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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 TED D.
MECHTENBERG 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 TED D. MECHTENBERG

I, Ted D. Mechtenberg, 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 Ted D. Mechtenberg:** I am an equity partner at the firm. I am a graduate of the University of Notre Dame, B.A. Anthropology, Cum Laude (1996) and Washington University School of Law, J.D. (2001). I became a member of the California State Bar in 2002. I have worked with firms both in Washington State and California. From 2011 to 2013 I worked with the Ventura, California firm of Anderson Kill. In 2013, I was designated as a Rising Star by

1 Southern California Super Lawyers. I joined DFM LLP in 2014 as a partner. DFM LLP has always
2 been a Plaintiff-side contingency based law firm representing clients predominantly in employment
3 and personal injury matters in both individual and class actions. DFM LLP is experienced counsel in
4 matters such as this and has worked on significant employment cases such as *Salvatierra v. Intuitive*
5 *Surgical, Inc.*, Santa Clara County Superior Court, Case No. 2014-1-CV-272069 (2016) (\$4.6M
6 gross settlement for class of 208 misclassified class member employees); *Gibbins/Leal v. Hismeh*
7 *Enterprises, Inc.*, Ventura County Superior Court, Case No. 56-2015-00468352 (2017) (\$1M gross
8 settlement for class of 4000+ delivery driver members reimbursements); *Sena v. Facebook, Inc.*, San
9 Mateo County Superior Court, Case No. 16CIV00496 (2018) (\$4.25M gross settlement for class of
10 900+ class member employees for unpaid overtime wage); and *Magpiong v. CareLinx*, San Mateo
11 County Superior Court, Case No. 21-CIV-03038 (2022) (\$1.8 M gross settlement for class of 2000+
12 class member employees for IC misclassification /unpaid overtime wage), *Monte v. Fontis Solutions*,
13 Ventura County Superior Court, Case No. 56-2016—00486848-CU-OE-VTA (2022)(\$1.25M gross
14 settlement for class of 30 class of sales representative reimbursements/wage deductions), to name
15 but a few.

16 7. The background of my law partners Matthew H. Fisher and Matthew S. Da Vega is
17 further set forth in the Declarations of Matthew H. Fisher and Matthew S. Da Vega submitted
18 concurrently with this Motion.

19 **II. CO-COUNSEL BACKGROUND**

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

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

25 9. **Common Fund Settlement:** In this matter Class Counsel negotiated a Class action
26 settlement providing a common settlement fund with a payout of **\$15,000,000 (Fifteen Million**

1 **dollars).** (Amended Settlement Agreement §III.A.15.). Class Counsel is seeking as a Fee Award of
2 **\$5,000,000 (Five Million)** or one-third of this common settlement fund. (Amended Settlement
3 Agreement §VIII.A)

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

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

24 12. **Contingency Fee Market:** I am familiar with the contingent fee market throughout
25 California and in particular as it pertains to complex employer, wage and hour, and consumer class
26 action litigation. On behalf of my firm, I and my partners have negotiated hundreds of contingency
27

1 fee agreements with Plaintiffs, including both individual matters and as representatives in class
2 action suits. Many of those agreements provide that counsel will receive between 33% to 40%+ of
3 any recovery that is obtained, and, in addition that counsel be reimbursed for the costs they incurred
4 out of the recovery amount. These are typical and standard percentages in employment-related
5 contingency fee agreements throughout California. The Class Members in this complex consumer
6 case would not be likely to obtain competent counsel in California, for any amount less than these
7 standard fee percentages. Class Counsel has also advanced all costs in this matter and not been paid
8 for any attorney's fees or costs to date.

9 13. **Class Counsel's Hours and Hourly Rates:** Over the course of seven and half years
10 of litigation I will have worked on this matter for 28.1 hours at the time of this motion and my
11 current billable rate as of 2024 is \$675/hr. for class action work ($\$675/\text{hr.} \times 28.1 \text{ hours} = \$18,968$ in
12 lodestar). These rates are comparable to, but are less than, those of counsel with the same education
13 and experience in the relevant legal communities in which I practice including the San Francisco
14 Bay Area and Southern California.

15 14. **Class Counsel Lodestar Cross-Check:** I have reviewed my firm's lodestar and that
16 of Class Counsel in this matter and believe the charges are reasonable and were reasonably
17 necessary to the conduct of the case. These rates are in line with the prevailing rates of attorneys in
18 the California legal community for similar work. In this case, the reasonableness of the requested
19 for \$5,000,000 in attorneys' fees is further supported by a cross-check using attorney's lodestar in
20 this matter. During the over seven years of this litigation, Class Counsel has spent a significant
21 amount of hours investigating, researching, and litigating this matter, including but not limited to the
22 following: interviewing Plaintiffs and flushing out facts and issues; developing facts and
23 investigating Defendant's data and call recording systems; investigating and discussing Defendant's
24 corporate structure, employee chain of command, call recording policies and procedures, etc.;
25 regularly meeting and/or communicating with our clients who are the Class Representatives; drafting
26 pleadings (complaint, case management statements, mediation briefs, motions for class certification
27

