

CLASS ACTION SETTLEMENT AGREEMENT

This SETTLEMENT is by and between REPRESENTATIVE PLAINTIFFS on behalf of SETTLEMENT CLASS MEMBERS in the above captioned action and the REMAINING APP DEVELOPER DEFENDANTS. The SETTLING PARTIES are desirous of settling their differences reflected in this action and hereby agree to the terms of this SETTLEMENT.

CLASS COUNSEL believe that the SETTLEMENT confers tangible benefits upon the SETTLEMENT CLASS MEMBERS and, based on their evaluation, is in the best interests of the SETTLEMENT CLASS.

The REPRESENTATIVE PLAINTIFFS have asserted, and continue to contend, that the REMAINING APP DEVELOPER DEFENDANTS have liability for the claims asserted in this action. The REMAINING APP DEVELOPER DEFENDANTS have denied, and continue to deny, that any REMAINING APP DEVELOPER DEFENDANT took any intentional or unintentional act that harmed or damaged any SETTLEMENT CLASS MEMBER. This SETTLEMENT is not an admission by any SETTLING PARTY that any of the RELEASED CLAIMS have or do not have merit.

Now, therefore, it is hereby stipulated and agreed by and among the REPRESENTATIVE PLAINTIFFS (for themselves and on behalf of the SETTLEMENT CLASS MEMBERS) and the REMAINING APP DEVELOPER DEFENDANTS that, subject to the approval of the Court and the other terms herein, this action and the RELEASED CLAIMS shall be finally and fully compromised, settled and released, and JUDGMENT entered with prejudice as to all SETTLING PARTIES on the RELEASED CLAIMS, upon and subject to the terms and conditions of this SETTLEMENT, as follows:

1. DEFINITIONS

As used in this SETTLEMENT the following terms have the meanings specified below:

1.1. "CLAIM FORM DEADLINE" means one-hundred and twenty (120) days after entry of the PRELIMINARY APPROVAL ORDER or such other deadline as is set by the Court.

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1 1.2. “CLASS COUNSEL” means CO-LEAD CLASS COUNSEL and the law firms
2 of Edwards Law, the Law Offices of Carl F. Schwenker and Gardy & Notis, LLP.

3 1.3. “CLASS LIST” means the list of members of the SETTLEMENT CLASS as
4 provided for in paragraph 4.1 of this SETTLEMENT.

5 1.4. “CLASS PERIOD” means the time period identified for each of the
6 REMAINING APP DEVELOPER DEFENDANTS, respectively, as set forth below in
7 paragraphs 1.36(A)–(H).

8 1.5. “CO-LEAD CLASS COUNSEL” means the law firms of Kerr & Wagstaffe LLP
9 and Phillips, Erlewine, Given & Carlin LLP.

10 1.6. “DEFENSE COUNSEL” means the law firms of record for each of the
11 REMAINING APP DEVELOPER DEFENDANTS as reflected on ECF No. 856.

12 1.7. “EFFECTIVE DATE” means five (5) Court days after all of the events and
13 conditions specified in paragraph 10.1 of this SETTLEMENT have been fully met and have
14 occurred.

15 1.8. “ELECTRONIC CLAIM FORM” refers to the online form the SETTLEMENT
16 CLASS MEMBERS may complete on the SETTLEMENT WEBSITE to receive payment under
17 the SETTLEMENT. Except as otherwise authorized or instructed by the Court, the
18 ELECTRONIC CLAIM FORM must be substantially similar to the form attached as **Exhibit A**.

19 1.9. “ELECTRONIC PAYMENT” shall mean compensation to be distributed to
20 ELIGIBLE CLAIMANTS, in the form of a code for cash value credit on Amazon.com, the total
21 monetary value of which shall be calculated by the SETTLEMENT ADMINISTRATOR
22 pursuant to paragraphs 7.5 through 7.7 below.

23 1.10. “ELIGIBLE CLAIMANT” means a SETTLEMENT CLASS MEMBER who
24 submitted an ELECTRONIC CLAIM FORM pursuant to the instructions on the Notice by the
25 CLAIM FORM DEADLINE.
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1 1.11. “FEE AND EXPENSE APPLICATION” means CO-LEAD CLASS
2 COUNSEL’s motion for Court approval pursuant to Federal Rule of Civil Procedure 23(h) of
3 attorneys’ fees and expenses.

4 1.12. “FINAL APPROVAL HEARING” means the date of the hearing set by the Court
5 to hear the FINAL APPROVAL MOTION.

6 1.13. “FINAL APPROVAL MOTION” means a motion pursuant to Federal Rule of
7 Civil Procedure 23(e) to (a) determine the fairness, adequacy and reasonableness of the
8 SETTLEMENT pursuant to class action procedures and requirements; (b) approve the PLAN
9 OF ALLOCATION; (c) award attorneys’ fees and litigation costs and expenses to CLASS
10 COUNSEL; (d) award INCENTIVE AWARDS; and (e) enter JUDGMENT.

11 1.14. “FINAL APPROVAL ORDER” means the Court’s order granting final approval
12 of this SETTLEMENT pursuant to Federal Rule of Civil Procedure 23(e).

13 1.15. “FINAL” means the later of: (i) the expiration of the time to appeal from the
14 JUDGMENT or, if the date for taking an appeal or seeking review shall be extended beyond
15 thirty (30) days by order of the Court, by operation of law or otherwise, the date of expiration of
16 such extension; (ii) if an appeal is filed from the JUDGMENT, the date of final affirmance on an
17 appeal of the JUDGMENT, the expiration of the time for a petition for a writ of certiorari to
18 review the JUDGMENT, or if certiorari is granted, the date of final affirmance of the
19 JUDGMENT following review pursuant to the grant of certiorari; or (iii) the date of final
20 dismissal of any appeal from the JUDGMENT or the final dismissal of any proceeding on
21 certiorari to review the JUDGMENT. Any proceedings or order, or any appeal or petition for a
22 writ of certiorari, pertaining solely to the PLAN OF ALLOCATION, or any portion thereof,
23 and/or the FEE AND EXPENSE APPLICATION, or any portion thereof, shall not in any way
24 delay or preclude the JUDGMENT from becoming FINAL.

25 1.16. “FULL NOTICE” means the notice to the SETTLEMENT CLASS MEMBERS
26 pursuant to Federal Rule of Civil Procedure 23(e), via posting on the SETTLEMENT
27 WEBSITE established by the SETTLEMENT ADMINISTRATOR, generally describing the

1 terms in this SETTLEMENT, including the proposed PLAN OF ALLOCATION, and the terms
2 of the CO-LEAD CLASS COUNSEL’s anticipated FEE AND EXPENSE APPLICATION. The
3 form of the parties’ agreed FULL NOTICE is attached hereto as **Exhibit B**.

4 1.17. “INCENTIVE AWARD” means an amount paid to a REPRESENTATIVE
5 PLAINTIFF, subject to Court approval, as an award for his or her effort and participation in the
6 litigation of this action on behalf of the SETTLEMENT CLASS.

7 1.18. “JUDGMENT” means the judgment rendered by the Court pursuant to Federal
8 Rule of Civil Procedure 54.

