate that the number of Class Members is 422,314. The ascertainable number of
14 Class Members (those for whom the Parties can identify a reliable name and mailing address) may
15 be smaller based on numerous factors inherent in matching phone numbers dialed during the Class
16 Period with current individual names and mailing addresses associated with those phone numbers.

17 6. “Class Period” refers to the period of time from October 12, 2015, to May 24, 2017.

18 7. “Class Representative Enhancement Payment(s)” means the amount to be awarded by
19 the Court pursuant to this Agreement to be paid to Plaintiffs in recognition of their effort and work in
20 prosecuting the Action on behalf of the Class Members, and the associated risks of acting as a class
21 representative. The Settlement Administrator shall report the Class Representative Enhancement
22 Payments on an IRS Form 1099.

23 8. “Court” means the Superior Court of the State of California, County of San Francisco.

24 9. “Defendant” or “Yelp” means Yelp Inc.

25 10. “Defendant’s Counsel” means the law firm of Reed Smith LLP.

26 11. “Depository Bank” means a bank jointly selected by counsel for the Parties or the
27 Settlement Administrator to receive, hold, invest, and disburse the Settlement Fund, subject to the

28 ² “Outbound” in these definitions means outbound from Yelp, *i.e.*, that a Yelp representative initiated the call.

1 direction of the Settlement Administrator.

2 12. "Dispute" means a timely and valid written dispute submitted to the Settlement
3 Administrator on or before the applicable Response Deadline by a Class Member indicating that they
4 dispute the number of calls that the Class Member received on his or her cell phone during the Class
5 Period that were the subject of one-sided recording.

6 13. "Effective Date" means the date on which the Settlement becomes "Effective,"
7 meaning that it has become "Final" as defined below, and either: (1) the California Court of Appeal
8 has rendered a final judgment affirming the Court's final approval without material modification and
9 the date for further appeal or review has passed without further appeal or review; (2) the California
10 Court of Appeal has rendered a final judgment affirming the Court's final approval without material
11 modification and the further appeals have been resolved without material modification of the final
12 approval order; (3) the applicable date for seeking appellate review of the Court's final approval of
13 the Settlement has passed without a timely appeal or request for review having been made; or
14 (4) upon the date the Court grants final approval if no valid and timely objections to the Settlement
15 have been filed or if any valid and timely objection(s) to the Settlement has/have been filed, that
16 objection(s) has/have been rescinded by the objecting Class Member, in writing, prior to the Court
17 granting final approval.

18 14. "Final" means the date on which the Court grants final approval of the Settlement
19 Agreement. "Final Approval Hearing" means the hearing at which the Court will determine whether
20 to grant final approval of the Settlement Agreement.

21 15. "Gross Settlement Amount" is a non-reversionary common fund in the total amount
22 of Fifteen Million Dollars (\$15,000,000.00) and is all-inclusive of all payments contemplated in this
23 resolution. The Gross Settlement Amount includes: (a) Attorneys' Fees and Expenses, (b) all
24 settlement administration costs, (c) all settlement payments to settlement class members, (d) the
25 class representatives' enhancement payments; and (e) any other costs incurred in connection with
26 effectuating this Settlement.

27 16. "Net Settlement Fund" or "Estimated Net Settlement Fund" means the amount
28 remaining after subtracting Attorneys' Fees and Expenses, settlement administration costs, and Class

1 Representative Enhancement Payments/Service Award Payments, as approved by the Court, from
2 the Gross Settlement Amount.

3 17. "Notice of Settlement" means the notice of the proposed Settlement terms, as
4 approved by Class Counsel, Defendant's Counsel, and the Court as stated in the "Notice of Class
5 Certification and Proposed Settlement of Class Action", which is to be mailed directly to Class
6 Members, substantially in the form attached hereto as **Exhibit A**.

7 18. "Objection(s)" means a timely and valid written document submitted to the
8 Settlement Administrator by a Class Member, on or before the Response Deadline, stating that he or
9 she objects to court approval of the Class Settlement.

10 19. "Participating Class Members" means members of the Class or Subclass to whom the
11 Settlement Administrator mailed a Notice of Settlement and who did not timely opt out of the
12 Settlement.

13 20. "Plaintiffs" or "Named Plaintiffs" or "Class Representatives" means Eric Gruber,
14 Ever Gonzalez, and Jeremy Earls.

15 21. "Preliminary Approval" means the Order of the Court preliminarily approving this
16 Settlement Agreement and the form of Notice to be sent to Class Members.

17 22. "Released Parties" means Yelp Inc. and any current and former parents, divisions,
18 subsidiaries and affiliated companies or entities, and their respective officers, directors, employees,
19 investors, insurers, administrators, representatives, partners, shareholders and agents, and any other
20 predecessors and successors, assigns and legal representatives and their related persons and entities.

21 23. "Request for Exclusion" or "Opt Out" means a timely and valid written document
22 submitted to the Settlement Administrator by a Class Member, on or before the Response Deadline,
23 stating that he or she requests to be excluded from the Class Settlement.

24 24. "Response Deadline(s)" means the deadline by which Class Members must submit to
25 the Settlement Administrator valid Requests for Exclusion/Opt Outs or Objections or Disputes.
26 Requests for Exclusion/Opt Out or Objections or Disputes must be submitted with proof of the
27 submission date (such as a U.S. Postal Service postmark or another delivery service date stamp) on
28 or before the Response Deadline. The Response Deadline shall be forty-five (45) calendar days from

1 the mailing of the Notice of Settlement to the Class Member.

2 25. "Settlement," "Agreement," and "Settlement Agreement" each mean this Class
3 Action Settlement and Release Agreement agreed to by the Parties and approved by the Court as its
4 order as reflected in this Settlement Agreement.

5 26. "Settlement Administrator" means Epiq Class Action & Claims Solutions, Inc. or
6 another entity jointly designated by the Parties to administer the Settlement and Settlement Fund
7 pursuant to Section VII below and orders of the Court.