1 and Belaire Notice, discovery motions, oppositions to motions to exclude Plaintiffs' experts;
2 oppositions to Motions for Summary Judgment, motions for preliminary and final approval of
3 settlement); drafting appellate briefing (Appellant Opening/Reply Briefs; Oppositions to Petitions
4 for Writ of Mandate and Answer to Petition for Review in the California Supreme Court); drafting
5 and responding to informal and formal written discovery and subpoenas; reviewing information
6 produced in formal and informal discovery (call recording data, audio recordings, call lists, email
7 notifications, etc.); researching CIPA statutory and First Amendment issues relevant to one-way call
8 recording; participating in Court-ordered hearings and conferences; taking and defending numerous
9 depositions of parties and experts, attending multiple mediations; retention of a team of seven expert
10 consultants and witnesses; discussion and development with expert witnesses of issues and
11 models/services related to voice transcription technology, VOIP and cellular technology, and
12 electronic data systems; preparing and analyzing damage models; negotiating the terms of the
13 Settlement; reviewing and making changes to Settlement Agreement; and coordinating and
14 overseeing all the administration of the Settlement. The contemporaneous billing records evidence
15 that the attorneys' lodestar is **\$3,046,555**, with additional fees still to be incurred for preparation and
16 attending the final approval hearing, managing post approval settlement distribution with the claims
17 administrator, responding to class member inquiries, and handling any potential appeal of the matter.
18 As a result, the current lodestar amount understates the total attorneys' fees ultimately incurred in
19 this action.

20 The requested fee award of \$5,000,0000 represents a 1.64 multiplier. Whereas ““Multipliers
21 of 1 to 4 are commonly found to be appropriate in complex class action cases.”” *Destefano v. Zynga,*
22 *Inc.*, 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*,
23 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United
24 States District Court Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most
25 multipliers range from 1.0 to 4.0). As a result, this Court should have no trouble concluding that an
26 award is supported by the lodestar cross-check is fair and reasonable and is justified under California
27

1 law. “[T]he lodestar method better accounts for the amount of work done, while the percentage of
 2 the fund method more accurately reflects the results achieved.” *Rawlings v. Prudential-Bache*
 3 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993).

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

Firm Name	Attorney/Staff Name	Hours	Hourly Rate	Lodestar	Requested Fee
DAVEGA FISHER MECHTENBERG LLP	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	
	Subtotal	2154		\$1,533,842.50	\$2,000,000
JAURIGUE LAW GROUP	Michael J. Jaurigue	411.2	\$950	\$390,640	
	David Zelenski	313.2	\$700	\$219,240	

1		Barbara DuVan-Clarke	98.4	\$675	\$66,420	
2		Sean Shahabi	79.9	\$900	\$71,910	
3		Brendan Way	12.2	\$750	\$9,150	
4		Abigail Zelenski	10.8	\$700	\$7,650	
5		P.J. Van Ert	8.5	\$550	\$4,675	
6		Hazel Blackman	8	\$450	\$3,600	
7		Alex Spellman	.6	\$550	\$330	
8		Alex Tieu	4.7	\$400	\$1,880	
9		Darby Renk	5.5	\$125	\$687.50	
10		Drew Aron	13.5	\$175	\$2,362.50	
11		Herbert Ortiz	5.4	\$175	\$945	
12		Parker Swanson	22.5	\$175	\$3,937.50	
13		Subtotal	994.4		\$783,337.50	\$1,500,000
14						
15						
16	KP LAW	Zareh Jaltorossian	715	\$750	\$ 536,250	\$1,000,000
17						
18						
19	DAKESSIAN LAW, LTD.	Zareh Jaltorossian	257.50	\$750	\$193,125.00	\$500,000
20						
21	GRAND TOTAL				\$3,046,555	\$5,000,000

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

1 required to advance all costs in this litigation. In this type of litigation where the corporate
2 defendant and their attorneys are well funded, this can prove to be very expensive, risky, and
3 therefore cost prohibitive to many attorneys. The financial burdens undertaken by Plaintiffs and
4 Class Counsel in prosecuting this action on behalf of the Class were substantial. Plaintiffs undertook
5 the risk of liability for Defendant's costs and even fees had this case not succeeded, as well as other
6 potential negative financial ramifications from having come forward to sue Defendant on behalf of
7 the Class. Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel
8 and Plaintiff also support the requested awards. The following list itemizes Class Counsel's costs
9 and expenses:

10 **DFM COSTS**

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

16
17 **JLG COSTS**

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

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25 **KP LAW/DAKESSIAN LAW COSTS**

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

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6 17. Based on my extensive experience in this type of litigation and thorough familiarity

7 with the factual and legal issues in this case, I have reached the firm conclusion that the proposed

8 Settlement is an excellent result for the Class and is in the Class Members’ best interest.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is

10 true and correct.

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15 Date: March 15, 2024



Ted D. Mechtenberg

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 TED D. MECHTENBERG 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 REED SMITH LLP 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 DA VEGA FISHER MECHTENBERG LLP 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 KP LAW 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