9 1.19. “LITIGATION” means the above-captioned case together with those cases
10 related to it by the Court.

11 1.20. “NET SETTLEMENT PROCEEDS” means the SETTLEMENT PAYMENT
12 after deduction of all amounts approved by the Court as attorneys’ fees, litigation expenses,
13 INCENTIVE AWARDS, and the costs of the SETTLEMENT ADMINISTRATOR allocated to
14 Foodspotting, LLC, Gowalla, Inc., and Yelp Inc., and any costs in excess of \$125,000 allocated
15 to Twitter, Inc.

16 1.21. “OBJECTION DEADLINE” means one-hundred and twenty (120) days after
17 entry of the PRELIMINARY APPROVAL ORDER or such other deadline as is set by the Court
18 for SETTLEMENT CLASS MEMBERS who have not excluded themselves from the
19 SETTLEMENT CLASS to object to the SETTLEMENT.

20 1.22. “OPT-OUT DEADLINE” means one-hundred and twenty (120) days after entry
21 of the PRELIMINARY APPROVAL ORDER or such other deadline as is set by the Court for
22 the SETTLEMENT CLASS MEMBERS to exclude themselves from the SETTLEMENT
23 CLASS pursuant to the instructions contained in the FULL and SUMMARY NOTICES.

24 1.23. “PERSON” means an individual, corporation, partnership, limited partnership,
25 association, joint stock company, estate, legal representative, trust, unincorporated association,
26 government or any political subdivision or agency thereof, and any business or legal entity and
27 his/her/its spouses, heirs, predecessors, successors, representatives or assignees.

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1 1.24. “PLAN OF ALLOCATION” means the formula and process for distributing the
2 NET SETTLEMENT PROCEEDS to ELIGIBLE CLAIMANTS pursuant to section 7 below.

3 1.25. “PRELIMINARY APPROVAL ORDER” means the order conditionally
4 certifying the SETTLEMENT CLASS, preliminarily approving this SETTLEMENT,
5 preliminarily appointing CLASS COUNSEL, approving the SETTLING PARTIES’ choice of a
6 SETTLEMENT ADMINISTRATOR, directing SUMMARY NOTICE to be delivered to the
7 SETTLEMENT CLASS MEMBERS, directing the CLAIM FORM to be made available to the
8 SETTLEMENT CLASS MEMBERS, and setting the date for the FINAL APPROVAL
9 HEARING.

10 1.26. “RELATED PARTIES” means each of a PERSON’S past or present directors,
11 officers, employees, partners, principals, agents, underwriters, issuers, insurers, coinsurers,
12 reinsurers, controlling shareholders or members, any entity in which a PERSON has a
13 controlling interest, a PERSON’S legal representatives, accountants, auditors, consultants,
14 predecessors, successors, parents, subsidiaries, divisions, partners and privities, assigns, spouses,
15 heirs, representatives, associates, any members of his/her/its immediate families, or any trust of
16 which any PERSON is the settlor or which is for the benefit of any PERSON and/or member(s)
17 of his or her family and all persons acting by, through, under, or in concert with the PERSON.
18 Subject to the foregoing, Defendants named in the LITIGATION are not RELATED PARTIES
19 to other Defendants.

20 1.27. “RELEASED CLAIMS” shall mean and include, all manner of known or
21 unknown past, present or future claims, causes of actions, suits, petitions, demands in law or
22 equity, or any allegations of liability or damages, debts, contracts, agreements, obligations,
23 promises, charges, penalties, losses, attorneys’ fees, costs, interest, or expenses of any nature
24 whatsoever, fixed or contingent, whether asserted in law or equity, that have been, could have
25 been, may be, or could be asserted against the REMAINING APP DEVELOPER
26 DEFENDANTS that are based upon, arise out of, are related to or connected with any “Find
27 Friends” or similar features, user-facing disclosures or consents relating thereto, accessing or

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1 uploading the contacts or address book data stored on any SETTLEMENT CLASS MEMBER’S
2 iOS mobile device during the CLASS PERIOD, or retaining such contacts or address book data.
3 For the avoidance of doubt, RELEASED CLAIMS shall also include the claims for fraudulent
4 transfer previously alleged against Gowalla and Facebook, Inc. and the claim for aiding and
5 abetting Gowalla in the Consolidated Amended Class Action Complaint (ECF No. 362), and
6 referenced in the Stipulation filed on June 27, 2014 (ECF No. 476).

7 1.28. “RELEASED PERSONS” means the REMAINING APP DEVELOPER
8 DEFENDANTS and each and all of their RELATED PARTIES, and Apple, Inc., for allegedly
9 aiding and abetting the REMAINING APP DEVELOPER DEFENDANTS in the alleged
10 invasion of privacy claim. For the avoidance of doubt, Apple, Inc. shall not be released by this
11 agreement as to any other claims Plaintiffs assert against it, whether for aiding and abetting
12 other Defendants or Plaintiffs’ separate claims against Apple.

13 1.29. “RELEASING PERSONS” means the SETTLEMENT CLASS MEMBERS who
14 have not excluded themselves from this SETTLEMENT in accordance with paragraph 6.2 by
15 the OPT-OUT DEADLINE.

16 1.30. “REMAINING APP DEVELOPER DEFENDANTS” means defendants
17 Foodspotting, LLC (“Foodspotting”); Foursquare Labs, Inc. (“Foursquare”); Gowalla, Inc.
18 (“Gowalla”); Instagram, LLC (“Instagram”); Kik Interactive Inc. (“Kik”); Kong Technologies,
19 Inc. (formerly known as Path, Inc.) (“Path”); Twitter, Inc. (“Twitter”); and Yelp Inc. (“Yelp”).

20 1.31. “REPRESENTATIVE PLAINTIFFS” means plaintiffs Allen Beuershausen,
21 Giuliana Biondi, Lauren Carter, Stephen Dean, Stephanie Cooley, Jason Green, Claire Hodgins,
22 Gentry Hoffman, Rachele King, Nirali Mandalaywala, Claire Moses, Judy Paul, and Gregory
23 Varner.

24 1.32. “SETTLEMENT” means this Class Action Settlement Agreement.

25 1.33. “SETTLEMENT ACCOUNT” means an interest-bearing escrow account
26 established by the SETTLEMENT ADMINISTRATOR to hold the SETTLEMENT PAYMENT
27 from the time REMAINING APP DEVELOPER DEFENDANTS deposit the funds pursuant to

1 paragraph 2.4 until such funds are distributed pursuant to the PLAN OF ALLOCATION. The
 2 SETTLEMENT ACCOUNT is intended to be a Qualified Settlement Fund within the meaning
 3 of Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1. In the event
 4 it is determined that the SETTLEMENT ACCOUNT is not a Qualified Settlement Fund within
 5 the meaning of Treasury Regulation section 1.468B-1, any tax liabilities associated with such
 6 determination shall be satisfied solely from the SETTLEMENT ACCOUNT without any
 7 recourse against REMAINING APP DEVELOPER DEFENDANTS based upon such tax
 8 liabilities. The interest accrued in the SETTLEMENT ACCOUNT shall be allocated
 9 proportionally to the distributions from the SETTLEMENT ACCOUNT.