8 27. "Settlement Administration Costs" means the costs payable to the Settlement
9 Administrator for all fees and expenses reasonably and necessarily incurred as a result of
10 administering this Settlement, including, but not limited to, the cost of providing notice of the
11 proposed settlement to the Class, the cost of administering the settlement and any settlement fund
12 created as a result of this Agreement. The Settlement Administration Costs are estimated to be
13 between \$450,000 and \$750,000 and shall be payable from, and not in addition to, the Gross
14 Settlement Amount.

15 28. "Settlement Fund" means the settlement monies transferred by and/or on behalf of
16 Yelp to the Qualified Settlement Fund established by the Settlement Administrator, pursuant to this
17 Settlement Agreement, including all interest earned thereon, to be held, invested, administered, and
18 disbursed pursuant to this Settlement Agreement.

19 29. "Settlement Share" means the individual portion of the Net Settlement Fund that each
20 Participating Class Member is eligible to receive. The Settlement Administrator shall calculate each
21 identified Participating Class Member's Settlement Share as follows: First, each identified
22 Participating Class Member shall receive \$5 (five) dollars. Second, each identified Participating
23 Class Member shall receive a pro-rata share of the remaining proceeds of the Estimated Net
24 Settlement Fund. The pro-rata share is an amount that is proportional to the number of calls that the
25 Class Member received on his or her cell phone during the Class Period that were the subject of one-
26 sided recording (e.g., if there were 100 calls received by all Participating Class Members during the
27 Class Period and Class Member #1 received 1 call during the Class Period he/she would receive
28 1/100 (one hundredth) of the remaining proceeds of the Estimated Net Settlement Fund as his or her

1 pro-rata share). The \$5 (five dollar) payment plus the pro-rata share equals the Settlement Share to
2 be distributed to the Participating Class Member. The Settlement Administrator shall use Exhibit 10
3 to the Verkhovskaya Declaration to determine the number of calls that Participating Class Member
4 received.

5 **B. Cooperation**

6 The Parties agree that they will cooperate to effectuate and implement all terms and
7 conditions of this Settlement Agreement, and exercise good faith efforts to accomplish the terms and
8 conditions of this Settlement Agreement. The Parties agree to accept non-material and procedural
9 changes to this Settlement Agreement if so required by the Court in connection with Final Approval
10 of the Settlement, but are not obligated to accept any changes in the monetary amount of relief, or
11 any other substantive change.

12 **IV. COURT APPROVAL/NOTICE AND FINAL APPROVAL HEARING**

13 **A. Jurisdiction and Venue**

14 The Parties agree that the Court has jurisdiction over the Parties and the subject matter of this
15 Action and that venue is proper. The Court shall retain jurisdiction of this Action for the purpose of
16 entering all orders and judgments authorized hereunder that may be necessary to implement and
17 enforce the relief provided herein.

18 **B. Preliminary Approval**

19 1. By September 25, 2023, Plaintiffs shall file a motion with the Court (“Preliminary
20 Approval Motion”) requesting the Court to enter an order preliminarily approving this Settlement
21 Agreement and approving the Notice of Settlement to be sent to Class Members describing the terms
22 of the Settlement and informing them of their rights to submit objections, to opt out, or file a
23 Dispute. The proposed Notice of Settlement is attached as **Exhibit A**.

24 2. Plaintiffs will provide Yelp with a draft of the Preliminary Approval Motion and
25 supporting exhibits and/or declarations by September 20, 2023, to provide Yelp with reasonable time
26 to review, and Yelp shall have the right to review and comment on the draft. Plaintiffs shall consider
27 any such comments in good faith and shall not unreasonably reject such comments. The draft
28 Preliminary Approval motion shall contain provisions to effectuate the following:

1 a. Direct Mail “Post Card” Notice and Website. The Parties, through the Settlement
2 Administrator, will provide the Notice of Settlement (one notice) via First Class U.S. mail postcard
3 to Class Members for whom it has a valid U.S. Postal address. The postcard shall contain the address
4 of a website (the “Settlement Website”), which shall include links to (1) long form notice
5 information and (2) a form that Class Members may use to “opt out” of the Settlement Class (the
6 “Opt-Out Form”). The Settlement Website, maintained by the Settlement Administrator, will also
7 allow Settlement Class Members to self-identify (subject to an identity check) and provide current
8 contact information.

9 b. Settlement Administrator. A mutually agreed-upon Settlement Administrator will be
10 retained by the Parties. All administration costs (estimated at \$450,000 to \$750,000), including but
11 not limited to the cost of providing Notice of Settlement to the Class, the cost of administering the
12 settlement and any settlement fund created pursuant to the Settlement Agreement, shall be paid from
13 the Gross Settlement Amount.

14 c. Disputes. Any Class Member who does not opt out of the Settlement Agreement may
15 dispute his or her pro-rata individual Settlement Share. For the written Dispute to be valid, it must:
16 (1.) state/contain the case name and number of the Action; (2.) set forth the Class Member’s name,
17 current address, telephone number, and last four digits of his or her Social Security number; (3.) be
18 signed by the Class Member; (4.) include any documentary evidence showing that the number of
19 one-way recorded phone calls attributed to him/her is inaccurate; and (5.) be submitted to the
20 Settlement Administrator at the address specified in the Class Notice; and (6.) be submitted with
21 proof of the submission date (such as a U.S. Postal Service postmark or another delivery service date
22 stamp) on or before the Response Deadline. The Settlement Administrator will decide if the Dispute
23 is valid, timely, and/or what if any less or additional pro-rata share of the Settlement will be
24 attributed to the Class Member. The parties may provide input to the Settlement Administrator to
25 assist in resolving a Dispute, but they have no obligation to do so.

