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13 Attorneys for Representative Plaintiffs

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION
 18

19 JUSTIN LARKIN, ANTHONY
 20 TIJERINO, and AHMAD DEANES, on
 behalf of themselves and all others
 21 similarly situated,
 22 Plaintiffs,
 23 v.
 24 YELP!, INC.,
 25 Defendant.
 26

) Case No. 3:11-cv-01503-EMC
)
) **DECLARATION OF ROSA VIGIL-**
) **GALLENBERG IN SUPPORT OF**
) **PLAINTIFFS' MOTION FOR AN**
) **ORDER (1) GRANTING FINAL**
) **APPROVAL OF CLASS AND**
) **COLLECTIVE ACTION**
) **SETTLEMENT; (2) APPROVING**
) **AWARD OF CLASS**
) **REPRESENTATIVE SERVICE**
) **PAYMENTS; (3) APPROVING**
) **AWARD OF ATTORNEYS' FEES**
) **AND COSTS.**

Date: November 30, 2012
 Time: 2:30 p.m.
 Courtroom: 5 -17th Floor
 Judge: Hon. Edward M. Chen

1 I, Rosa Vigil-Gallenberg, hereby declare as follows:

2 1. I am an attorney in good standing with the State Bar of California, and admitted to
3 practice before this Court. I make this declaration of personal knowledge and if called as a
4 witness I could and would testify competently to the facts stated herein.

5 2. I am founder of Gallenberg PC, a professional law corporation in the state of
6 California, and co-counsel for Plaintiffs. I am the attorney at my office responsible for
7 prosecuting this case.

8 3. This Declaration is respectfully submitted in support of Plaintiffs' Motion for an
9 Order (1) Granting Final Approval of Class and Collective Action Settlement; (2) Approving
10 Award of Class Representative Service payments; and (3) Approving Award of Attorneys' fees
11 and Costs.

12 Professional Background

13 4. I obtained a Juris Doctorate and a Civil Litigation Certificate from U.C. Hastings
14 College of the Law in 2007. Following graduation from law school, I was an associate at
15 Koletsky, Mancini, Feldman & Morrow working in their complex litigation department in
16 Oakland California. Thereafter, I was an associate at a class action law firm (Scott Cole &
17 Associates) in Oakland California, exclusively representing employees in class action wage and
18 hour cases. Since starting my own law practice in April 2009, I have represented employees in
19 individual, representative class action lawsuits, including wage and hour and consumer class
20 actions.

21 5. I have worked in several class actions on behalf of Plaintiffs including but not
22 limited to the following: Tierno v. Rite-Aid, Inc. (overtime class action; N.D.Cal. 3:2005CV-
23 02520), Fulton v. 24 Hour Fitness (overtime class action; San Diego County Superior Court,
24 Case No.GIC873193), Flores v. Bally Total Fitness Corporation (overtime class action; Alameda
25 County Superior Court Case No. RG-08414512), Runnings v. Dollar Tree Stores, Inc. (overtime
26 class action; N.D. Cal. 3:2005CV-04012), Salguero v. EMPNC, Inc. (overtime class action;
27 Alameda County Superior Court Case No. RG10542), Kendrick v. Concorde Career Colleges,
28 Inc. (consumer class action; Los Angeles County Superior Court Case No. BC457097), Trelles v.

1 Stephens Institute (overtime class action; San Francisco County Superior Court Case No.
2 CGC11509952), Wilhelm v. International Career Development Center, Inc., (consumer class
3 action, Los Angeles County Superior Court Case No. BC481389), Larkin v. Yelp!, Inc. (overtime
4 class action; N.D. Cal. 3:11-CV-01503), Steven Jones v. Canon Business Solutions Inc. (overtime
5 class action; C.D. Cal. 2:12-CV-07195).

6 6. I am currently a member of the State Bar of California Labor Employment and
7 Litigation Sections, a member of the Bar Association of Los Angeles Labor and Employment
8 Section as well as a member of the Consumer Attorneys of California.

9 This Litigation

10 7. My office and our co-counsel, Rukin Hyland Doria & Tindall LLP and Shapiro
11 Haber & Urmy LLP spent months investigating this case before filing the action. That pre-filing
12 investigation included discussions with numerous Account Executives and a review of the
13 representative Plaintiffs' documents and records. After filing the case, we began discussions with
14 Yelp's counsel regarding the issues in the case, including the possible mediation of the action.
15 We requested and received a production of relevant documents and data, including documents
16 reflecting Yelp's compensation policies regarding Account Executives, employment agreements,
17 and workweek data. Additionally, Yelp provided an analysis of a representative sampling of data
18 regarding time worked gathered through a database used by Account Executives.

19 8. On May 11, 2011, the parties executed an agreement to toll the FLSA statute of
20 limitations effective May 11, 2011 for all absence collective action members, pending mediation
21 of the case.

