

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

OCT 12 2016

CLERK OF THE COURT  
BY VALENE APODNO  
Deputy Clerk

1 Matthew S. Da Vega, SBN 195443  
2 Matthew H. Fisher, SBN 229532  
3 Ted Mechtenberg, SBN 219602  
4 **DA VEGA | FISHER | MECHTENBERG, LLP**  
5 232 E. Anapamu St.  
6 Santa Barbara, CA 93101  
7 Telephone: 805.232.4471  
8 Facsimile: 877.535.9358  
9 Mdavega@mdmflaw.com

10 Attorneys for Plaintiffs and the Proposed Class

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN FRANCISCO**

13 ERIC GRUBER, individually and on behalf  
14 and all others similarly situated,

15 Plaintiffs,

16 vs.

17 YELP, INC., and DOES 1-10, inclusive,  
18 Defendants.

19 Case No.

**CGC 16-554784**

CLASS ACTION

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF:**

- 20 (1) **UNLAWFUL RECORDING AND INTERCEPTING OF COMMUNICATIONS (Cal. Penal. Code § 632.7)**
- 21 (2) **UNLAWFUL RECORDING OF AND EAVESDROPPING UPON CONFIDENTIAL COMMUNICATIONS (Cal. Penal Code §632)**
- 22 (3) **UNLAWFUL WIRETAPPING (Cal. Penal Code §631).**

DEMAND FOR JURY TRIAL

23 Individual and Representative Plaintiff Eric Gruber ("Gruber") brings this action on behalf  
24 of himself ("Plaintiff") and all others similarly situated ("the Class"), and on information and  
25 belief allege against Defendant YELP, Inc. ("YELP") and Does 1-10 (collectively "Defendants")  
26 the following:

NATURE OF THE CASE

- 27 1. This case is brought as a class action under California Code of Civil Procedure

FILED BY FAX

1 (“CCP”) §382. This class action lawsuit arises out of Defendant’s policy and practice of illegally  
2 monitoring and recording calls made to and from YELP’s Sales Representatives to and from  
3 prospective clients (both large and small business owners). YELP has a policy and practice by  
4 which YELP’s Sales Managers “barge” into (electronically eavesdrop and record conversations  
5 without the knowledge or consent of all the parties) telephone communications between YELP’s  
6 Sales Representatives and prospective business owners regarding the sales of YELP’s products  
7 (advertising on YELP’s website). Defendant intentionally and surreptitiously monitored and  
8 recorded telephone calls to and from YELP’s Sales Representatives without warning or disclosing  
9 to callers that they were doing so.

10 2. For at least one (1) year prior to the original filing of this action and through to the  
11 present Defendants have had a consistent policy and practice of recording telephone  
12 conversations without the consent of all parties violating California’s Invasion of Privacy Act  
13 (Penal Code §630, et seq.). Specifically, Defendant’s policy and practice violated Penal Code §  
14 632.7, which prohibits the recording of a communication made from a cellular or cordless  
15 telephone without the consent of all the parties to the communication; Penal Code §632, which  
16 similarly prohibits the recording or intercepting (i.e. monitoring) of a confidential communication  
17 made from a hardwired landline telephone without the consent of all parties to the  
18 communication; and Penal §631, which prohibits unauthorized wiretapping to gain access to the  
19 contents of a telephone communication.

20 3. As a result of Defendant’s violations, thousands of individuals who called or were  
21 called by YELP’s Sales Representatives in California to and/or from a hardwired landline,  
22 cellular or cordless telephone were monitored and recorded by Defendants surreptitiously and  
23 without disclosure. Therefore, they are entitled to an award of statutory damages and injunctive  
24 relief as set forth in Penal Code §637.2.

25 4. The “Class Period” is designated as the time from **October 12, 2015** (one year  
26 prior to filing of the this complaint), through the entry of judgment, based on the allegations as  
27 described herein, as they have been ongoing for at least the one year prior to the filing of this  
28 Complaint.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THE PARTIES**

5. **Plaintiff Eric Gruber** (“Gruber”) is an individual who resides in the City and County of San Francisco. Gruber is a small business owner and solo attorney practitioner who owns and operates the Gruber Law Group, which is also located in San Francisco, California.