10 1.34. “SETTLEMENT ADMINISTRATOR” means KCC Class Action Services, LLC,
 11 an independent third party administrator selected and mutually agreed on by the SETTLING
 12 PARTIES and appointed by the Court to administer the settlement process.

13 1.35. “SETTLEMENT CLASS MEMBER” means an individual in the
 14 SETTLEMENT CLASS.

15 1.36. “SETTLEMENT CLASS” means the class the SETTLING PARTIES herein
 16 stipulate to be certified for the purposes of this SETTLEMENT only, of natural persons in the
 17 United States meeting one or more of the following class definitions:

18 (A) who received from Apple’s App Store a copy of versions 2.5 through 3.1
 19 of the iOS mobile application entitled **Foodspotting**, and activated via such App on their Apple
 20 iDevice the “Find iPhone Contacts” feature of the Foodspotting mobile application between
 21 August 9, 2011 and February 19, 2012 (the “Foodspotting Class Period”);

22 (B) who received from Apple’s App Store one or more of versions 1.1
 23 through 4.2 of the iOS mobile application entitled **Foursquare**, and did one or both of the
 24 following between April 4, 2009 and February 14, 2012 (the “Foursquare Class Period”): (1) for
 25 versions 1.1 through 4.2, activated such App on via their Apple iDevice (iPhone, iPad, iPod
 26 Touch) the “Add Friends” feature of the Foursquare mobile application or (2) for versions 3.1
 27

1 through 4.2, registered via their iDevice as a Foursquare user through the Foursquare mobile
2 application;

3 (C) who received from Apple’s App Store one or more of versions 1.5.0
4 through 4.1 of the iOS mobile application entitled **Gowalla**, and did one or both of the following
5 within the Gowalla mobile application between February 23, 2010 and February 23, 2012 (the
6 “Gowalla Class Period”): (1) selected a checkbox stating “Automatically connect with friends
7 from my address book” and then depressed a “Let’s Get Started” button; (2) depressed a “Find
8 Friends” button and then depressed an “Address Book” button;

9 (D) (i) owned an Apple iDevice on which he or she registered an account for
10 any of the versions 1.0.0 through 2.0.7 of the **Instagram** App obtained from the Apple App
11 Store; (ii) utilized the Find Friends feature of the Instagram App between October 6, 2010 and
12 February 10, 2012 (the “Instagram Class Period”); and (iii) resided within the United States at
13 the time he or she registered an Instagram account and used the Find Friends Feature;

14 (E) (i) owned an Apple iDevice on which he or she downloaded from Apple
15 App Store, installed, and registered an account on the **Kik** App; (ii) installed version 5.4.0 of the
16 Kik App; (iii) after installing version 5.4.0, utilized the Suggested Friends feature of the Kik
17 App between December 22, 2011 and February 11, 2012 (the “Kik Class Period”); (iv) as a
18 result of such use of the Suggested Friends Feature, had contacts data uploaded to Kik’s servers
19 in non-hashed format; and (v) resided within the United States at the time he or she registered a
20 Kik account and used the Suggested Friends Feature;

21 (F) who received from Apple’s App Store a copy of version 2.0 through 2.0.5
22 of the iOS mobile application entitled **Path**, and who were Path registrants and activated via
23 such App on their Apple iDevice the Path mobile application between November 29, 2011 and
24 February 7, 2012 (the “Path Class Period”);

25 (G) who received preinstalled on an Apple iDevice and/or from Apple’s App
26 Store between March 11, 2011 and February 21, 2012 (the “Twitter Class Period”) a copy of
27

1 versions 3.3 through 4.0.1 of the iOS mobile application entitled **Twitter**, and activated via such
2 App on their Apple iDevice the “Find Friends” feature of the Twitter mobile application; and/or

3 (H) who received from Apple’s App Store a copy of versions 4.0.0 through
4 5.6.0 of the iOS mobile application entitled **Yelp**, and activated via such App on their Apple
5 iDevice the “Find Friends” feature of the Yelp mobile application between January 16, 2010 and
6 February 22, 2012 (the “Yelp Class Period”).

7 1.37. “SETTLEMENT PAYMENT” means the REMAINING APP DEVELOPER
8 DEFENDANTS’ collective payment of \$5,300,000 pursuant to paragraph 2.1.

9 1.38. “SETTLEMENT WEBSITE” means a website maintained by the
10 SETTLEMENT ADMINISTRATOR for the purpose of posting relevant pleadings and
11 information concerning the SETTLEMENT, the FULL NOTICE, FAQs and important dates
12 concerning the SETTLEMENT, and administering the ELECTRONIC CLAIM FORMS that
13 must be completed by SETTLEMENT CLASS MEMBERS in order to become ELIGIBLE
14 CLAIMANTS.

15 1.39. “SETTLING PARTIES” means, collectively, the REMAINING APP
16 DEVELOPER DEFENDANTS, on the one hand, and the REPRESENTATIVE PLAINTIFFS
17 on behalf of themselves and the SETTLEMENT CLASS MEMBERS, on the other hand.

18 1.40. “SUMMARY NOTICE” means the legal notice summarizing the proposed
19 Settlement terms and provided to SETTLEMENT CLASS MEMBERS pursuant to Federal Rule
20 of Civil Procedure 23(e), in the manner set forth in paragraph 5.2.

21 1.40.1. The form of the parties’ agreed SUMMARY NOTICE to be delivered
22 via email, which shall include a CLASS MEMBER identification number, is attached hereto as
23 **Exhibit C**.

24 1.40.2. The form of the parties’ agreed SUMMARY NOTICE to be delivered
25 via Promoted Tweet is attached hereto as **Exhibit D**.

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1 **2. SETTLEMENT BENEFITS**

2 2.1 REMAINING APP DEVELOPER DEFENDANTS will pay the SETTLEMENT
3 PAYMENT into the SETTLEMENT ACCOUNT pursuant to paragraph 2.4 below.

4 2.2 The SETTLEMENT PAYMENT is paid by the REMAINING APP
5 DEVELOPER DEFENDANTS, individually and collectively on an all-in, common fund non-
6 reversionary basis. The SETTLEMENT PAYMENT shall constitute all compensation to be
7 paid by REMAINING APP DEVELOPER DEFENDANTS under the SETTLEMENT except
8 for (a) the costs charged by the SETTLEMENT ADMINISTRATOR which shall be allocated as
9 set forth herein, and (b) the REMAINING APP DEVELOPER DEFENDANTS’ internal and
10 external costs, including its own attorneys’ fees and costs, in this LITIGATION and in
11 complying with this SETTLEMENT, which REMAINING APP DEVELOPER DEFENDANTS
12 shall bear.

13 2.3 The costs charged by the SETTLEMENT ADMINISTRATOR are in addition to
14 the SETTLEMENT PAYMENT and shall be allocated amongst the REMAINING APP
15 DEVELOPER DEFENDANTS per paragraph 5.1 below.