26 d. Objections. Any Class Member who does not opt out of the Settlement Agreement
27 may object to approval of the Settlement Agreement by filing and serving an Objection and/or by
28 appearing at the hearing and stating an objection on the record. For the written Objection to be valid,

1 it must: (1.) state/contain the case name and number of the Action; (2.) set forth the Class Member's
2 name, current address, telephone number, and last four digits of his or her Social Security number;
3 (3.) state the basis for the objection, (4.) be signed by the Class Member, (5.) be submitted to the
4 Settlement Administrator at the address specified in the Class Notice; and (6.) be submitted with
5 proof of the submission date (such as a U.S. Postal Service postmark or another delivery service date
6 stamp) on or before the Response Deadline. Notwithstanding the requirement in the preceding
7 sentences regarding submitting an Objection, any Class Member will be permitted to appear and
8 speak at the Preliminary or Final Approval Hearing to object to the Settlement.

9 e. Exclusions (i.e., "opt outs" of the Settlement Agreement). Any Class Member may
10 elect not to be part of the Settlement Agreement, provided that the Class Member submits a valid
11 and timely request for exclusion (i.e., "opts out" of the Settlement Agreement) by the Response
12 Deadline. A Class Member may opt out by mailing the above-referenced Opt-Out Form to the
13 Settlement Administrator by U.S. mail or by submitting a form on the Settlement Website. For the
14 Request for Exclusion or Opt-Out Form to be valid, it must: (1.) state/contain the case name and
15 number of the Action; (2.) set forth the Class Member's name, current address, telephone number,
16 and last four digits of his or her Social Security number; (3.) include a written statement confirming
17 that the individual is aware that by opting out they will forego the opportunity to receive monetary
18 benefits from this Settlement; (4.) be signed and/or submitted electronically by the Class Member;
19 (5.) be submitted to the Settlement Administrator at the address specified in the Class Notice or via
20 the Settlement Website; and (6.) be submitted with proof of the submission date (such as a U.S.
21 Postal Service postmark or another delivery service date stamp) or via the Settlement Website on or
22 before the Response Deadline.

23 f. The Class will not include those individuals who submit a timely Opt-Out Form, and
24 individuals who opt out are not entitled to any monetary award under this Settlement Agreement.
25 With respect to each such individual, the statute of limitations for the individual to assert any claim
26 for individual relief will resume running on the postmark date of their signed, written statement that
27 they are opting out of the Settlement or, alternatively, the date they submitted the Opt-Out Form on
28 the Settlement Website. Individuals who submit Opt-Out Forms may rescind their opt outs. To be

1 effective, such rescissions must be submitted in writing to the Settlement Administrator and must be
2 postmarked, or submitted to the website, on or before sixty (60) calendar days after the date the
3 Notice of Settlement is disseminated to Class Members.

4 g. Timing of Final Approval Hearing. Plaintiffs will request that the final
5 approval/fairness hearing be held within 120 calendar days after entry of the Preliminary Approval
6 order, subject to the Court's availability.

7 **C. Notice and Final Approval Hearing**

8 1. Within twenty (20) calendar days after the court grants Preliminary Approval, the
9 Parties will provide Exhibit 10 to the Verkhovskaya Declaration to the Settlement Administrator and
10 direct the Settlement Administrator to use the phone number data in Exhibit 10 to determine the
11 names and physical addresses of Class Members. The Settlement Administrator will keep this
12 information confidential and not disclose it except as required to administer the Settlement.

13 2. Within forty-five (45) calendar days after receiving the Class Member information
14 from the Parties (Exhibit 10 to the Verkhovskaya Declaration), the Settlement Administrator will
15 send to each Class Member the Notice of Settlement, which shall include the estimated Settlement
16 Share that the Class Member may qualify to receive (one notice) via First Class U.S. mail postcard
17 to Class Members for whom it has a valid U.S. Postal address. The postcard shall contain the address
18 of a website (the "Settlement Website"), which shall include links to (1) long form notice
19 information and (2) the Opt-Out Form. The Settlement Website also will contain information about
20 the case, including the First Amended Complaint, Settlement Agreement, and the Notice of
21 Settlement. Prior to sending the Notice of Settlement, the Settlement Administrator will update Class
22 Member addresses through the United States Postal Service National Change of Address (NCOA)
23 service. In the event of returned or non-deliverable notices, the Settlement Administrator will make
24 reasonable efforts to locate Class Members and re-send the notices. Within twenty-five (25) calendar
25 days after Notice of Settlement is distributed, the Settlement Administrator shall provide to Class
26 Counsel a list of those Class Members for whom mail notices were returned as undeliverable and for
27 whom the Settlement Administrator has not been able to determine a better address. The Settlement
28 Administrator shall take steps to locate such Class Members and may engage third-party vendors to

1 assist in that effort, if appropriate. The Settlement Administrator will maintain a log of its activities
2 undertaken pursuant to this section. The expenses of the Settlement Administrator shall be paid by
3 the Settlement Fund described at Section VII below.

4 **D. Yelp's Right to Rescind**

5 Yelp may terminate and rescind the Settlement Agreement at any time prior to the date on
6 which the Court's approval of the Settlement Agreement becomes "final" (i.e., not subject to appeal
7 or reconsideration) if:

8 1. The Settlement Agreement is construed in such a fashion that Yelp is required to pay
9 more than the Gross Settlement Amount;

10 2. The Court makes an order that substantially contradicts or impairs this Settlement
11 Agreement³; or

12 3. More than seven and one-half percent (7.5%) of Class Members timely and validly
13 exclude themselves ("opt out") of a class or classes.

14 If Yelp exercises the right to rescind, the Settlement and all actions taken in its furtherance
15 will be null and void, but Yelp will be responsible for the costs of administration of the Settlement
16 incurred through that time.

17 **E. Notifications to Courts**

18 The Parties shall jointly seek to stay all dates and deadlines before the Court pending Final
19 Approval of the Settlement Agreement other than those related to and/or in furtherance of the
20 Settlement Agreement. The Parties shall request that the Court hold Yelp's motion for summary
21 adjudication in abeyance pending further proceedings to approve the Settlement Agreement. Yelp
22 notified the California Supreme Court that the Parties have reached a settlement in principle and
23 made a request to withdraw its Petition for Review before the California Supreme Court related to
24 the Action, and on August 7, 2023, the California Supreme Court granted Yelp's request to withdraw
25 its Petition.

