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21 Attorneys for Plaintiffs and the Proposed Class

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
23 **COUNTY OF SAN FRANCISCO**

24 ERIC GRUBER; EVER GONZALEZ; and  
25 JEREMY EARLS, individually and on behalf  
26 and all others similarly situated

27 Plaintiffs,

28 v.

YELP, INC., and DOES 1-10, inclusive,

Defendants.

Case No. CGC 16-554784

**CLASS ACTION**

**DECLARATION OF MATTHEW S.  
DA VEGA IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS SETTLEMENT  
and ATTORNEY FEES and COSTS**

Date: April 10, 2024

Time: 9:30 AM

Dept.: 613

Action Filed: October 12, 2016

Assigned to the Hon. Andrew Y.S. Cheng

ELECTRONICALLY

**FILED**

Superior Court of California,  
County of San Francisco

**03/15/2024**

**Clerk of the Court**

BY: SANDRA SCHIRO

Deputy Clerk

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**DECLARATION OF MATTHEW S. DA VEGA**

I, Matthew S. Da Vega, declare as follows:

- 1. I am an attorney admitted to practice law in the State of California.
- 2. I am a named Partner at Da Vega Fisher Mechtenberg, LLP (“DFM LLP”).
- 3. DFM LLP is counsel for Plaintiffs Eric Gruber, Jeremy Earls, Ever Gonzalez, and the certified class in this Lawsuit together with the co-counsel firms Jaurigue Law Group and KP Law (collectively “Class Counsel”.)
- 4. I have been intimately involved in all aspects of this case. I make this declaration in support of Plaintiffs’ Motion for Final Approval of Class Settlement and Attorney Fees and Costs.

**I. LEAD COUNSEL BACKGROUND**

5. **DA VEGA | FISHER | MECHTENBERG LLP (“DFM LLP”):** DFM LLP is a small plaintiff-side contingency fee based law firm representing individuals who could not otherwise afford legal counsel. Each case the firm takes, including this one, runs the risk of an uncertain outcome and possibility of little or no recovery for the client or the firm. Many cases the firm takes can require years of litigation and thousands of hours of attorney time and costs. To represent our clients in this case on a contingent fee basis, our firm had to forego compensable hourly work on other cases to devote the necessary time and resources to this case. In so doing, our firm gave up work that a firm receives more immediate payment for in exchange for risky contingent fee work in this case. This firm has previously invested in similar cases which resulted in little or no recovery due to various issues, including but not limited to bankruptcy, change in prevailing law, and/or lengthy appeals.

6. **Plaintiff’s Counsel Matthew S. Da Vega:** I am a graduate of the University of California, Santa Barbara (1993) and the University of San Francisco School of Law (1997). I became a member of the State Bar of California in 1998. After passing the bar I started working in private practice as a Plaintiff’s attorney. During my entire career I have always practiced as a Plaintiff’s lawyer representing individuals and/or groups of individuals, specializing in employment,

1 personal injury, mass torts, and product defect matters. I have done so now for approximately 24  
2 years. I first worked for Brayton & Purcell in Novato, CA representing individuals injured from  
3 exposure to asbestos and other toxins. I then worked for the class action firm of Lieff Cabraser  
4 Heimann & Bernstein in San Francisco, CA representing individuals and class members in mass  
5 torts, product defects, and in employment matters. I then worked for the firm of Cappello & Noel in  
6 Santa Barbara, again representing individual and class action Plaintiffs in employment claims, lender  
7 liability, and antitrust matters. In 2012, I started my own law firm, Da Vega Fisher Mechtenberg  
8 LLP (“DFM LLP”), originally with an office in the San Francisco Bay Area then later opening  
9 additional offices in Santa Barbara, Ventura, and the Sacramento area. I am one of the firm’s two  
10 founding partners and the current managing partner. I personally manage the firm’s Mt. View office  
11 and Santa Barbara office and travel back and forth between the two on a regular basis. I currently  
12 have cases all over the state of California including as far north as Sonoma County and as far South  
13 as San Diego County and as far east as Stanislaus County. The majority of my practice and cases are  
14 in the San Francisco South Bay area although I maintain my primary residence in Santa Barbara,  
15 California. DFM LLP has always been a Plaintiff-side contingency based law firm representing  
16 clients predominantly in employment and personal injury matters in both individual and class  
17 actions. DFM LLP is experienced counsel in matters such as this and has worked on significant  
18 employment cases such as *Salvatierra v. Intuitive Surgical, Inc.*, Santa Clara County Superior Court,  
19 Case No. 2014-1-CV-272069 (2016) (\$4.6M gross settlement for class of 208 misclassified class  
20 member employees); *Gibbins/Leal v. Hismeh Enterprises, Inc.*, Ventura County Superior Court,  
21 Case No. 56-2015-00468352 (2017) (\$1M gross settlement for class of 4000+ delivery driver  
22 members reimbursements); *Sena v. Facebook, Inc.*, San Mateo County Superior Court, Case No.  
23 16CIV00496 (2018) (\$4.25M gross settlement for class of 900+ class member employees for unpaid  
24 overtime wage); *Fregoso v. Eat Club, Inc.*, Santa Clara County Superior Court, Case No. 18-CV-  
25 330433 (2021) (\$900K gross settlement for class of 1815 class member employees for unpaid  
26 overtime wages); and *Magpiong v. CareLinx, Inc.*, San Mateo County Superior Court, Case No. 21-