6. **Defendant YELP:** YELP is an internet company that develops, hosts and markets Yelp.com and the Yelp mobile app, which publish crowd-sourced reviews about local businesses. Yelp was founded in 2004 and grew quickly. By 2015 it had \$55 million in revenues. Yelp became a public company in March 2012 and became profitable for the first time two years later. As of 2016, Yelp.com has 135 million monthly visitors and 95 million reviews. The company's revenues come from businesses advertising. At all relevant times, Defendant YELP was and is a corporation organized under the laws of the State of California, having its corporate headquarters in San Francisco, California in San Francisco County. Plaintiffs allege that the practices and policies that are complained of in this Complaint have been occurring throughout the Class Period and are currently applied by Defendants throughout California. Defendant systematically and continuously does business in California with California residents.

**FICTITIOUS DEFENDANTS**

7. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiffs at this time. When their true names and capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and capacities. Plaintiff is informed and believes, and thereon alleges that each of the fictitiously-named Defendants are responsible in some manner for the occurrences alleged herein and that Plaintiff's and the proposed Class Members' damages and penalties alleged herein were proximately caused by such Defendants.

**AGENCY**

8. Plaintiffs are informed, believe, and thereon allege that each of the Defendants herein was, at all times relevant in this action, the agent, employee, representing partner, officer, director, subsidiary, affiliate, parent corporation, successor and/or predecessor in interest and/or

1 joint venture of the remaining Defendants and was acting within the course and scope of that  
2 relationship. Plaintiffs are further informed, believe, and thereon allege that each of the  
3 Defendants herein gave consent to, ratified, adopted, approved, controlled, aided and abetted,  
4 and/or otherwise authorized the acts alleged herein to the remaining Defendants.

### 5 JURISDICTION AND VENUE

6 9. This Court has subject matter jurisdiction over this action under California Penal  
7 Code §§ 631, 632, 632.7 and 637.2

8 10. This Court has personal jurisdiction over the parties because Defendant YELP's  
9 principal place of business and corporate headquarters is located in the City and County of San  
10 Francisco, California. YELP continually and systematically conducts business in San Francisco,  
11 California and has employed and does employ numerous individuals within the City and County  
12 of San Francisco. Likewise, Plaintiff is a resident of San Francisco, California and his rights were  
13 violated in the State of California and arose out of his contact with Defendant in and from San  
14 Francisco, California.

15 11. Venue is proper in this county pursuant to California Code of Civil Procedure  
16 §395(a). Defendant's business may be found within San Francisco County. The unlawful acts, as  
17 well as the course of conduct alleged herein, occurred, in part, in San Francisco County.  
18 Defendants maintain headquarters, transact business, have agents in San Francisco County, and  
19 numerous Class Members are located in San Francisco County, and Defendants are otherwise  
20 within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged  
21 herein have had a direct effect on Plaintiffs and those similarly situated within the State of  
22 California and within San Francisco County.

### 23 FACTUAL ALLEGATIONS

24 12. Plaintiff, on information and belief, alleges the following:

25 13. **Defendant YELP's Eavesdropping and Recording Practices:** During  
26 the Class Period Defendant YELP had a pattern and practice of illegally eavesdropping and  
27 recording the conversations of Class Members without their knowledge or consent. Defendants  
28 intentionally used technology consisting of hardware and/or software to carry out a practice and

1 policy of recording calls made to and from California-based Class Members and YELP's Sales  
2 Representatives.

3 14. Defendant's Sales Managers and Representatives were directed, trained, and  
4 instructed to, and did, record telephone calls between YELP's call centers and callers, including  
5 California Class Members.

6 15. Defendant's Sales Managers and Representatives were not trained nor instructed;  
7 or such training and instruction was not enforced or monitored to provide Class Members notice  
8 that the conversations they were having might be monitored and/or recorded. YELP does not  
9 provide a "pre-recorded" message that such monitoring and/or recording may be taking place.  
10 The standard procedure for YELP's Sales Representatives is to call business owners and simply  
11 say, "Hi I am [Sales Representative's first name] from YELP ...".

12 16. Defendant YELP employs Sales Managers who in turn manage a team of Sales  
13 Representatives who each make sales calls within and into California on a daily basis, attempting  
14 to sell California based business owners and operators (Class Members) advertisement space on  
15 YELP's website. The majority of their sales calls are made within or to California based  
16 companies and individuals.