26 _____
27 ³ To rescind based on a Court order as described in No. 2 above, Defendant must provide written notice to Plaintiffs of
28 its intent to rescind within 14 calendar days after the order is filed. Failure to provide timely notice will serve as a waiver
of the right to rescind under the circumstances described above. If Yelp rescinds the Settlement Agreement for any
reasons the Action will revert to the status that existed before the execution date of the Memorandum of Understanding.

1 **F. Motion for Final Approval**

2 If Yelp does not exercise the right to rescind the Settlement based on the provisions of
3 Section IV.D, Plaintiffs will move for Final Approval (the “Final Approval Motion”) and request
4 that the Final Approval Hearing be held within 120 calendar days after entry of the preliminary
5 approval order, subject to the Court’s availability. Class Counsel will provide Yelp with a draft of
6 the Final Approval Motion in advance, and Yelp shall have the right to review and comment on it.
7 Class Counsel shall provide Yelp with reasonable time to conduct such review. Class Counsel shall
8 consider any such comments in good faith and shall not unreasonably reject such comments. Class
9 Counsel will also move for an award of the Class Representative Service Award Payments and
10 Attorneys’ Fees and Expenses pursuant to the Settlement, which Yelp will not oppose.

11 **G. Effect of Non-Approval**

12 In the event that this Settlement Agreement does not become final and binding, this
13 Settlement Agreement will become null and void. No party shall be deemed to have waived any
14 claims, objections, rights or defenses, or legal arguments or positions.

15 If Yelp exercises its option to rescind the Settlement or if this Settlement Agreement is not
16 approved by the Court or for any other reason is terminated or fails to become effective in
17 accordance with its terms (or, if following approval by this Court, such approval is reversed or
18 substantively modified on appellate review⁴), the Parties shall be restored to their respective
19 positions that existed in this Action prior to the execution date of the Memorandum of
20 Understanding (MOU) and this Settlement Agreement; the terms and provisions of this Settlement
21 Agreement shall have no force or effect and shall not be used in this Action or in any proceeding for
22 any purpose; the Settlement Fund shall be returned to Yelp, including the interest earned by the
23 Settlement Fund through the date of termination (after deducting all costs and expenses, including
24 costs of providing Notice of Settlement to Class Members, paid or incurred by the Settlement
25 Administrator as of the date of termination); any order entered by the Court in accordance with the
26 terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*; and the litigation of

27 _____
28 ⁴ An award by the Court of lesser amounts than sought for the Class Representative Service Award Payments or Attorneys’ Fees and Expenses will not be a material modification of the Settlement.

1 the Action will resume as if there had been no MOU and/or Settlement Agreement. In the event that
2 the Settlement Agreement does not become final and binding, the Parties retain all rights, claims,
3 and defenses as to any of the allegations asserted in this Action and reserve the right to prosecute or
4 defend this Action. This Settlement Agreement will not be considered an admission of liability by
5 Yelp nor represent a cap on damages available to the Named Plaintiffs or the Class if the Settlement
6 Agreement fails to be effective in accordance with its terms.

7 **V. RELEASE OF CLAIMS**

8 **A. Class Members**

9 In consideration for their awarded Settlement Shares, as of the Effective Date, all Class
10 Members who do not timely opt out will release any and all known and unknown claims and causes
11 of action against Yelp and the Released Parties that reasonably arise out of or reasonably relate to
12 the allegations in Plaintiffs' First Amended Complaint, including Plaintiffs' allegations that during
13 the Class Period (October 12, 2015 to May 24, 2017), Yelp made one-sided recordings of calls
14 between Yelp representatives and individual business owners or employees without disclosing to the
15 individual business owners or employees that Yelp was recording its own representative during the
16 calls.

17 **B. Named Plaintiffs**

18 Upon entry of the final order and judgment following the Final Approval / fairness hearing,
19 the Named Plaintiffs and each of their respective successors, assigns, legatees, heirs, and personal
20 representatives waive, release, forever discharge, and will not pursue any manner of action, cause of
21 action, claim, demand, right, suit, obligation, debt, contract, agreement, promise, liability, or remedy
22 of any nature whatsoever (including without limitation any damages, charges, penalties, losses,
23 costs, expenses, and attorneys' fees), whether in law or in equity, under contract, tort or any other
24 subject area, or under any statute, rule, regulation, order, or law, whether federal, state, or local, on
25 any grounds whatsoever, arising out of or relating to any acts, facts, omissions or obligations,
26 whether known or unknown, whether foreseen or unforeseen, fixed or contingent, against Defendant
27 or any of its respective current or former directors, officers, member, administrators, agents,
28 insurers, beneficiaries, trustees, employee benefit plans, representatives, servants, employees,

1 attorneys, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors,
2 contractors, successors, joint venturers, predecessors, related entities, and assigns, and all other
3 individuals and entities acting on their behalf (collectively, the “Released Parties”). However, this
4 release shall not apply to any other claim or right that cannot be waived or released as a matter of
5 law.

6 In addition, Plaintiffs, and each of Plaintiffs’ successors, assigns, legatees, heirs, and personal
7 representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions,
8 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under
9 federal or state law, which provides:

10 **A general release does not extend to claims that the creditor or releasing party**
11 **does not know or suspect to exist in his or her favor at the time of executing the**
12 **release and that, if known by him or her, would have materially affected his or**
13 **her settlement with the debtor or released party.**

14 Plaintiffs agree that this waiver is an essential and material term of this release and the
15 settlement that underlies it and that without such waiver the settlement would not have been
16 accepted.

17 **C. No Bar to Future Claims**

18 Nothing in the Settlement Agreement shall be construed to bar any claims of Class Members
19 that arise from conduct occurring after the Preliminary Approval date. Nothing in the Settlement
20 Agreement shall be construed to bar any claims of Named Plaintiffs that arise from conduct
21 occurring after the date that each Named Plaintiff’s general release become effective.