1 CIV-03038 (2022)(\$1.9M gross settlement for a class of 2058 Nurses for under-paid overtime wages  
2 and misclassification as independent contractors).

3 7. The background of my law partners Matthew H. Fisher and Ted Mechtenbeg is  
4 further set forth in the Declarations of Matthew H. Fisher and Ted Mechtenberg submitted  
5 concurrently with this Motion.

6 **II. CO-COUNSEL BACKGROUND**

7 8. The background of appointed co-counsel Michael Jaurigue of JLG and Zareh  
8 Jaltorossian of KP Law is further set forth in the Declarations of Michael Jaurigue of JLG Law  
9 Group and Zareh Jaltorossian of KP Law and Dakessian Law Group, submitted concurrently with  
10 this Motion.

11 **III. CLASS COUNSEL AWARD OF ATTORNEY FEES AND COSTS**

12 9. **Common Fund Settlement:** In this matter Class Counsel negotiated a Class action  
13 settlement providing a common settlement fund with a payout of **\$15,000,000 (Fifteen Million**  
14 **dollars)**. (Amended Settlement Agreement §III.A.15.). Class Counsel is seeking as a Fee Award of  
15 **\$5,000,000 (Five Million)** or one-third of this common settlement fund. (Amended Settlement  
16 Agreement §VIII.A)

17 10. **Attorney Fees of 33.33% Percent of Common Fund is Reasonable:** Class Counsel  
18 requests the Court grant its application for an award of attorneys' fees in the amount of **\$5,000,000**  
19 **(Five Million Dollars)**. This is equal to 1/3 of the Maximum Settlement Amount of \$15,000,000  
20 created on behalf of the Class. (Settlement Agreement §6.C.(3), § 11). The requested award is fair,  
21 reasonable, and well within the common range for attorney fees of 20% to 50% in a common fund  
22 settlement. The requested award also compares favorably to the overall lodestar incurred to date (see  
23 below). Therefore, the DFM LLP respectfully requests approval of the agreed upon fee award.

24 11. **Contingency Fee Matter:** As this is a contingency matter, Class Counsel litigated  
25 this action without receiving any payment for their services or reimbursement of their costs incurred  
26 for the benefit of the Class. To represent the Class on a contingent fee basis, Class Counsel had to  
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1 forego compensable hourly work or other contingency fee cases to devote the necessary time and  
2 resources to this contingent case. In so doing, Class Counsel gave up work that a firm receives more  
3 immediate payment for in exchange for risky class action contingency fee work which could have  
4 paid the Class and its Counsel nothing. A number of difficult issues, the adverse resolution of any  
5 one of which could have barred the successful prosecution of the action, were present here.  
6 Attorneys' fees in this case were not only contingent but risky, with a very real chance that Class  
7 Counsel would receive nothing at all for their efforts, having devoted time and advancing costs.  
8 DFM LLP has previously invested in similar cases which resulted in little or no recovery due to  
9 various issues, including but not limited to bankruptcy, failed certification/decertification, other  
10 overlapping class cases, and/or lengthy appeals.

11       12.     **Contingency Fee Market:** I am familiar with the contingent fee market throughout  
12 California and in particular as it pertains to complex employer, wage and hour, and consumer class  
13 action litigation. On behalf of my firm, I and my partners have negotiated hundreds of contingency  
14 fee agreements with Plaintiffs, including both individual matters and as representatives in class  
15 action suits. Many of those agreements provide that counsel will receive between 33% to 40%+ of  
16 any recovery that is obtained, and, in addition that counsel be reimbursed for the costs they incurred  
17 out of the recovery amount. These are typical and standard percentages in employment-related  
18 contingency fee agreements throughout California. The Class Members in this complex consumer  
19 case would not be likely to obtain competent counsel in California, for any amount less than these  
20 standard fee percentages. Class Counsel has also advanced all costs in this matter and not been paid  
21 for any attorney's fees or costs to date.