17 17. Each of these Sales Managers are required by YELP's management to "barge" into  
18 (electronically eavesdrop and/or record conversations without the knowledge or consent of all the  
19 parties) the calls of their managed Sales Representatives. The eavesdropping Sales Manager has  
20 the power to, using YELP's phone system's "barge" feature:

21 (1) Silently monitor the phone call between a Sales Representative and Class Member  
22 without the Sales Representatives or Class Members knowledge or notice;

23 (2) "Whisper Coach" the Sales Representative (covertly speak only to the Sales  
24 Representative) so as to coach the Sales Representative on what to say to close the sale without  
25 the Class Member's ability to hear the Sales Manager and thus without the Class Member's  
26 knowledge or notice of the eavesdropping;

27 (3) Record the conversation between the Sales Representative and Class Member,  
28 again without the knowledge or notice of either the Sales Representative and/or Class Member.

1 Further, the Sales Representative may on his/her own record the conversation (without the Sales  
2 Manager's involvement) with the Class Member.

3 18. All of this is done without notifying the Class Members that the conversation may  
4 be "monitored or recorded". In fact such warnings are routinely and regularly ignored by the  
5 Sales Representatives and Sales Managers who have no knowledge if any warning was given at  
6 the start of the conversation due to "barging" in the middle of these conversations in progress. It  
7 is a daily routine and practice that the Sales Managers and Sales Representatives record such  
8 conversations electronically on YELP's phone system. YELP's Sales Managers and Sales  
9 Representatives are in fact instructed and encouraged to record these conversations to then use as  
10 training tools to increase sales. These recordings are then stored in YELP's phone system/data  
11 base.

12 19. YELP's Sales Managers are constantly measured by the amount of "barge time"  
13 per week they perform. Those "barged" calls are often recorded by Sales Managers and Sales  
14 Representatives are expected by YELP management to record phone conversations.

15 20. **Plaintiff Eric Gruber ("Gruber"):** Eric Gruber is an individual and a resident of  
16 San Francisco, California. He is a small business owner. He is a solo attorney and legal  
17 practitioner who owns and operates the Gruber Law Group located in San Francisco, California.  
18 His legal practice, which started in 2013, focuses on personal injury and employment matters. He  
19 is a graduate of Hamline University in St. Paul, Minnesota and the University of California,  
20 Hastings College of the Law.

21 21. In approximately March of 2014 Gruber was approached via calls to his cell phone  
22 and email by YELP Sales Representatives regarding purchasing advertisement space on YELP's  
23 website. Over the next approximately 2 years and 4 months Gruber was contacted via phone a  
24 dozens times or more by YELP's Sales Representatives aggressively attempting to sell him  
25 advertisement space. Gruber's last discussions with a YELP Sales Representative were in  
26 approximately July of 2016. During these conversations Gruber discussed numerous confidential  
27 business related and financial issues with the YELP Sales Representatives including his own  
28 business' confidential financial situation, business strategies, and business practices as well as his

1 own personal finances and sometimes his own personal life. On information and belief some if  
2 not many of these conversations Gruber had with YELP's Sales Representatives were  
3 eavesdropped on and recorded by YELP's Sales Managers and/or Sales Representatives. Gruber  
4 had a reasonable expectation that these conversations were private and not being eavesdropped on  
5 or recorded because Defendant failed to provide the now common pre-recorded message that the  
6 call may be "monitored or recorded for quality assurance purposes". The failure to provide such  
7 warnings or actual live notice that such conversations might be monitored and recorded provided  
8 Plaintiff the reasonable expectation that such conversations were private, confidential and not  
9 being monitored and recorded. Further, Gruber had a reasonable expectation of privacy because  
10 he was working with YELP Sales Representatives on how to best benefit his business and  
11 personal life through the exchange of confidential business and financial information. During  
12 these calls Gruber was never given notice or warning that his conversation with the Sales  
13 Representative was being eavesdropped on and/or recorded without his knowledge.