22 **D. Ownership of Claims**

23 Class Members may not assign or transfer their rights to participate in this Settlement
24 Agreement. The Parties and their counsel represent, covenant, and warrant that they have not
25 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber
26 to any person or entity any portion of any liability, claim, demand, action, cause of action or right
27 herein released and discharged. Named Plaintiffs and Class Counsel further represent and warrant
28

1 that there are not any liens or claims against any amount that Yelp is to pay to the Named Plaintiff or
2 Class Counsel under this Agreement.

3 **VI. NO ADMISSION, NO DETERMINATION**

4 This Settlement Agreement does not, and is not intended to constitute, nor shall it be deemed
5 to constitute, an admission by any party as to the merits, validity or accuracy of any of the
6 allegations, claims or defenses of any party in this case. The Class Members continue to assert the
7 merits and validity of their claims under California Penal Code §§ 632.7 and 632. Yelp denies any
8 wrongdoing. By entering into this Agreement, Yelp does not admit or concede, expressly or
9 impliedly, but instead denies, that it has in any way violated California Penal Code §§ 632.7 or 632,
10 any other provisions of CIPA, the common law of any jurisdiction, or any other federal, state or local
11 law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
12 equity. No fault, liability or culpability is attributed to Yelp in connection with this Settlement, and
13 neither the Court nor any other court has made any findings or expressed any opinion concerning the
14 merits, validity or accuracy of any of the allegations, claims or defenses in this Action. Nothing in
15 this Settlement Agreement may be construed as an admission or concession on any point of fact or
16 law by or against any Party.

17 Nothing in this Settlement Agreement, nor any action taken in implementation thereof, nor
18 any statements, discussions or communications, nor any materials prepared, exchanged, issued or
19 used during the course of the mediation or negotiations leading to this Settlement Agreement, is
20 intended by the Parties to, nor shall any of the foregoing constitute, be introduced, be used or be
21 admissible in any way in this case or any other judicial, arbitral, administrative, investigative or
22 other proceeding of whatsoever kind or nature as evidence of any violation of California Penal Code
23 §§ 632.7 or 632, any other provisions of CIPA, the common law of any jurisdiction, or any other
24 federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or
25 duty at law or in equity.

26 This Settlement Agreement, whether approved or not approved, rescinded, or made
27 ineffective for any reason, and any proceedings related to the Settlement Agreement and any
28 discussions relating thereto shall be inadmissible as evidence of any liability or wrongdoing

1 whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other
2 tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this
3 Settlement Agreement nor any proceedings taken pursuant to it, including the Court's Preliminary
4 and Final Approval thereof, shall be construed, offered or received in evidence as an admission,
5 concession or presumption that class certification is appropriate, except to the extent necessary for
6 the consummation of this Settlement Agreement

7 Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in
8 the Court or in mediation or arbitration to enforce or implement any provision of this Settlement
9 Agreement, including to enforce a Named Plaintiff or Class Member Release, or implement any
10 orders or judgments of the Court entered into in connection herewith.

11 Yelp states that it has acted lawfully at all times and its policies and practices have been
12 lawful, fair and consistent with all relevant laws, rules, and regulations. Yelp denies all claims as to
13 liability, damages, penalties, interest, fees, restitution, injunctive relief and all other forms or relief as
14 well as the class allegations asserted in the Action. Yelp will agree to resolve the allegations through
15 this Settlement Agreement, but to the extent the Settlement Agreement is deemed void or voidable,
16 Yelp does not waive, but rather expressly reserves, all rights to challenge all such claims and
17 allegations in the Action upon all procedural and factual grounds, including without limitation to
18 challenge class action treatment on any grounds, as well as asserting any and all other potential
19 defenses or privileges. Plaintiffs and their counsel agree that Yelp retains and reserves these rights.
20 Specifically, Plaintiffs and their counsel agree not to argue or present any argument that in the event
21 the Settlement Agreement is not approved in full that Yelp could not oppose or appeal any class
22 certification motion, file a later motion for de-certification, contest any class certification on any
23 grounds, or assert any and all other potential defenses and privileges if the Action were to proceed.

24 **VII. MONETARY RELIEF**

25 **A. Settlement Administration**

26 The Settlement Administrator will: deliver Notice of Settlement to Class Members; distribute
27 Settlement Shares and other payments due under the Settlement; and otherwise administer the
28

1 Settlement. If the Settlement is not finally approved, Yelp will pay the Settlement Administrator's
2 reasonable fees incurred as of that time.

3 The Settlement Administrator will provide Yelp with the name and address of the Depository
4 Bank and wire transfer information within five (5) calendar days after the Settlement becomes Final.
5 Yelp will transfer the Gross Settlement Amount to the Settlement Administrator via wire transfer
6 within sixty (60) calendar days after the Settlement Administrator provides Yelp with wire transfer
7 information.

8 **B. Settlement Fund**

9 Yelp shall pay, by wire transfer to the Depository Bank, the Gross Settlement Amount of
10 Fifteen Million Dollars (\$15,000,000.00) to the interest-bearing Qualified Settlement Fund (as
11 described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg.
12 Section 1.468B-1, et seq.) set up by the Settlement Administrator. The Gross Settlement Amount
13 will be placed in an interest-bearing account in the name of "Gruber v. Yelp Settlement Fund." This
14 payment is made in order to satisfy the claims of the Class, as well as for other purposes identified in
15 this paragraph. The monies so transferred, together with interest subsequently earned thereon, shall
16 constitute the "Settlement Fund." The Gross Settlement Amount shall constitute the total settlement
17 cash outlay by Yelp in connection with the resolution of the Class Claims in this Action. This sum is
18 inclusive of payment for: (a) all settlement payments to Class Members eligible for settlement
19 payments; (b) the Class Representative Service Award Payments (if any are awarded by the Court);
20 (c) Class Counsel's Attorneys' Fees and Expenses (including all attorneys' fees and expenses
21 incurred to date and to be incurred in documenting the Settlement, securing trial and appellate court
22 approval of the Settlement, attending to the administration of the Settlement, and obtaining a
23 dismissal of the Action); and (d) the Settlement Administrator's fees and expenses. The Settlement is
24 non-reversionary.