16 2.4 Each REMAINING APP DEVELOPER DEFENDANT or its insurer(s) shall
17 transmit its respective portion of the SETTLEMENT PAYMENT to the SETTLEMENT
18 ADMINISTRATOR for deposit into the SETTLEMENT ACCOUNT by no later than fourteen
19 (14) days after the filing of Plaintiffs’ motion for preliminary approval of the SETTLEMENT.
20 The SETTLEMENT PAYMENT shall be held in trust by the SETTLEMENT
21 ADMINISTRATOR in the SETTLEMENT ACCOUNT until the EFFECTIVE DATE.

22 2.5 In the event the SETTLEMENT does not become FINAL, the SETTLEMENT
23 PAYMENT shall be returned to REMAINING APP DEVELOPER DEFENDANTS after first
24 deducting all costs to that point in time of the SETTLEMENT ADMINISTRATOR, which costs
25 shall be borne by REMAINING APP DEVELOPER DEFENDANTS as set forth in paragraph
26 5.1. For the avoidance of doubt, the REMAINING APP DEVELOPER DEFENDANTS shall
27 bear costs deducted pursuant to this paragraph without regard to the allocation set forth in

1 paragraph 5.1.1. Subject to the deduction of costs pursuant to this paragraph, any interest
2 accumulated in the SETTLEMENT ACCOUNT shall be returned to REMAINING APP
3 DEVELOPER DEFENDANTS in proportion to their respective contributions to the total
4 SETTLEMENT PAYMENT.

5 **3. RESPONSIBILITIES OF THE SETTLEMENT ADMINISTRATOR**

6 3.1 The SETTLEMENT ADMINISTRATOR shall, within seven (7) days after the
7 filing of Plaintiffs' motion for preliminary approval of the SETTLEMENT, cause the
8 SETTLEMENT ACCOUNT to be established and provide instructions to the REMAINING
9 APP DEVELOPER DEFENDANTS to allow for payment of the SETTLEMENT AMOUNT
10 into the SETTLEMENT ACCOUNT pursuant to paragraph 2.4 above.

11 3.2 The SETTLEMENT ADMINISTRATOR will be solely responsible for verifying
12 and obtaining updated email addresses or other contact information for the SETTLEMENT
13 CLASS MEMBERS, delivering, administering and overseeing the SUMMARY NOTICE,
14 administering the SETTLEMENT WEBSITE, collecting and processing ELECTRONIC
15 CLAIM FORMS, and implementing the PLAN OF ALLOCATION. It is specifically
16 understood that REMAINING APP DEVELOPER DEFENDANTS shall have no duties or
17 responsibilities with regard to administration of the SETTLEMENT except for the obligations
18 expressly set forth in this SETTLEMENT.

19 **4. DELIVERY OF CLASS LIST**

20 4.1 Within fifteen (15) days after the entry of the PRELIMINARY APPROVAL
21 ORDER, each REMAINING APP DEVELOPER DEFENDANT shall provide the
22 SETTLEMENT ADMINISTRATOR with a list of SETTLEMENT CLASS MEMBERS,
23 including their names and email addresses or, for Twitter, Twitter handles, to the extent this
24 information is in REMAINING APP DEVELOPER DEFENDANTS' possession.

25 4.1.1 To the extent any REMAINING APP DEVELOPER DEFENDANT is
26 unable to provide email addresses or, for Twitter, Twitter handles, that DEFENDANT shall
27 meet and confer with Plaintiffs' counsel to arrange provision to the SETTLEMENT

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1 ADMINISTRATOR of such other contact information as necessary to deliver the SUMMARY
2 NOTICE, for example by providing user phone numbers with which the SETTLEMENT
3 ADMINISTRATOR can conduct a reverse telephone number search through a primary and
4 secondary source in an attempt to obtain email addresses for those CLASS MEMBERS.

5 4.1.2 The REMAINING APP DEVELOPER DEFENDANTS shall make all
6 reasonable efforts based on the data available to it (including any information available to it via
7 Apple) to limit the CLASS LISTS to individuals meeting the class definition.

8 4.2 In the event CO-LEAD CLASS COUNSEL receive inquiries from persons
9 claiming to be SETTLEMENT CLASS MEMBERS, the SETTLEMENT ADMINSTRATOR
10 shall be authorized to provide information to CO-LEAD CLASS COUNSEL, upon request,
11 sufficient to determine whether such persons are in fact SETTLEMENT CLASS MEMBERS
12 and for CO-LEAD CLASS COUNSEL to respond to such inquiries.

13 4.2.1 The SETTLEMENT ADMINISTRATOR shall maintain a log of all such
14 requests from CO-LEAD CLASS COUNSEL and the names of all persons for whom the
15 SETTLEMENT ADMINISTRATOR provided information to CO-LEAD CLASS COUNSEL.

16 4.2.2 CO-LEAD CLASS COUNSEL agree that they shall not use any
17 information provided by the SETTLEMENT ADMINISTRATOR pursuant to this paragraph 4.2
18 for any purpose other than confirming inquiring persons' status as SETTLEMENT CLASS
19 MEMBERS and communicating with such persons regarding the same.

20 **5. SETTLEMENT NOTICE**

21 5.1 Administration costs shall be allocated to the REMAINING APP DEVELOPER
22 DEFENDANTS and paid as follows:

23 5.1.1 Costs allocated to Foodspotting, Gowalla, and Yelp shall be deducted
24 from the SETTLEMENT PAYMENT made by each such defendant. Costs allocated to the
25 other REMAINING APP DEVELOPER DEFENDANTS shall be paid by them in addition to
26 SETTLEMENT PAYMENT amounts pursuant to the cost-allocation formulae set forth below,
27

1 except that costs exceeding \$125,000 allocated to Twitter will be deducted from the
2 SETTLEMENT PAYMENT made by Twitter.

3 5.1.2 Costs of distributing the SUMMARY NOTICE shall be allocated as follows:

4 5.1.2.1 Twitter shall be allocated the cost of sending the SUMMARY
5 NOTICE by Promoted Tweet.

6 5.1.2.2 The other REMAINING APP DEVELOPER DEFENDANTS
7 shall be allocated the cost of sending the SUMMARY NOTICE by email in proportion to the
8 number of unique emails each provides to the SETTLEMENT ADMINISTRATOR for Notice.
9 Emails shall be de-duplicated, and where more than one REMAINING APP DEVELOPER
10 DEFENDANT provides the same email, each such REMAINING APP DEVELOPER
11 DEFENDANT shall be allocated a fractional share for that email.

12 5.1.3 Costs of distributing the NET SETTLEMENT PROCEEDS shall be
13 allocated as follows:

14 5.1.3.1 Costs relating to the distribution of ELECTRONIC
15 PAYMENTS via email delivery of Amazon.com credit shall be allocated to the REMAINING
16 APP DEVELOPER DEFENDANTS in proportion to the number of ELIGIBLE CLAIMANTS
17 making claims against each such REMAINING APP DEVELOPER DEFENDANT. Where an
18 ELIGIBLE CLAIMANT makes a claim against more than one REMAINING APP
19 DEVELOPER DEFENDANT, those REMAINING APP DEVELOPER DEFENDANTS will
20 each be allocated a fractional share for that ELIGIBLE CLAIMANT.