14 22. Gruber, on information and belief, and on that ground alleges that YELP, during  
15 the proposed Class Period, had a pattern and practice of eavesdropping and recording  
16 conversations of thousands of Class Members without their knowledge or consent. Because there  
17 were no warnings that calls would be recorded, Plaintiff and Class Members had a reasonable  
18 expectation that their telephone conversations with Defendant's employees and agents were, and  
19 would remain, private to the parties on the telephone. The secret monitoring and recording of  
20 these conversations without notice and consent is an invasion of privacy and highly offensive and  
21 intrusive to a reasonable person including Plaintiff and Class Members.

### 22 CLASS ACTION ALLEGATIONS

23 23. Plaintiff brings this action individually and as a class action on behalf of an opt-out  
24 class (the "Class") defined as follows:

25 **All current California residents who participated in one or**  
26 **more telephone conversations with YELP's Sales**  
27 **Representatives via a cellular, cordless or hardwired landline**  
28 **telephones while the resident was located in California and**  
**whose call(s) was monitored and recorded by YELP**

1                   **surreptitiously or without disclosure during the Class Period**  
2                   **(October 12, 2015 until the entry of judgment).**

3           24.       Plaintiffs reserve the right under Rule 3.765(b), California Rules of Court, to  
4 amend or modify the class description with greater specificity or further division into a subclasses  
5 or limitations to particular issues.

6           25.       This action is brought, and may properly be maintained, as a class action pursuant  
7 to California Code of Civil Procedure §382 (and the analogous provisions of Federal Rules of  
8 Civil Procedure 23(a)(1)-(4) and 23(b).)

9           26.       Defendants, via their unlawful actions, have violated Plaintiff and the Class  
10 Members' privacy rights under California's Invasion of Privacy Act, California Penal Code §630  
11 et seq. There is a well-defined community of interest in the litigation and the questions of law  
12 and fact raised by Defendant's alleged violations of the Penal Code, as Plaintiff seeks to represent  
13 the Class containing numerous members who were monitored and recorded by Defendant without  
14 their knowledge or consent. Further, the proposed Class is clearly ascertainable and Class  
15 Members easily identifiable via Defendant's phone system records and/or Defendant's telephone  
16 company's record of calls, recordings, and supporting documents. As described below, this  
17 action also satisfies the numerosity, commonality, predominance, typicality, adequacy, and  
18 superiority requirements of these provisions.

19                   **Numerosity:**

20           27.       A class action is the only available method for the fair and efficient adjudication of  
21 this controversy. Although the exact number and identities of Class Members are unknown to  
22 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is  
23 informed and believes that the Class includes at least 1000 persons. On information and belief,  
24 therefore, Plaintiff alleges that the members of the Class are so numerous that joinder of all  
25 members is impractical, if not impossible. Membership in the Class will be determined upon  
26 analysis of, *inter alia*, telephone systems records maintained by Defendants.

27                   **Commonality and Predominance:**

28           28.       The Plaintiffs and the Class share a community of interest because there are



1 numerous common issues of fact and law that predominate over any questions and issues solely  
2 affecting individual members. Such common factual and legal issues include, but are not limited  
3 to, the following:

4 a. Whether Defendant had a policy or practice of monitoring and recording  
5 telephone calls to and/from the proposed Class Members;

6 b. Whether Defendant had a policy or practice during the Class Period of not  
7 disclosing/providing notice to the proposed Class Members that their conversations might be  
8 monitored and recorded;

9 c. Whether Defendant had a policy or practice during the Class Period of not  
10 obtaining consent from the proposed Class Members to the monitoring and recording of telephone  
11 conversations;

12 d. Whether Defendant violated California Penal Code §632.7 during the  
13 proposed Class Period by monitoring and recording telephone conversations between the  
14 proposed Class Members on cellular or cordless telephones in California and Defendant's Sales  
15 Representatives without knowledge or consent of the Class Members.

16 e. Whether Defendant violated California Penal Code §632 during the  
17 proposed Class Period by monitoring and recording telephone conversations between the  
18 proposed Class Members on a hardwired landline telephone in California and Defendant's Sales  
19 Representatives without knowledge or consent of the Class Members.

20 f. Whether Defendant violated California Penal Code §631 during the  
21 proposed Class Period by engaging in unauthorized wiretapping of telephone conversations  
22 between proposed Class Members in California and Defendant's Sales Representatives without  
23 knowledge or consent of the Class Members; and

24 g. Whether Class Members are entitled to statutory damages of \$5,000 under  
25 Penal Code §637.2 for every violation of Penal Code §§ 631, 632, and 632.7.