25 The Parties shall instruct the Settlement Administrator to pay the Settlement Shares, the
26 Class Representative Service Award Payments, and Class Counsel's Attorneys' Fees and Expenses
27 within thirty (30) calendar days after Yelp transfers the Gross Settlement Amount to the Settlement
28 Administrator by wire transfer as per Section VII.A, above. If the Settlement becomes Final but does

1 not become Effective because an objection of the Settlement is upheld on appeal, the Settlement
2 Administrator shall return the Settlement Fund to Yelp, less administrative and notice expenses
3 already incurred.

4 **C. Allocation to Participating Class Members**

5 All Participating Class Members (i.e., those Class Members who do not opt out of the
6 Settlement) will be bound by the Settlement and its release of claims. Settlement Shares will be paid
7 to each ascertainable Participating Class Member, meaning that settlement checks and/or digital
8 payments will be sent to all Class Members whose name and address can be determined based on the
9 list of phone numbers in Exhibit 10 to the Verkhovskaya Declaration, and no claim forms will be
10 required. Settlement Shares will be paid to Participating Class Members on or before thirty (30)
11 calendar days after the Effective Date.

12 **D. Class Representative Service Award Payments**

13 In addition to each Named Plaintiff's Class Member Settlement Share, Plaintiffs will seek a
14 total payment of no more than a total of Forty-Five Thousand Dollars (\$45,000.00) from the Gross
15 Settlement Amount for Class Representative Enhancement/Service Award Payments to the Named
16 Plaintiffs to be split (not necessarily evenly) among the three Named Plaintiffs ("Class
17 Representative Service Award Payments"). The Service Award Payments are intended to
18 compensate the Class Representatives for the risks they took bringing this case, including but not
19 limited to enduring potential for career or reputational harm, and their active and time-intensive
20 participation in the prosecution and settlement of this case. This case participation included each
21 Plaintiff assisting in the development of the theories of the case, preparing for and then being
22 deposed, responding to discovery requests, assisting counsel in developing discovery strategy,
23 attending mediations, and providing input into settlement discussions and the ultimate Settlement
24 Agreement.

25 Yelp and its attorneys will not oppose Court approval for Service Award Payments as set
26 forth above. The Settlement Administrator will issue to each Named Plaintiff a Form 1099 with
27 respect to their awarded Class Representative Service Award Payment. The Settlement
28

1 Administrator will pay the Service Award Payments approved by the Court to the Named Plaintiffs
2 on or before thirty (30) calendar days after the Effective Date.

3 **E. Non-Admissibility of Fact of Award (or Non-Award)**

4 Except to the extent that it would constitute a set off in an action for damages claimed for any
5 period covered by this Settlement, neither the fact nor the amount of an award, nor the fact of any
6 non-award, shall be admissible in any other proceeding for any purpose other than to enforce a
7 Named Plaintiff Release or a Class Member Release executed in accordance with the claims process,
8 nor shall it be deemed to be a finding as to the merits of any claim.

9 **F. Tax Treatment**

10 **1. Qualified Tax Status and Tax Responsibilities**

11 The Parties shall appoint the Settlement Administrator to serve as trustee of the Settlement
12 Fund and to act as a fiduciary with respect to the handling, management and distribution of the
13 Settlement Fund. The Settlement Administrator shall act in a manner necessary to qualify the
14 Settlement Fund as a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code
15 of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq., and to maintain that qualification.

16 The Parties shall cooperate to ensure such treatment and shall not take a position in any filing
17 or before any tax authority inconsistent with such treatment.

18 **2. Payment of Federal, State and Local Taxes**

19 In the event that it is subsequently determined by a tax authority that any Named Plaintiff,
20 Participating Class or Subclass Member, or Class Counsel owes any additional taxes with respect to
21 any money distributed under this Settlement Agreement, it is expressly agreed that the determination
22 of any tax liability is between the payment recipient and the tax authorities, and that Yelp shall not
23 be responsible for the payment of such taxes, including any interest and/or penalties. Yelp makes no
24 representations as to the tax treatment or legal effect of any payments pursuant to this Settlement
25 Agreement and Named Plaintiffs and Participating Class Members are not relying on any statement
26 or representation by Yelp or Yelp's counsel in this regard. The Settlement Administrator may report
27 any and all payments from the Settlement to the Named Plaintiffs, Participating Class or Subclass
28 Members, or Class Counsel on an IRS Form 1099.

1 **G. Disposition of Uncashed Settlement Checks/Electronic Payments**

2 In the event that any checks and/or electronic payments mailed and/or distributed to Class
3 Members remain uncashed/undeposited after the expiration of one hundred twenty (120) calendar
4 days, or an envelope mailed to a Class Member is returned and no forwarding address can be located
5 for the Class Member after reasonable efforts have been made (including but not limited to skip
6 tracing), then any such funds shall be transmitted to the Settlement Administrator and distributed in
7 accordance with California Code of Civil Procedure section 384 to the State Bar of California Justice
8 Gap Fund).⁵

9 **VIII. ATTORNEYS' FEES, EXPENSES OF CLASS COUNSEL AND ADMINISTRATIVE**
10 **EXPENSES**

11 **A. Class Counsel Fees and Costs**

12 Matthew H. Fisher and Matthew S. Da Vega of Da Vega Fisher Mechtenberg LLP, Michael
13 J. Jaurigue of the Jaurigue Law Group, Zareh A. Jaltrossian of KP Law, serve as counsel for
14 Plaintiffs and the class. Subject to Court approval, Yelp agrees not to object to Class Counsel's
15 request for up to one third (33.33%) of the Gross Settlement Amount (Five Million [\$5,000,000.00])
16 to cover all attorneys' fees. Class counsel agrees not to seek an award of greater than one third of the
17 Gross Settlement Amount for their attorneys' fees and that Yelp will not be obligated to pay any
18 award of class counsels' attorneys' fees in excess of one third of the Gross Settlement Amount.