22 9. On September 15, 2011, the parties engaged in a full day mediation session with
23 Mark Rudy of Rudy, Exelrod, Zieff & Lowe. Although the parties did not reach a settlement at
24 the mediation, negotiations continued for several months.

25 10. Having explored and analyzed the evidence in the case and the parties' respective
26 arguments regarding liability, I believe that this Settlement is fair, adequate, and reasonable given
27 the risks of continued litigation and the benefits that the Settlement provides Class Members.
28

1 11. I believe this Settlement affords relief to Class Members who likely would never
2 have filed individual claims for unpaid overtime wages. Based on my conversation with multiple
3 Class Members, many were unwilling to assist with the case or file an opt-in form to join the
4 action out of fear. I believe they were also unlikely to pursue litigation, or find representation in
5 individual lawsuits, because of the releases they signed and Yelp's distribution of the ADR class
6 action waiver policy.

7 12. Plaintiffs Larkin, Tijerino, and Deanes will, pursuant to the proposed settlement,
8 provide Yelp with a full release -- not just a release of their wage and hour claims. Because
9 Plaintiffs Larkin, Tijerino, and Deanes acknowledged that the settlement provided a substantial
10 benefit to the class members to whom they owed a fiduciary duty, they agreed to these terms.
11 In my opinion, the proposed enhancement payments of \$5,000 for the named Plaintiffs here are
12 without a doubt reasonable. In addition, the named Plaintiffs have provided all the assistance that
13 a named plaintiff typically provides in a class action case, assisting in the investigation,
14 prosecution, and mediation of the action and accepting the risk of an adverse result.

15 13. Simpluris, Inc. is a well-known and established claims administrator. Based on
16 my experience, the fee it has requested in this case is fair, adequate and reasonable.

17 Attorney Fee Request

18 14. This litigation has required my office to spend time and financial resources which
19 we could have devoted to other matters. My office has not been compensated for any of this time
20 since the litigation began. From the beginning, prosecution of this class action has involved
21 significant risk for my office, which undertook the matter solely on a contingent basis with no
22 guarantee of recovery. My office placed at risk its own resources to investigate and prosecute this
23 action for nearly two years. But for my involvement in this litigation, I could and would have
24 accepted other potentially profitable work of similar complexity. In addition, I have clients who
25 retain me on an hourly basis. The time spent on this litigation precluded me from accepting this
26 type of work as well.

27 15. The work I have performed in this case includes but is not limited to the following
28

1 tasks: (1) pre litigation investigation of the merits of the case including legal research, document
2 review and witness interviews; (2) preparing the Complaint and First Amended Complaint in the
3 action; (3) conferring with co-counsel regarding case strategy; (4) legal research including but not
4 limited to research regarding arbitration issues, class action waivers, release of claims through
5 severance agreements, and other legal research; (5) making document and information requests;
6 (6) reviewing and analyzing documents produced by Defendant, including its policies,
7 employment agreements, account executive compensation documents, and spreadsheets
8 regarding the number of people that signed different waivers or releases; (7) reviewing and
9 revising a mediation brief including preparing damage calculations; (8) participating in
10 mediation; (9) negotiating/drafting/editing settlement documentation over the course of over six
11 months; (10) reviewing and analyzing reports submitted by the Claims Administrator and
12 communicating with Claims Administrator regarding the status of the claims process; (11)
13 responding to Class Members e-mails and phone calls regarding this litigation and settlement;
14 (12) Conducting a public records search for contact information for each person listed in the list
15 of 100 random Class Members who had not submitted claim forms as of September 6, 2012
16 (“Random List”) to make sure they had received the Class Notices and remind them of the
17 deadline to submit a claim form; (13) Contacted Class Members from the Random List whose
18 phone number were listed on public records searches to remind them of the deadline to respond to
19 the Class Notices; (14) prepared the moving documents for Preliminary Approval and prepare
20 and attend the Preliminary Approval hearing; and (15) prepared the moving documents for Final
21 Approval of Settlement.

22 16. I have incurred approximately \$162,000 in attorney time¹ charges in connection
23 with this matter to date. More attorney time will be invested in the future to respond to any
24 objections to the settlement if any, travel to and attend the hearing for Final Approval in San
25 Francisco, resolve issues involving late/disputed claims, negotiate/draft the releases of the Class
26 Representatives, and perform other tasks necessary to complete the settlement and claims process.
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28 ¹ As of October 17, 2012, I have devoted approximately 360.5 hours to this matter and not been paid for any of those hours.

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17. Based on the attorney fee amount requested in this case, I will be receiving substantially less than my lodestar calculation once all three firms are paid out of the fee requested. Therefore, I believe the attorney fee requested in this matter is more than reasonable.

18. My office has also incurred approximately \$1,629.54 in costs² to date and will incur more costs related to traveling to the hearing for Final Approval of Settlement in San Francisco. I have not been reimbursed for any of those costs.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed this 19TH of October 2012, at Los Angeles, California.

/s/ Rosa Vigil-Gallenberg
ROSA VIGIL-GALLENBERG

² Travel and research costs.