26 **Typicality:**

27 29. Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff and all  
28 Class Members are based on the same legal theories and arise out of the same common course of

1 conduct and unlawful policies or practices of Defendant, resulting in the same injury to Plaintiffs  
2 and Class Members and same statutory damages, as alleged herein.

3 **Adequacy of Representation:**

4 30. Plaintiff will fairly and adequately represent the Class. Plaintiff has the same  
5 interests in the litigation of this case as the Class Members. Plaintiff is committed to vigorous  
6 prosecution of this case and has retained competent counsel who are experienced in class actions  
7 of this nature. Plaintiff is not subject to any individual defenses different from those conceivably  
8 applicable to the Class as a whole. Plaintiff and his counsel are not aware of any interest adverse  
9 to those of the other proposed Class Members.

10 **Superiority of Class Action:**

11 31. A class action is superior to other available methods for the fair and efficient  
12 adjudication of this controversy because individual litigation of the claims of all Class Members  
13 is impractical. The nature of this action and the format of laws available to Plaintiff and Class  
14 Members identified herein make the class action format a particularly efficient and appropriate  
15 procedure to redress the wrongs alleged herein. If each Class Member were required to file an  
16 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage  
17 since they would be able to exploit and overwhelm the limited resources of each individual class  
18 member with their vastly superior financial and legal resources. Requiring each class member to  
19 pursue an individual remedy would also discourage the assertion of lawful claims by Class  
20 Members who would be disinclined to file an action against Defendant.

21 32. Even if every Class Member could afford individual litigation, the court system  
22 could not. It would be unduly burdensome to the courts in which individual litigation of  
23 numerous cases would proceed. Individualized litigation would also present the potential for  
24 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all  
25 parties and to the court system resulting from multiple trials of the same factual issues leading to  
26 establishment of inconsistent rulings and standards. The prosecution of individual actions may  
27 create a risk of adjudications that as a practical matter may be dispositive of the Class Members  
28 interest not parties to those adjudications or that may impede or impair the ability of those non-

1 party Class Members to protect their own interest. Further, it will allow the illegal actions (that  
2 are difficult to discovery due to their convert nature) and very real harm suffered by numerous  
3 putative Class Members to continue unabated due to most individual's inability to pursue and  
4 enforce such individual claims because of the limited statutory penalty. By contrast, the conduct  
5 of this action as a class action, with respect to some or all of the issues presented herein, presents  
6 fewer management difficulties, conserves the resources of the parties and the court system, and  
7 protects the rights of each Class Member. Plaintiff anticipates no management difficulties in this  
8 litigation.

9 33. Further, the Defendant has also acted, or have refused to act, in respects generally  
10 applicable to the Class, thereby making appropriate final and injunctive relief, or corresponding  
11 declaratory relief, with regard to Class Members as a whole, as requested herein. Likewise,  
12 Defendant's conduct, as described herein, is unlawful, ongoing, and will continue unless  
13 restrained and enjoined by this Court.

14 **FIRST CAUSE OF ACTION**

15 **Unlawful Recording and Intercepting of Communications**

16 **Violation of Penal Code §632.7**

17 **(Against Defendant YELP and Does 1-10)**

18 34. Plaintiff incorporates by reference in this cause of action each allegation of all of  
19 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and  
20 Does 1-10, and each of them, as follows:

21 35. Plaintiff alleges that during the Class Period that Plaintiffs and Class Members  
22 each participated in at least one telephone call with Defendant's employees or agents that was  
23 made to or within California while the Class Member was on a cellular or cordless telephone.

24 36. Plaintiff alleges that during the Class Period Defendant had a policy and practice  
25 of using a telephone system that enabled Defendant to surreptitiously, without knowledge or  
26 consent, monitor and record conversations between its Sales Representatives and Class Members  
27 on cellular or cordless telephones.

28 37. Plaintiff alleges that during the Class Period Defendant had a policy and practice

1 of using a telephone system surreptitiously, without knowledge or consent, to monitor and record  
2 conversations between its Sales Representatives and Class Members on cellular or cordless  
3 telephones.