19 Subject to Court approval, Yelp agrees not to object to Class Counsel's request for
20 reasonable and documented litigation costs in an amount of up to three hundred fifty thousand
21 dollars (\$350,000) subject to proof before the Court. This amount may be adjusted upwards, subject
22 to mutual agreement by the Parties. Any reduction by the Court or by an appellate court of the Class
23 Counsels' attorneys' fees or out-of-pocket expenses/costs shall not affect any of the Parties' other
24 rights and obligations under this Settlement Agreement.

25 The Settlement Administrator will issue to Class Counsel a Form 1099 with respect to the
26 awarded attorneys' fees and costs. The Settlement Administrator will pay the Court-awarded

27
28 ⁵ See <https://www.calbar.ca.gov/Access-to-Justice/Grants/Justice-Gap-Fund>

1 Attorneys' Fees and Expenses (aka Class Counsel Award) to Class Counsel on or before thirty (30)
2 calendar days after the Effective Date.

3 **IX. CONFIDENTIALITY AND PUBLIC STATEMENTS**

4 Upon preliminary approval of the Settlement Agreement, the parties shall work together in
5 good faith to prepare a mutually acceptable public statement regarding the Settlement, which Class
6 Counsel can use on their websites and for future communications related to the Settlement (and
7 Class Counsel may also refer to other publicly filed documents regarding the Settlement). Nothing
8 herein precludes the Settlement Administrator from setting up a website as part of the settlement
9 administration process.

10 **X. WAIVER OF APPEALS**

11 The Parties waive all appeals from the final approval of the Settlement unless the Court
12 materially modifies the Settlement, except that Plaintiffs and Class Counsel may appeal from an
13 order by the Court that reduces the amounts sought for the Class Representative Service Award
14 Payments or Class Counsel's Attorneys' Fees and Expenses. Such an order or affirmance of such an
15 order will not entitle Plaintiffs or the Class to void the Settlement. Yelp's payment obligations under
16 the Settlement will be suspended pending any appeal.

17 **XI. GOVERNING LAW**

18 The Parties agree that California law shall govern the validity, construction and enforcement
19 of this Settlement Agreement.

20 This Settlement Agreement, including the Exhibits hereto, contains the entire agreement and
21 understanding of the Parties with respect to the Settlement. This Settlement Agreement does not
22 impose any obligations on the Parties beyond the terms and conditions stated herein.

23 **XII. OTHER CONDITIONS OF SETTLEMENT**

24 **A. Exhibits**

25 The Exhibits to this Settlement Agreement are material and integral parts hereof and are fully
26 incorporated herein by this reference.

27
28

1 **B. Notices to Counsel**

2 All notices to counsel required or desired to be given under this Settlement Agreement shall
3 be in writing and by e-mail to lead counsel for the respective Parties. Specifically, such notices shall
4 be e-mailed to Matthew Fisher (mfisher@mdmflaw.com) of Da Vega Fisher Mechtenberg LLP for
5 the Plaintiffs, and Brian Sutherland (bsutherland@reedsmith.com) of Reed Smith LLP for Yelp at
6 their respective addresses set forth herein (or to such other attorney or address as any such party or
7 counsel may designate in a notice).

8 **C. Failure to Insist on Strict Compliance**

9 The failure of any party to insist in any one or more instances on strict compliance with the
10 terms and conditions hereof shall not be construed to be a waiver of remedies available with respect
11 to any prior or subsequent breach.

12 **D. Modifications to this Agreement**

13 No material modifications to this Agreement may be made without written agreement of all
14 Parties and prior Court approval.

15 **E. No Drafting Presumption**

16 All Parties hereto have participated, through their respective counsel, in the drafting of this
17 Settlement Agreement and, therefore, this Settlement Agreement shall not be construed more strictly
18 against one party than another.

19 **F. Dispute As To Meaning of Agreement Terms**

20 In the event of any dispute or disagreement with respect to the meaning, effect or
21 interpretation of this Settlement Agreement or any Exhibit hereto, or in the event of a claimed breach
22 of the Settlement Agreement, the Parties agree that such dispute will be resolved and adjudicated
23 only in accordance with the dispute resolution provisions of this Settlement Agreement.

24 **G. Interpretation of Terms**

25 Whenever possible, each provision and term of this Settlement Agreement shall be
26 interpreted in such a manner as to be valid and enforceable.

27
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1 **H. Severability**

2 If any portion of this Settlement Agreement is judged to be unenforceable, the remainder of
3 the Agreement shall continue to be valid and enforceable.

4 **I. Paragraph and Section Headings**

5 Paragraph and section headings are for convenience of reference only and are not intended to
6 create substantive rights or obligations.

7 **J. Counterparts**

8 This Settlement Agreement may be executed in counterparts. It may be executed in
9 counterparts which shall be deemed to be part of one original, and facsimile and electronic image
10 copies of signatures (including by pdf, Adobe Sign, DocuSign, or any electronic signature
11 complying with the U.S. federal E-SIGN Act of 2000) or other transmission method shall be
12 equivalent to original signatures. It is not necessary for all parties to sign the same document.
13 However, it is void and unenforceable if it is not signed by all Parties. Each signed counterpart
14 together with the others shall constitute the full Settlement Agreement.

15 **K. Agreement Binding**

16 As of the date on which counsel for the Parties and the Parties execute this Settlement
17 Agreement, this Settlement Agreement will be binding in all respects, unless it is rescinded as set
18 forth in Section IV.D, or unless the Court fails to approve this Settlement Agreement and the
19 Settlement Agreement is thus vacated. This Settlement Agreement shall inure to the benefit of, and
20 be binding upon, the Parties hereto and their respective heirs, dependents, executors, administrators,
21 trustees, legal representatives, personal representatives, agents, successors and assigns; provided,
22 however, that this Settlement Agreement shall not inure to the benefit of any third party.

23 **L. Advice of Counsel.** The Parties to this Settlement Agreement are represented by
24 competent counsel, and they have had an opportunity to consult with them.

25 **M. Enforcement**

26 Enforcement of this Settlement Agreement shall be prosecuted by Class Counsel or counsel
27 for Yelp only, not third parties. Class Counsel shall meet and confer with counsel for Yelp prior to
28 commencement of any enforcement proceedings.