21 5.1.3.2 Costs relating to the distribution of postcard checks (with the
22 exception of postage) shall be allocated as follows:

23 A. an amount equal to the per-unit cost of distributing
24 ELECTRONIC PAYMENTS shall be allocated to the REMAINING APP DEVELOPER
25 DEFENDANTS in proportion to the number of ELIGIBLE CLAIMANTS making claims
26 against each such REMAINING APP DEVELOPER DEFENDANT. Where an ELIGIBLE
27 CLAIMANT makes a claim against more than one REMAINING APP DEVELOPER

1 DEFENDANT, those REMAINING APP DEVELOPER DEFENDANTS will each be allocated
2 a fractional share for that ELIGIBLE CLAIMANT; and

3 B. the incremental per-unit cost of distributing postcard
4 checks (*i.e.*, the amount in excess of the per-unit cost of distributing ELECTRONIC
5 PAYMENTS) shall be deducted in bulk from the SETTLEMENT PAYMENT.

6 5.1.3.3 Costs of postage for the delivery of postcard checks shall be
7 deducted from the amount distributed to each ELIGIBLE CLAIMANT who elects to receive his
8 or her distribution via postcard check.

9 5.1.4 All costs of the SETTLEMENT ADMINISTRATOR other than those
10 referenced above in paragraphs 5.1.2–5.1.3 shall be allocated to the REMAINING APP
11 DEVELOPER DEFENDANTS in proportion to the amount each is paying as a percentage of
12 the SETTLEMENT PAYMENT.

13 5.2 The SUMMARY NOTICE shall be sent by the SETTLEMENT
14 ADMINISTRATOR as follows:

15 5.2.1 The SETTLEMENT ADMINISTRATOR shall use the account
16 @settlementnews (or other mutually agreeable account) as a Twitter advertiser and shall send
17 the SUMMARY NOTICE using Twitter’s Promoted Tweets product to all class members for
18 whom a Twitter handle is provided. Twitter shall have no involvement in or responsibility for
19 such Promoted Tweets beyond the involvement or responsibility it would have with respect to a
20 Promoted Tweet sent by any other Twitter advertiser. The Promoted Tweet shall be sent three
21 times, starting no later than thirty (30) days after entry of the PRELIMINARY APPROVAL
22 ORDER, and ending before the CLAIM FORM DEADLINE.

23 5.2.2 The SETTLEMENT ADMINISTRATOR shall also send the SUMMARY
24 NOTICE to the SETTLEMENT CLASS MEMBERS by electronic mail, starting no later than
25 thirty (30) days after entry of the PRELIMINARY APPROVAL ORDER. The SETTLEMENT
26 ADMINISTRATOR will de-duplicate the email lists provided by the REMAINING APP
27 DEVELOPER DEFENDANTS to create a single master list for the SUMMARY NOTICE, but

1 shall code all emails so as to retain the association of each email address with the lists provided
2 by each REMAINING APP DEVELOPER DEFENDANT. The SETTLEMENT
3 ADMINISTRATOR will have up to and including sixty (60) days after entry of the
4 PRELIMINARY APPROVAL ORDER to complete transmission of the SUMMARY NOTICE
5 by electronic mail and Promoted Tweet. The SETTLEMENT ADMINISTRATOR shall notify
6 DEFENSE COUNSEL and CLASS COUNSEL once notice has been completed.

7 5.3 The FULL NOTICE shall be posted on the SETTLEMENT WEBSITE. Unless
8 otherwise ordered by the Court, within thirty (30) days after entry of the PRELIMINARY
9 APPROVAL ORDER, the SETTLEMENT ADMINISTRATOR will set up the SETTLEMENT
10 WEBSITE and a toll-free number. In addition to the FULL NOTICE, the SETTLEMENT
11 WEBSITE will post the Complaint, Settlement Agreement, Preliminary Approval Order, and
12 within three (3) Court days after it is filed, the FEE AND EXPENSE APPLICATION. In
13 addition, the SETTLEMENT WEBSITE will host the ELECTRONIC CLAIM FORM. The
14 SETTLEMENT WEBSITE will be active until at least the EFFECTIVE DATE.

15 5.4 Within ten (10) days after this Agreement is filed with the Court, the
16 REMAINING APP DEVELOPER DEFENDANTS shall serve upon relevant government
17 officials notice of the proposed settlement in accordance with 28 U.S.C. § 1715.

18 **6 OBJECTIONS AND EXCLUSIONS**

19 6.1 Any SETTLEMENT CLASS MEMBER who wishes to object to the
20 SETTLEMENT must file a written objection with the Court by the OBJECTION DEADLINE.
21 It shall be the objector's responsibility to ensure the timely filing of any objection with the
22 Court. The objection must set forth, in clear and concise terms, (a) the name and case number of
23 the LITIGATION; (b) the full name, address, email and telephone number of the person
24 objecting; and (c) the legal and factual arguments supporting the objection. Any CLASS
25 MEMBER who files and serves a written objection has the option to appear at the Fairness
26 Hearing, either in person or through personal counsel hired at the CLASS MEMBERS's
27 expense, to object to the fairness, reasonableness, or adequacy of the SETTLEMENT or to the

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1 award of attorneys' fees. However, CLASS MEMBERS (with or without their attorneys)
2 intending to make an appearance at the Fairness Hearing must file a timely and valid objection.
3 Objections may not be submitted by persons who have excluded themselves from the CLASS.
4 Individuals who file objections must still submit a timely ELECTRONIC CLAIM FORM in
5 order to be eligible to receive money under the PLAN OF ALLOCATION.

6 6.2 Any SETTLEMENT CLASS MEMBER who wishes to exclude herself or
7 himself from the SETTLEMENT CLASS must submit a written opt-out request to the
8 SETTLEMENT ADMINISTRATOR pursuant to the instructions in the FULL NOTICE, which
9 shall require delivery via U.S. Mail, by no later than the OPT-OUT DEADLINE. The delivery
10 date is deemed to be the date the opt-out request is deposited in the U.S. Mail as evidenced by
11 the postmark. It shall be the SETTLEMENT CLASS MEMBER's responsibility to ensure
12 timely receipt of any opt-out request by the Claims Administrator.

13 6.2.1 Except for those who have properly and timely opted out, Class Members
14 will be bound by this SETTLEMENT and the JUDGMENT. A SETTLEMENT CLASS
15 MEMBER who elects to opt out of the SETTLEMENT CLASS will (i) not be bound by any
16 orders or the JUDGMENT entered in this LITIGATION; (ii) not be entitled to relief or bound to
17 any releases under this SETTLEMENT; (iii) not gain any rights by virtue of this
18 SETTLEMENT; and (iv) not be entitled to object to any aspect of this SETTLEMENT.