4 38. Plaintiff alleges that during the Class Period Defendant had and followed a policy  
5 or practice of not providing notice or warning to Plaintiff or Class Members that their cellular and  
6 cordless telephone communications with Defendant's Sales Representatives were to be monitored  
7 and recorded. Because Defendant did not disclose to Plaintiff and Class Members their calls  
8 were being monitored and recorded Defendant did not obtain, nor could have obtained, express or  
9 implied consent to the monitoring and recording of said conversations. As a result Plaintiff and  
10 Class Members had an objectively reasonable expectation of privacy from the surreptitious and  
11 covert practice of monitoring and recording conversations.

12 39. Defendant has failed to provide even the now common and simple pre-recorded  
13 message that such sales calls may be "monitored or recorded for quality assurance purposes".  
14 The failure to provide such warnings or actual live notice that such conversations may be  
15 monitored and recorded provided the Plaintiff and Class Members the reasonable expectation that  
16 such conversations were private, confidential and not being monitored and recorded. The failure  
17 of such warnings would provide a reasonable person the belief and security that their discussions  
18 were not being recorded and they could discuss confidential financial or personal information that  
19 they would not normally want eavesdropped on and recorded. As the California Supreme Court  
20 has stated, "in light of the circumstances that California consumers are accustomed to being  
21 informed at the outset of a telephone call wherever a business entity intends to record the call, it  
22 appears equally plausible that, in the absence of such an advisement, a California consumer  
23 reasonably would anticipate that such a telephone call is not being recorded, particularly in view  
24 of the strong privacy interest most persons have with regard to personal financial information  
25 frequently disclosed in such calls." (Kearney v. Salomon Smith Barney (2006) 39 Cal. 4<sup>th</sup> 95.)

26 40. Defendant's conduct as described herein violated California Penal Code §  
27 632.7(a). Under Penal Code §637.2 Plaintiff and Class Members are therefore entitled to \$5,000  
28 in statutory damages per violation, even in the absence of proof of actual damages, the amount

1 deemed proper by the California Legislature. Plaintiff and Class Members are also entitled to  
2 injunctive relief to enjoin further violations.

3 **SECOND CAUSE OF ACTION**

4 **Unlawful Recording of and Eavesdropping upon Confidential Communications**

5 **Violation of Penal Code §632**

6 **(Against Defendant YELP and Does 1-10)**

7 41. Plaintiffs incorporate by reference in this cause of action each allegation of all of  
8 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and  
9 Does 1-10, and each of them, as follows:

10 42. Plaintiff alleges that during the Class Period that Plaintiffs and Class Members  
11 each participated in at least one telephone call with Defendant's employees or agents that was  
12 made to or within California while the Class Member was on a hardwired landline telephone.

13 43. Plaintiff alleges that during the Class Period Defendant had a policy and practice  
14 of using a telephone system that enabled Defendant to surreptitiously, without knowledge or  
15 consent, monitor and record conversations between its Sales Representatives and Class Members  
16 on a hardwired landline telephone.

17 44. Plaintiff alleges that during the Class Period Defendant had a policy and practice  
18 of using a telephone system surreptitiously, without knowledge or consent, to monitor and record  
19 conversations between its Sales Representatives and Class Members on a hardwired landline  
20 telephone.

21 45. Plaintiff alleges that during the Class Period Defendant had and followed a policy  
22 or practice of not providing notice or warning to Plaintiff or Class Members that their hardwired  
23 landline telephone communications with Defendant's Sales Representatives were be monitored  
24 and recorded. Because Defendant did not disclose to Plaintiff and Class Members their calls  
25 were being monitored and recorded Defendant did not obtain, nor could have obtained, express or  
26 implied consent to the monitoring and recording of said conversations. As a result Plaintiff and  
27 Class Members had an objectively reasonable expectation of privacy from the surreptitious and  
28 covert practice of monitoring and recording conversations.