1 The Parties will work diligently and in good faith to resolve all disputes that may arise during
2 the term of this Settlement Agreement concerning the rights, obligations, and duties of the Parties to
3 the Settlement Agreement. In the event the Parties cannot agree, the Parties will attempt to resolve
4 the dispute in mediation with mediator Mark LeHocky. If he is not available, then the Parties shall
5 negotiate in good faith to select another mediator. If the mediation fails, the Parties reserve their
6 rights to seek recourse with the Court. Defendant and Class Counsel shall split equally and pay for
7 any mediator fees and costs associated with seeking mediator assistance pursuant to this Section.
8 Under no circumstances shall any mediator fees or costs incurred pursuant to this Section be taken
9 out of the Gross Settlement Amount.

10 Any enforcement proceedings related to or arising out of this Settlement Agreement will be
11 resolved and adjudicated only by the Superior Court of California, County of San Francisco, unless
12 otherwise provided in this Settlement Agreement.

13
14 **SIGNATURES - READ CAREFULLY BEFORE SIGNING**

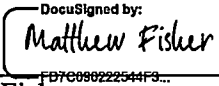
15 DocuSigned by:
16 *Eric Gruber*
By: Eric Gruber Dated: 12/12/2023
17 B88527DD449744A...
Eric Gruber
Plaintiff and Class Representative

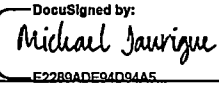
18 DocuSigned by:
19 *Ever Gonzalez*
By: Ever Gonzalez Dated: 12/13/2023
20 B50E17FAFF4D4CD...
Ever Gonzalez
Plaintiff and Class Representative


21 DocuSigned by:
22 *Jeremy Earls*
By: Jeremy Earls Dated: 12/12/2023
23 FE8EF9A09FF0475...
Jeremy Earls
Plaintiff and Class Representative

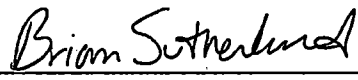
24
25 *David Schwarzbach*
By: David Schwarzbach Dated: Dec 14, 2023
26 David Schwarzbach
27 Chief Financial Officer
28 Defendant Yelp Inc.

1 **APPROVED AS TO FORM:**

2 By:  Dated: 12/11/2023
3 Matthew Fisher
4 DA VEGA FISHER MECHTENBERG LLP
5 Attorneys for Plaintiffs and Class

6 By:  Dated: 12/13/2023
7 Michael J. Jaurigue
8 JAURIGUE LAW GROUP
9 Attorneys for Plaintiffs and Class

10 By:  Dated: 12/12/2023
11 Zareh A. Jaltorossian
12 KP LAW
13 Attorneys for Plaintiffs and Class

14 By:  Dated: 12/15/2023
15 Brian Sutherland
16 ~~Reed-Smith LLP~~ (Complex Appellate Litigation Group LLP)
17 Attorneys for Defendant Yelp Inc.

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EXHIBIT A

Gruber. v. Yelp Inc.
San Francisco County Superior Court
Case No. CGC-16-554784

A Settlement has been reached in a class action lawsuit against Yelp Inc. (“Yelp”), alleging that it violated California’s Invasion of Privacy Act (“CIPA”). The Superior Court of the State of California, San Francisco County has authorized this notice. The Court will hold a hearing to consider whether to approve the Settlement.

Our records indicate you may be a member of the Settlement Class and therefore entitled to payment from the Settlement. You are part of the Settlement Class if, while physically present in California and using a cellular device, you received a call and participated in a telephone conversation with a Yelp sales representative from October 12, 2015 to May 24, 2017 (“Class Period”).

Your Estimated Settlement Payment is \$[_____] based on the estimated [_____] calls you received on a cellular device during the Class Period, as reflected in the parties’ records.

The lawsuit alleges that Yelp violated CIPA by “one-way recording” conversations (meaning Yelp recorded its own employees’ voices but not the recipients’ voices during the conversations) during certain phone calls to individuals in California without notice to or consent from the call recipient. The Court has not decided in favor of either party. Yelp denies the allegations and denies that it engaged in any wrongdoing, but has agreed to the Settlement to avoid the uncertainties and expenses associated with continuing the case.

Under the Settlement, Yelp will create a \$15,000,000.00 Settlement Fund, which will be distributed in the following amounts: (1) an estimated \$9,005,000.00 for the Settlement Class; (2) estimated settlement administration expenses of \$600,000; (3) \$45,000 to the Class Representatives for their work in creating the Settlement; (4) out-of-pocket litigation costs (expected to be no more than \$350,000) and (5) up to \$5,000,000.00 for attorneys’ fees as awarded by the Court. From the portion of the Settlement set aside for Class Awards (“Estimated Net Settlement Fund”), participating Class Members with valid mailing addresses will receive a minimum payment of \$5.00 (Five Dollars) plus a pro-rata share of the remaining Estimated Net Settlement Fund proportional to the number of calls that the Class Member received from Yelp on his or her cell phone during the Class Period.

If you want to be included in the Settlement and receive your Settlement Award, you do not need to do anything. You will give up your right to sue Yelp regarding the claims resolved by this Settlement. If you do not want to participate in this Settlement, you need to exclude yourself (“opt out”). If you exclude yourself, you will not get money from this Settlement, but you will keep your rights to sue on your own over the claims resolved by the Settlement. If you stay in the Settlement Class, you may object to any part of the Settlement by mailing a written objection to the Settlement Administrator. Your request to opt out or any objections must be submitted by [objection/exclusion deadline], 2023. Go to [settlement website] for more information on the proposed Settlement, and how to opt out or object.

This notice is only a summary. For more information on this Settlement, please visit [settlement website] or call [toll free number].

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

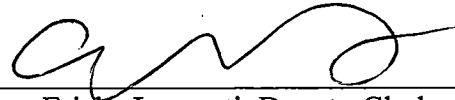
I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On December 28, 2023, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: December 28, 2023

Brandon E. Riley, Clerk

By: _____



Ericka Larnauti, Deputy Clerk