

1 PETER RUKIN (SBN 178336)
 RUKIN HYLAND DORIA & TINDALL LLP
 2 100 Pine Street, Suite 2150
 San Francisco, CA 94111
 3 Telephone: (415) 421-1800
 Facsimile: (415) 421-1700
 4 E-mail: peterrukin@rhdtdlaw.com

5 Attorneys for Plaintiffs

6 MALCOLM A. HEINICKE (SBN 194174)
 Malcolm.Heinicke@mto.com
 7 CAROLYN V. ZABRYCKI (SBN 263541)
 Carolyn.Zabrycki@mto.com
 8 MUNGER, TOLLES & OLSON LLP
 560 Mission Street
 9 Twenty-Seventh Floor
 San Francisco, CA 94105-2907
 10 Telephone: (415) 512-4000
 Facsimile: (415) 512-4077

11 Attorneys for Defendant
12 YELP! INC.

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

16 JUSTIN LARKIN, ANTHONY TIJERINO,
 17 and AHMAD DEANES, on behalf of
 themselves and all others similarly situated,
 18
 Plaintiffs,
 19
 v.
 20 YELP! INC.,
 21
 Defendant.

CASE NO. 11-CV-01503 EMC

~~PROPOSED~~ **ORDER GRANTING
 PRELIMINARY APPROVAL AND
 SETTLEMENT HEARING**

Judge: Honorable Edward M. Chen

28

1 The joint motion of the Settling Parties for an order preliminarily
2 approving a class action and collective action settlement and setting a settlement
3 hearing, came on for hearing on or about June 4, 2012. At that hearing, the Court
4 directed the parties to meet and confer and attempt to stipulate to certain changes
5 to the agreement, primarily concerning the notice process. The Court has now
6 considered the Stipulation Re: Settlement of Class and Collective Actions (and its
7 exhibits), the submissions of counsel, the stipulation amending the Stipulation Re:
8 Settlement of Class and Collective Actions per the Court's June 4, 2012
9 instructions, and all other papers filed in this action. The matter having been
10 submitted and good cause appearing therefore, the Court finds as follows:

11 1. All defined terms contained herein shall have the same
12 meanings as set forth in the Stipulation Re: Settlement of Class and Collective
13 Actions executed by the Settling Parties and filed with this Court (the
14 "Stipulation");

15 2. The Class Representatives and Yelp, through their counsel of
16 record in the Litigation and per the terms of the Stipulation, have reached an
17 agreement to resolve the Litigation and settle all California Released Claims and
18 National Released Claims;

19 3. The Court conditionally finds that, for the purposes of
20 approving this settlement only and for no other purpose and with no other effect,
21 the proposed California Class meets the requirements for certification under Rule
22 23 of the Federal Rules of Civil Procedure: (a) the proposed California Class is
23 ascertainable and so numerous that joinder of all members of the class is
24 impracticable; (b) there are questions of law or fact common to the proposed
25 California Class; (c) the claims of the Class Representatives Justin Larkin and
26 Anthony Tijerino (the "California Class Representatives") are typical of the claims
27 of the members of the proposed California Class; (d) the California Class
28 Representatives will fairly and adequately protect the interests of the proposed

1 California Class Members; (e) a class action is superior to other available methods
2 for an efficient adjudication of this controversy, especially given the settlement
3 context here; and (f) the counsel of record for the California Class Representatives
4 are qualified to serve as counsel for the Class Representatives in their own
5 capacities as well as their representative capacities and for the California Class;

6 4. The Court conditionally finds that, for the purpose of approving
7 this settlement only and for no other purpose and with no other effect, in the
8 context of this Settlement, the proposed California Class and the proposed National
9 Class meet the requirements for certification as a collective action class under 29
10 U.S.C. § 216(b) because a sufficient initial showing has been made that the
11 California Class Members and the National Class Members are similarly situated;

12 5. The moving parties have presented to the Court for review a
13 Stipulation Re: Settlement of Class and Collective Actions. The Stipulation is
14 within the range of reasonableness and meets the requirements for preliminary
15 approval;

16 6. The moving parties have also presented to the Court for review
17 a plan to provide a California Notice to the Members of the proposed California
18 Class which sets out the terms of the settlement and the California Class Members'
19 options including, *inter alia*, their options (i) to opt out of the California Settlement
20 Class, (ii) to remain in the California Settlement Class and elect to be represented
21 by counsel of their choosing, (iii) to object to the terms of the settlement, and/or
22 (iv) to seek to become California Participating Claimants by submitting California
23 Settlement Claim Certification Forms. The California Notice will be mailed to all
24 California Class Members at their Last Known Addresses. The plan regarding
25 California Notices proposed by the Settling Parties is the best practical under the
26 circumstances and satisfies pertinent due process requirements and the
27 requirements of Federal Rule of Civil Procedure 23; and