1 46. Defendant has failed to provide even the now common and simple pre-recorded  
2 message that such sales calls may be “monitored or recorded for quality assurance purposes”.  
3 The failure to provide such warnings or actual live notice that such conversations may be  
4 monitored and recorded provided the Plaintiff and Class Members the reasonable expectation that  
5 such conversations were private, confidential and not being monitored and recorded. The failure  
6 of such warnings would provide a reasonable person the belief and security that their discussions  
7 were not being recorded and they could discuss confidential financial or personal information that  
8 they would not normally want eavesdropped on and recorded. As the California Supreme Court  
9 has stated, “ in light of the circumstances that California consumers are accustomed to being  
10 informed at the outset of a telephone call wherever a business entity intends to record the call, it  
11 appears equally plausible that, in the absence of such an advisement, a California consumer  
12 reasonably would anticipate that such a telephone call is not being recorded, particularly in view  
13 of the strong privacy interest most persons have with regard to personal financial information  
14 frequently disclosed in such calls.” (*Kearney v. Salomon Smith Barney* (2006) 39 Cal. 4<sup>th</sup> 95.)

15 47. Defendant’s conduct as described herein violated California Penal Code § 632.  
16 Under Penal Code §637.2 Plaintiff and Class Members are therefore entitled to \$5,000 in  
17 statutory damages per violation, even in the absence of proof of actual damages, the amount  
18 deemed proper by the California Legislature. Plaintiff and Class Members are also entitled to  
19 injunctive relief to enjoin further violations.

20 **THIRD CAUSE OF ACTION**

21 **Unlawful Wiretapping**

22 **Violation of Penal Code §631**

23 **(Against Defendant YELP and Does 1-10)**

24 48. Plaintiffs incorporate by reference in this cause of action each allegation of all of  
25 the foregoing paragraphs as if fully restated herein, and further allege against Defendants and  
26 Does 1-10, and each of them, as follows:

27 49. Plaintiff alleges that during the Class Period Defendant had a policy and practice  
28 of having supervisors (i.e. Sales Managers) monitor and record telephone calls using a telephone

1 system that enabled Defendant to surreptitiously, without knowledge or consent, monitor and  
2 record conversations between its Sales Representatives and Class Members.

3 50. Plaintiff alleges that during the Class Period Defendant had a policy and practice  
4 of having supervisors (i.e. Sales Managers) accessing and listening to recordings of calls that  
5 either Sales Managers or Sales Representatives recorded using a telephone system surreptitiously,  
6 without knowledge or consent of Class Members.

7 51. Defendant's conduct as described herein violated California Penal Code § 631.  
8 Under Penal Code §637.2 Plaintiff and Class Members are therefore entitled to \$5,000 in  
9 statutory damages per violation, even in the absence of proof of actual damages, the amount  
10 deemed proper by the California Legislature. Plaintiff and Class Members are also entitled to  
11 injunctive relief to enjoin further violations.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff, on behalf of himself and the Proposed Class and pray  
14 for judgment and the following specific relief against Defendants, jointly and separately as  
15 follows:

16 A. That the Court determine and order that this action may be maintained and  
17 certified as a class action under California Code of Civil Procedure § 382;

18 B. That the Court order Plaintiff appointed as representative of the Class and  
19 appoint counsel for Plaintiff as class counsel;

20 C. An order declaring that Defendant's actions, as described herein, violate  
21 California Penal Code §§ 631, 632, 632.7;

22 D. A judgment for an award of statutory damages to Plaintiff and Class  
23 Members for each violation pursuant to California Penal Code § 637.2;

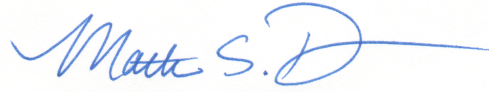
24 E. A permanent injunction under Penal Code § 637.2 enjoining Defendant  
25 from engaging in further conduct in violation of California Penal Code § 630, et seq.;

26 F. That Plaintiff, the Class Members, and represented parties be awarded  
27 reasonable attorneys' fees and costs pursuant to, Code of Civil Procedure § 1021.5, and/or other  
28 applicable law; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- G. An award of pre and post-judgment interest to extent allowed by law, and
- H. For such other and further relief as this Court may deem appropriate.

Dated: October 12, 2016



By: \_\_\_\_\_

Matthew S. Da Vega  
**DA VEGA | FISHER | MECHTENBERG, LLP**  
Attorneys for the Plaintiff and the Proposed Plaintiffs  
Class



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a trial by jury for all issues so triable.

Dated: October 12, 2016



By: \_\_\_\_\_

Matthew S. Da Vega  
**DA VEGA | FISHER | MECHTENBERG, LLP**

Attorneys for the Plaintiff and the Proposed Class