22       13.     **Class Counsel's Hours and Hourly Rates:** Over the course of seven and half years  
23 of litigation I will have worked on this matter for 356.6 hours at the time of this motion and my  
24 current billable rate as of 2024 is \$775/hr. for class action work ( $\$775/\text{hr.} \times 356.6 \text{ hours} = \$276,365$   
25 in lodestar). These rates are comparable to, but are less than, those of counsel with the same  
26 education and experience in the relevant legal communities in which I practice including the San  
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1 overseeing all the administration of the Settlement. The contemporaneous billing records evidence  
2 that the attorneys' lodestar is **\$3,046,555**, with additional fees still to be incurred for preparation and  
3 attending the final approval hearing, managing post approval settlement distribution with the claims  
4 administrator, responding to class member inquiries, and handling any potential appeal of the matter.  
5 As a result, the current lodestar amount understates the total attorneys' fees ultimately incurred in  
6 this action.

7 The requested fee award of \$5,000,0000 represents a 1.64 multiplier. Whereas ““Multipliers  
8 of 1 to 4 are commonly found to be appropriate in complex class action cases.”” *Destefano v. Zynga,*  
9 *Inc.*, 2016 WL 537946, at \*21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*,  
10 2013 WL 496358, at \*4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United  
11 States District Court Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most  
12 multipliers range from 1.0 to 4.0). As a result, this Court should have no trouble concluding that an  
13 award is supported by the lodestar cross-check is fair and reasonable and is justified under California  
14 law. “[T]he lodestar method better accounts for the amount of work done, while the percentage of  
15 the fund method more accurately reflects the results achieved.” *Rawlings v. Prudential-Bache*  
16 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993).

17 **15. Distribution of Attorney Fee Award among Class Counsel:** DFM has incurred  
18 roughly 50% of the attorney hours/lodestar in this case, with JLG and Zareh Jaltorossian (through his  
19 affiliated firms KP Law and Dakessian Law, Ltd.) incurring approximately 25% of the remaining  
20 hours lodestar each. However, this lodestar should be adjusted to reflect additional considerations  
21 not reflected in these hours. JLG provided significant marketing, staffing, and administration  
22 support services in connection with this case in addition to hourly attorney work. Mr. Jaltorossian  
23 provided extraordinary appellate work in this case which included reversing a summary judgment  
24 loss at the trial court level. He further obtained a published appellate court decision of first  
25 impression holding that one-way recording a conversation without notice to the caller violates CIPA.  
26 These achievements should be reflected in the lodestar award. Plaintiffs therefore request a  
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1 distribution of fees as set forth below:

Firm Name	Attorney/Staff Name	Hours	Hourly Rate	Lodestar	Requested Fee
<b>DAVEGA FISHER MECHTENBERG LLP</b>	Matthew H. Fisher	1,769.3	\$700	\$1,238,510	
	Matthew S. Da Vega	356.6	\$775	\$276,365	
	Ted D. Mechtenberg	28.1	\$675	\$18,968	
	<b>Subtotal</b>	<b>2154</b>		<b>\$1,533,842.50</b>	<b>\$2,000,000</b>
<b>JAURIGUE LAW GROUP</b>	Michael J. Jaurigue	411.2	\$950	\$390,640	
	David Zelenski	313.2	\$700	\$219,240	
	Barbara DuVan-Clarke	98.4	\$675	\$66,420	
	Sean Shahabi	79.9	\$900	\$71,910	
	Brendan Way	12.2	\$750	\$9,150	
	Abigail Zelenski	10.8	\$700	\$7,650	
	P.J. Van Ert	8.5	\$550	\$4,675	
	Hazel Blackman	8	\$450	\$3,600	
	Alex Spellman	.6	\$550	\$330	
	Alex Tieu	4.7	\$400	\$1,880	
	Darby Renk	5.5	\$125	\$687.50	
	Drew Aron	13.5	\$175	\$2,362.50	
	Herbert Ortiz	5.4	\$175	\$945	
	Parker Swanson	22.5	\$175	\$3,937.50	
	<b>Subtotal</b>	<b>994.4</b>		<b>\$783,337.50</b>	<b>\$1,500,000</b>



<b>KP LAW</b>	Zareh Jaltorossian	715	\$750	<b>\$ 536,250</b>	<b>\$1,000,000</b>
<b>DAKESSIAN LAW, LTD.</b>	Zareh Jaltorossian	257.50	\$750	<b>\$193,125.00</b>	<b>\$500,000</b>
<b>GRAND TOTAL</b>				<b>\$3,046,555</b>	<b>\$5,000,000</b>