19 6.2.2 The SETTLEMENT ADMINISTRATOR must serve on CO-LEAD
20 CLASS COUNSEL and REMAINING APP DEVELOPER DEFENDANTS' COUNSEL a list
21 of CLASS MEMBERS who have timely and validly excluded themselves from the
22 SETTLEMENT CLASS no later than ten (10) days before the filing date for Plaintiff's motion
23 in support of FINAL APPROVAL.

24 **7. PLAN OF ALLOCATION**

25 7.1 In order to be eligible to receive a distribution under the SETTLEMENT, a
26 SETTLEMENT CLASS MEMBER must submit a completed ELECTRONIC CLAIM FORM
27 through the SETTLEMENT WEBSITE by the CLAIM FORM DEADLINE.

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1 7.2 Each SUMMARY NOTICE delivered via email shall have a CLASS MEMBER
2 Identification Number that must be used by a SETTLEMENT CLASS MEMBER to complete
3 the ELECTRONIC CLAIM FORM.

4 7.3 The date of submission of an ELECTRONIC CLAIM FORM is deemed to be the
5 date the ELECTRONIC CLAIM FORM was completed on the SETTLEMENT WEBSITE, as
6 reflected in the business records of the SETTLEMENT WEBSITE. Upon receipt of a
7 completed ELECTRONIC CLAIM FORM, the SETTLEMENT ADMINISTRATOR shall cause
8 an automated response to be sent to the ELIGIBLE CLAIMANT via email (if an email address
9 is provided) confirming receipt of the completed ELECTRONIC CLAIM FORM.

10 7.4 The NET SETTLEMENT PROCEEDS shall be distributed to all ELIGIBLE
11 CLAIMANTS on a pro rata basis in the form selected by the ELIGIBLE CLAIMANT. Where
12 an ELIGIBLE CLAIMANT elects to receive a postcard check, the amount of \$0.35 shall be
13 deducted to cover the cost of postage.

14 7.5 For each App designated on the ELIGIBLE CLAIMANT's ELECTRONIC
15 CLAIM FORM such ELIGIBLE CLAIMANT is entitled to one share, subject to a maximum of
16 eight shares per ELIGIBLE CLAIMANT. For example, an ELIGIBLE CLAIMANT who
17 designates only one App would be entitled to receive one share, while an ELIGIBLE
18 CLAIMANT who designates all eight Apps would be entitled to receive the maximum of eight
19 shares.

20 7.6 No later than fifteen (15) court days after the expiration of the CLAIM FORM
21 DEADLINE, the SETTLEMENT ADMINISTRATOR shall inform CO-LEAD CLASS
22 COUNSEL and REMAINING APP DEVELOPER DEFENDANTS' COUNSEL of the number
23 of ELIGIBLE CLAIMANTS and total shares eligible for distribution.

24 7.7 Within ten (10) court days after the FINAL APPROVAL ORDER is entered, the
25 SETTLEMENT ADMINISTRATOR shall calculate the NET SETTLEMENT PROCEEDS and
26 the amount of shares that will be distributed to each ELIGIBLE CLAIMANT, and shall disclose
27 those calculations to REMAINING APP DEVELOPER DEFENDANTS' COUNSEL and CO-

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1 LEAD CLASS COUNSEL. The SETTLEMENT ADMINISTRATOR shall calculate the
2 monetary value of each share by dividing the NET SETTLEMENT PROCEEDS by the total
3 number of shares claimed by ELIGIBLE CLAIMANTS.

4 7.8 The SETTLEMENT ADMINISTRATOR shall distribute to each ELIGIBLE
5 CLAMAINT the value of that ELIGIBLE CLAIMANT’S shares using the method selected by
6 that ELIGIBLE CLAIMANT. The SETTLEMENT ADMINISTRATOR shall contract with
7 Amazon.com, Inc. for purposes of using the NET SETTLEMENT PROCEEDS to purchase
8 codes as necessary for distribution to ELIGIBLE CLAIMANTS who elect to receive
9 ELECTRONIC PAYMENT in the form of code for cash value credit on Amazon.com.

10 7.9 The SETTLEMENT ADMINISTRATOR shall begin to distribute the NET
11 SETTLEMENT PROCEEDS to ELIGIBLE CLAIMANTS within fourteen (14) days after the
12 EFFECTIVE DATE and shall complete such distribution no later than thirty (30) days after the
13 EFFECTIVE DATE.

14 7.10 Undeliverable or uncashed distributions shall be handled as follows:

15 7.10.1 In the event that any email sent to provide ELECTRONIC
16 PAYMENT is returned to the SETTLEMENT ADMINISTRATOR as undeliverable, the
17 SETTLEMENT ADMINISTRATOR will attempt to contact the relevant SETTLEMENT
18 CLASS MEMBER using the contact information provided on the ELECTRONIC CLAIM
19 FORM. If an updated or corrected email address is located, the SETTLEMENT
20 ADMINISTRATOR will immediately re-send the email. If no new email address is located, the
21 SETTLEMENT ADMINISTRATOR will immediately notify CO-LEAD CLASS COUNSEL
22 and will hold the distribution and associated settlement statement until it is claimed. If it is not
23 claimed within ninety (90) days, the ADMINISTRATOR will (a) obtain a refund from Amazon
24 for the amount of the unclaimed distribution, and (b) treat the distribution as an uncashed
25 settlement distribution pursuant to paragraph 7.10.4, below.

26 7.10.2 In the event that any postcard check is returned to the SETTLEMENT
27 ADMINISTRATOR as undeliverable, the SETTLEMENT ADMINISTRATOR will attempt to

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1 contact the relevant SETTLEMENT CLASS MEMBER using the contact information provided
2 on the ELECTRONIC CLAIM FORM. If an updated or corrected mailing address is located,
3 the SETTLEMENT ADMINISTRATOR will immediately re-send the postcard check to such
4 confirmed mailing address. If no new mailing address is located, the SETTLEMENT
5 ADMINISTRATOR will immediately notify CO-LEAD CLASS COUNSEL and will hold the
6 distribution and associated settlement statement until it is claimed. If it is not claimed within
7 ninety (90) days, the ADMINISTRATOR will treat the distribution as an uncashed settlement
8 distribution pursuant to paragraph 7.10.4, below.

9 7.10.3 Any postcard check sent by the SETTLEMENT ADMINISTRATOR
10 that is not cashed within ninety (90) days of its issuance by the SETTLEMENT
11 ADMINISTRATOR will be void and will be treated as an uncashed settlement distribution
12 pursuant to paragraph 7.10.4, below.

13 7.10.4 The SETTLEMENT ADMINISTRATOR shall distribute any
14 uncashed settlement distributions from the NET SETTLEMENT PROCEEDS on a cy pres basis
15 to the Electronic Frontier Foundation after first receiving permission of the Court to do so.

16 7.11 Following delivery of the SETTLEMENT PAYMENT to the SETTLEMENT
17 ADMINISTRATOR, and except with regards to costs set forth elsewhere in this
18 SETTLEMENT, the RELEASED PERSONS shall have no responsibility for, or liability
19 whatsoever with respect to, any claims relating to distribution of the SETTLEMENT
20 PAYMENT to SETTLEMENT CLASS MEMBERS or CLASS COUNSEL, the payment or
21 withholding of taxes, or any obligations or losses incurred by any PERSON in connection
22 therewith.