28 7. The moving parties have also presented to the Court for review

1 a plan to provide a National Notice to the Members of the proposed National Class
2 which sets out the terms of the settlement and the National Class Members' options
3 including, *inter alia*, their options (i) to refrain from acting and thereby exclude
4 themselves from the National Settlement Class, (ii) to opt in to the National
5 Settlement Class, and, if eligible, become National Participating Claimants, (iii) to
6 elect to be represented by counsel of their choosing, and/or (iv) to object to the
7 terms of the settlement. The National Notice will be mailed to all National Class
8 Members at their Last Known Addresses. The plan regarding National Notices
9 proposed by the Settling Parties is the best practical under the circumstances and
10 satisfies pertinent due process requirements.

11 Good cause appearing therefore, IT IS HEREBY ORDERED that:

12 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and
13 29 U.S.C. § 216(b), the California Class and National Class are provisionally
14 certified, and the Stipulation of Settlement is preliminarily approved;

15 2. Notice of the proposed settlement, and the rights of California
16 Class Members to opt out of the settlement or become California Participating
17 Claimants, shall be given by mailing of the California Notice by first class mail,
18 postage prepaid, to all California Class Members pursuant to the applicable
19 provisions in the Stipulation. Yelp shall provide the Claims Administrator with the
20 information necessary to conduct this mailing as set forth in the Stipulation;

21 3. Notice of the proposed settlement, and the rights of National
22 Class Members to opt in to the settlement and become National Participating
23 Claimants, if eligible, or refrain from acting and thereby exclude themselves from
24 the settlement, shall be given by mailing of the National Notice by first class mail,
25 postage prepaid, to all National Class Members pursuant to the applicable
26 provisions in the Stipulation. Yelp shall provide the Claims Administrator with the
27 information necessary to conduct this mailing as set forth in the Stipulation

28 4. Yelp has agreed to pay Class Counsel their reasonable attorney

1 fees in this matter in the maximum total combined, gross amount not to exceed
2 \$312,500 as well as certain allowable costs in this matter up to the maximum gross
3 amount of \$10,000, and Yelp has agreed to pay enhancement awards in the total
4 maximum gross amount of \$15,000 (\$5,000 to each Class Representative) to the
5 Class Representatives to reimburse them for their unique services and execution of
6 general releases. The Court preliminarily finds that these agreements are fair and
7 reasonable, subject to counsel's motion for attorney's fees and motion for final
8 approval;

9 5. By October 5, 2012, the parties shall file a joint motion for final
10 approval of the settlement, and Class Counsel shall file a motion for an award of
11 attorneys' fees and costs. Both of these motions shall be posted to the class
12 website on the same date. Written objections by California Class Members and
13 National Class Members to the proposed settlement or Class Counsel's Request for
14 attorneys' fees will be considered if received by Class Counsel on or before
15 October 22, 2012. Counsel for the parties shall respond to any such objections by
16 November 2, 2012;

17 6. A hearing shall be held before this Court on November 16,
18 2012 at 1:30 p.m. to consider whether the settlement should be given final approval
19 by the Court:

20 (a) At the Settlement Hearing, California Class Members and
21 National Class Members who have filed timely written objections may be heard
22 orally in support of, or in opposition to, the settlement;


23 (b) Class Counsel and counsel for Yelp should be prepared at the
24 hearing to respond to objections filed by California Class Members and National
25 Class Members, if any, and to provide, as appropriate, other information bearing
26 on whether or not the settlement should be approved; and

27 7. In the event that the Effective Date occurs, all California
28 Settlement Class Members will be deemed to have forever released and discharged

1 the California Released Claims, all National Settlement Class Members will be
2 deemed to have forever released and discharged the National Released Claims, and
3 the Litigation will be dismissed with prejudice. In the event that the Effective Date
4 does not occur for any reason whatsoever, the Stipulation shall be deemed null and
5 void and shall have no effect whatsoever.

6
7 PURSUANT TO STIPULATION, IT IS SO ORDERED.

8
9
10 DATED: July 12, 2012



11 The Honorable Edward M. Chen
12 United States District Judge