16. **Class Counsel Attorney Costs:** The Settlement Agreement permits up to **\$350,000 in reimbursement of costs.** (Settlement Agreement § 6.C.(3), §11). However, Class Counsel's actual costs are \$274,195.19. Therefore, Class Counsel requests the Court award it **\$274,195.19** in costs related to filing fees, service fees, court reporter/deposition fees, mediation fees, travel costs, and expert fees which could not have been recovered if this case had been lost. Class Counsel was required to advance all costs in this litigation. In this type of litigation where the corporate defendant and their attorneys are well funded, this can prove to be very expensive, risky, and therefore cost prohibitive to many attorneys. The financial burdens undertaken by Plaintiffs and Class Counsel in prosecuting this action on behalf of the Class were substantial. Plaintiffs undertook the risk of liability for Defendant's costs and even fees had this case not succeeded, as well as other potential negative financial ramifications from having come forward to sue Defendant on behalf of the Class. Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel and Plaintiff also support the requested awards. The following list itemizes Class Counsel's costs and expenses:

**DFM COSTS**

<b>Filings/Service/Depos/Court Fees:</b>	\$	<b>30,403.31</b>
<b>Travel (Flights, Lodging, Rentals, Meal):</b>	\$	<b>18,222.36</b>
<b>Mediation Fees/Costs:</b>	\$	<b>12,900.00</b>
<b><u>Experts Fees/Costs:</u></b>	\$	<b><u>59,262.89</u></b>
<b>TOTAL</b>	\$	<b>120,788.56</b>

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**JLG COSTS**

<b>Filings/Service/Depos/Court Fees:</b>	<b>\$</b>	<b>15,618.04</b>
<b>Travel (Flights, Lodging, Rentals, Meal):</b>	<b>\$</b>	<b>11,861.98</b>
<b>Marketing Fees/Costs:</b>	<b>\$</b>	<b>43,886.23</b>
<b>Mediation Fees/Costs:</b>	<b>\$</b>	<b>4,300</b>
<b><u>Experts Fees/Costs:</u></b>	<b>\$</b>	<b><u>41,603.93</u></b>
<b>TOTAL</b>		<b>\$117,270.18</b>

**KP LAW/DAKESSIAN LAW COSTS**

<b>Filings/Service/Depos/Court Fees:</b>	<b>\$</b>	<b>6,429.87</b>
<b>Travel (Flights, Lodging, Rentals, Meal):</b>	<b>\$</b>	<b>3,556.25</b>
<b>Mediation Fees/Costs:</b>	<b>\$</b>	<b>6,979.20</b>
<b><u>Experts Fees/Costs:</u></b>	<b>\$</b>	<b><u>19,171.10</u></b>
<b>TOTAL COSTS</b>	<b>\$</b>	<b>36,136.42</b>

17. Based on my extensive experience in this type of litigation and thorough familiarity with the factual and legal issues in this case, I have reached the firm conclusion that the proposed Settlement is an excellent result for the Class and is in the Class Members' best interest.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 15, 2024



Matthew S. Da Vega

2 **PROOF OF SERVICE**

3 I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a  
 4 party to the within action; and my business address is 300 West Glenoaks Boulevard, Suite 300,  
 Glendale, California 91202.

5 On **March 15, 2024**, I served the document(s) described as

6 **DECLARATION OF MATTHEW S. DA VEGA ISO MOTION FOR FINAL**  
 7 **APPROVAL**

8 on the party (or parties) in this action by delivering a true copy (or copies) addressed as follows:

<p>9 Brian A. Sutherland          10 Christine M. Morgan          11 Chris J. Pulido  <b>REED SMITH LLP</b>          12 101 Second Street, Ste 1800          San Francisco, CA 94105          BSutherland@ReedSmith.com          CMorgan@ReedSmith.com          CPulido@ReedSmith.com          QLa@reedsmith.com          CMosqueda@ReedSmith.com          15 <i>Attorney(s) for Defendant Yelp,</i>          16 <i>Inc.</i></p>	<p>Matthew S. Da Vega          Matthew H. Fisher  <b>DA VEGA FISHER</b>  <b>MECHTENBERG LLP</b>          232 East Anapamu Street          Santa Barbara, CA 93101          mfisher@mdmflaw.com          mdavega@mdmflaw.com    <i>Attorney(s) For Plaintiff</i>  <i>Eric Gruber</i></p>	<p>Zareh A. Jaltorossian  <b>KP LAW</b>          150 East Colorado Blvd.          Suite 206          Pasadena, CA 91105          zjaltorossian@kplitigators.com    <i>Attorney For Plaintiff</i>  <i>Eric Gruber</i></p>
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 18 **XXX BY ELECTRONIC MAIL:** I caused to be served by electronic transmission (e-mail) to  
 19 the parties and/or their attorney(s) of record stated above. The document(s) was/were  
 20 transmitted by electronic transmission. The transmission was reported as complete and  
 without error.

21 I declare under penalty of perjury under the laws of the State of California and the United States  
 22 that the foregoing is true and correct. Executed on **March 15, 2024** at Glendale, California.

23  
 24 

25 Parker Swanson