23 **8. ATTORNEYS' FEES AND EXPENSES**

24 8.1 CO-LEAD CLASS COUNSEL may submit a FEE AND EXPENSE
25 APPLICATION seeking a portion of the SETTLEMENT PAYMENT in attorneys' fees, and to
26 recover expenses. The FEE AND EXPENSE APPLICATION will be filed at least fourteen (14)
27 days prior to the OBJECTION DEADLINE.

1 8.2 The SETTLEMENT is not conditioned on the Court awarding any particular
2 amount of attorneys' fees and expenses and a reduction by the Court shall not affect any of the
3 Parties' other rights and obligations under the Settlement Agreement.

4 8.3 Any attorneys' fees or expenses approved by the Court will be paid by the
5 SETTLEMENT ADMINISTRATOR from the SETTLEMENT ACCOUNT within five (5) court
6 days after the EFFECTIVE DATE. Payment shall be by wire transfer or check pursuant to
7 instructions from CO-LEAD CLASS COUNSEL.

8 **9. INDIVIDUAL SETTLEMENTS AND INCENTIVE AWARDS**

9 9.1 CO-LEAD CLASS COUNSEL may submit a request for INCENTIVE
10 AWARDS for the REPRESENTATIVE PLAINTIFFS in connection with the RELEASED
11 CLAIMS.

12 9.2 The settlement is not conditioned on the Court awarding any particular amount of
13 INDIVIDUAL PLAINTIFF SETTLEMENT AMOUNTS or INCENTIVE AWARDS and a
14 reduction by the Court shall not affect any of the Parties' other rights and obligations under the
15 Settlement Agreement.

16 9.3 Any INCENTIVE AWARDS approved by the Court will be paid by the
17 SETTLEMENT ADMINISTRATOR from the SETTLEMENT ACCOUNT within five (5) court
18 days after the EFFECTIVE DATE. Payments shall be made by check sent by first class mail
19 pursuant to instructions provided by CO-LEAD CLASS COUNSEL. The INCENTIVE
20 AWARDS shall be paid and reported as 1099 income.

21 **10. EFFECTIVE DATE**

22 10.1 The EFFECTIVE DATE of this SETTLEMENT shall be the fifth Court day after
23 all of the following conditions and events have been fully met and have occurred:

24 10.1.1 The Court has entered the PRELIMINARY APPROVAL ORDER;

25 10.1.2 The Court has entered a FINAL APPROVAL ORDER and filed the
26 JUDGMENT thereon; and

27 10.1.3 The JUDGMENT in this LITIGATION has become FINAL.

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11. RELEASES

11.1 Upon the EFFECTIVE DATE the RELEASING PERSONS shall be deemed to have, and by operation of the JUDGMENT shall have, fully, finally, and forever released, relinquished and discharged all RELEASED CLAIMS against the RELEASED PERSONS.

11.2 As of the EFFECTIVE DATE, REMAINING APP DEVELOPER DEFENDANTS hereby release each of the SETTLEMENT CLASS MEMBERS who have not excluded themselves from this SETTLEMENT in accordance with paragraph 6.2 by the OPT-OUT DEADLINE and their RELATED PARTIES from all claims, including any claims for reimbursement of costs, REMAINING APP DEVELOPER DEFENDANTS may have against them arising out of or related to any of the contentions or allegations in the LITIGATION.

11.3 The RELEASED CLAIMS include claims that the RELEASING PERSONS do not know or suspect to exist in their favor, which, if known by them, would have materially affected their decisions to enter into this Agreement. The RELEASING PERSONS understand and acknowledge that they are familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon EFFECTIVE DATE, the RELEASING PERSONS shall be deemed to have, and by operation of this SETTLEMENT shall have, expressly waived and relinquished any rights they may have under California Civil Code section 1542 or any other statute or common law principle with a similar effect as to all releases set forth in this SETTLEMENT. In connection with such waiver and relinquishment, the RELEASING PERSONS acknowledge that they are aware that, after executing this SETTLEMENT, they or their legal counsel or agents may discover RELEASED CLAIMS or facts in addition to, or different from, those which they now know or believe to exist with respect to the subject matter of this SETTLEMENT, but that it is

1 the RELEASING PERSONS' intention hereby to fully, finally, and forever settle and release all
2 of the RELEASED CLAIMS, whether known or unknown, suspected or unsuspected, which
3 now exist, may exist, or heretofore may have existed against the RELEASED PERSONS.

4 **12. EFFECT OF DISAPPROVAL OR TERMINATION**

5 12.1 The SETTling PARTIES shall have the option to withdraw from and terminate
6 this SETTLEMENT, and to render this SETTLEMENT null and void, in the event that:

7 12.1.1 the terms of this SETTLEMENT (other than reducing the award of
8 attorneys' fees and costs or incentive awards) are not approved by the Court and JUDGMENT
9 entered;

10 12.1.2 the JUDGMENT is reversed or materially modified on appeal;

11 12.1.3 the EFFECTIVE DATE is not reached;

12 12.1.4 prior to the FINAL APPROVAL ORDER, any court certifies, on a
13 conditional basis or otherwise, a class, collective, or representative action involving a
14 RELEASED CLAIM by any CLASS MEMBER;

15 12.1.5 none of the REPRESENTATIVE PLAINTIFF(S) for a REMAINING
16 APP DEVELOPER DEFENDANT executes the Settlement Agreement, in which case only such
17 REMAINING APP DEVELOPER DEFENDANT shall have the right to withdraw from this
18 SETTLEMENT;

19 12.1.6 every REPRESENTATIVE PLAINTIFF for a REMAINING APP
20 DEVELOPER DEFENDANT submits a valid and timely opt-out notice, in which case only
21 such REMAINING APP DEVELOPER DEFENDANT shall have the right to withdraw from
22 this SETTLEMENT; or

23 12.1.7 the occurrence of any of the following events, which shall not affect
24 the right of any REMAINING APP DEVELOPER DEFENDANT not listed below to withdraw
25 from this Settlement:

26 12.1.7.1 solely with respect to Foursquare, more than 1.0% of the
27 total number of email addresses provided by Foursquare to the SETTLEMENT

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1 ADMINISTRATOR for purposes of delivering the SUMMARY NOTICE submit valid and
2 timely opt-out notices, in which case only Foursquare shall have the right to withdraw from this
3 SETTLEMENT;

4 12.1.7.2 solely with respect to Instagram, more than 1.0% of the
5 total number of email addresses provided by Instagram to the SETTLEMENT

6 ADMINISTRATOR for purposes of delivering the SUMMARY NOTICE submit valid and
7 timely opt-out notices, in which case only Instagram shall have the right to withdraw from this
8 SETTLEMENT;

9 12.1.7.3 solely with respect to Kik, more than 1.0% of the total
10 number of email addresses provided by Kik to the SETTLEMENT ADMINISTRATOR for
11 purposes of delivering the SUMMARY NOTICE submit valid and timely opt-out notices, in
12 which case only Kik shall have the right to withdraw from this SETTLEMENT; and

13 12.1.7.4 solely with respect to Twitter, more than 1.0% of the total
14 number of Twitter handles provided by Twitter to the SETTLEMENT ADMINISTRATOR for
15 purposes of delivering the SUMMARY NOTICE submit valid and timely opt-out notices, in
16 which case only Twitter shall have the right to withdraw from this SETTLEMENT.

17 12.2 In the event any REMAINING APP DEVELOPER DEFENDANT does not
18 contribute payment to the SETTLEMENT ACCOUNT by the deadline set forth in paragraph
19 2.4:

20 12.2.1 PLAINTIFFS shall have the right to terminate this SETTLEMENT
21 solely with respect to such non-paying REMAINING APP DEVELOPER DEFENDANT(S), in
22 which event the provisions of paragraph 12.5 below shall apply to the terminated REMAINING
23 APP DEVELOPER DEFENDANT(S); and

24 12.2.2 the provisions of paragraphs 12.3.1–12.3.4 below shall apply to the
25 REMAINING APP DEVELOPER DEFENDANTS that contribute payment to the
26 SETTLEMENT ACCOUNT by the deadline set forth in paragraph 2.4.
27

1 12.3 In the event that at least one, but not all, REMAINING APP DEVELOPER
2 DEFENDANTS withdraws from this SETTLEMENT pursuant to paragraphs 12.1.5, 12.1.6,
3 and/or 12.1.7, above:

4 12.3.1 this SETTLEMENT shall remain valid and binding on all other
5 SETTLING PARTIES;

6 12.3.2 the SETTLEMENT PAYMENT shall be reduced by the amount the
7 withdrawing REMAINING APP DEVELOPER DEFENDANT(S) agreed to pay;

8 12.3.3 the withdrawing REMAINING APP DEVELOPER DEFENDANT(S)
9 shall remain liable for its allocation of SETTLEMENT ADMINISTRATION costs incurred
10 through the date of withdrawal;

11 12.3.4 any remaining SETTLEMENT ADMINISTRATION costs shall
12 continue to be allocated per paragraph 5.1 among the non-withdrawing REMAINING APP
13 DEVELOPER DEFENDANTS; and

14 12.3.5 CO-LEAD CLASS COUNSEL and the withdrawing REMAINING
15 APP DEVELOPER DEFENDANT(S) shall proceed pursuant to paragraph 12.5, below.

16 12.4 In the event that this SETTLEMENT is terminated or fails to become effective in
17 accordance with its material terms, this SETTLEMENT and all negotiations and proceedings
18 relating hereto shall be without prejudice as to the rights of the SETTLING PARTIES, who
19 shall be restored to their respective positions in this LITIGATION as of the day preceding the
20 signing of this SETTLEMENT. In such event, the terms and provisions of this SETTLEMENT
21 shall have no further force and effect with respect to the SETTLING PARTIES and shall not be
22 used in this LITIGATION or in any other proceeding for any purpose; and any judgment or
23 order entered by the Court in accordance with the terms of this SETTLEMENT shall be treated
24 as vacated, nunc pro tunc. No order of the Court, or modification or reversal on appeal of any
25 order of the Court, concerning the amount of the FEE AND EXPENSE APPLICATION,
26 INCENTIVE AWARDS, or the PLAN OF ALLOCATION shall constitute grounds for
27

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1 cancellation or termination of this SETTLEMENT, unless the SETTLEMENT PAYMENT is
2 increased without the REMAINING APP DEVELOPER DEFENDANTS’ consent.

3 12.5 In the event this SETTLEMENT is terminated or fails to become effective, the
4 SETTLING PARTIES shall, within two weeks of such cancellation, jointly request a status
5 conference with the Court to be held on the Court’s first available date. At such status
6 conference, the SETTLING PARTIES shall ask the Court’s assistance in scheduling continued
7 proceedings in this LITIGATION as between the SETTLING PARTIES. Pending such status
8 conference or the expiration of sixty (60) days from the SETTLING PARTIES’ joint request for
9 a status conference without a response from the Court, whichever occurs first, none of the
10 SETTLING PARTIES shall file or serve any further motions or discovery requests on any of the
11 other SETTLING PARTIES in connection with this LITIGATION, nor shall any opposition or
12 response be due by any SETTLING PARTY to any pending motions or outstanding discovery
13 by any other SETTLING PARTY.

14 12.6 The parties to this SETTLEMENT hereby stipulate that in the event the
15 SETTLEMENT is terminated or fails to become effective, all pending deadlines in the
16 LITIGATION are stayed as between the SETTLING PARTIES effective as of the earlier of (a)
17 August 1, 2016 through the date of the status conference, or (b) the expiration of sixty (60) days
18 from the SETTLING PARTIES’ joint request for a status conference without a response from
19 the Court referenced in paragraph 12.5.

20 **13. COMMUNICATIONS REGARDING THE SETTLEMENT**

21 13.1 The existence and terms of this SETTLEMENT shall be treated as confidential
22 by the SETTLING PARTIES, and not disclosed to any person or entity other than the Court and
23 the SETTLING PARTIES and/or the SETTLEMENT CLASS MEMBERS, until the earlier of:
24 (a) the filing of this SETTLEMENT with the Court pursuant to its terms, or (b) after the
25 PRELIMINARY APPROVAL ORDER is issued by the Court and/or requested in an unsealed
26 motion. Once the existence of this SETTLEMENT is made public and until the Preliminary
27 Approval Order, the PARTIES shall make no public comment, to the press or otherwise, and

1 issue no press release, beyond stating that the PARTIES have reached a mutually acceptable
2 tentative settlement and are seeking Court approval for that settlement.

3 **14. MISCELLANEOUS PROVISIONS**

4 14.1 The SETTLING PARTIES (a) acknowledge that it is their intent to consummate
5 this SETTLEMENT; and (b) agree to cooperate to the extent necessary to effectuate and
6 implement all terms and conditions of this SETTLEMENT, and to exercise their best efforts to
7 accomplish the terms and conditions of this SETTLEMENT.

8 14.2 The SETTLING PARTIES represent, covenant, and warrant that they have not
9 directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
10 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
11 action or right released and discharged in this SETTLEMENT.

12 14.3 Each REMAINING APP DEVELOPER DEFENDANT has denied and continues
13 to deny each and all of the claims alleged in this LITIGATION. Neither this SETTLEMENT
14 nor any act performed or document executed pursuant to or in furtherance of this
15 SETTLEMENT, whether approved or not approved by the Court, (i) is or may be deemed to be,
16 or may be used as, an admission of, or evidence of the validity of any RELEASED CLAIM, or
17 of any wrongdoing or liability of REMAINING APP DEVELOPER DEFENDANTS; or (ii) is
18 or may be deemed to be, or may be used as, an admission of, or evidence of wrongdoing or
19 liability, or fault or omission of REMAINING APP DEVELOPER DEFENDANTS in any civil,
20 criminal or administrative proceeding in any court, administrative agency or other tribunal, other
21 than in such proceedings as may be necessary to consummate or enforce this SETTLEMENT or
22 the JUDGMENT. REMAINING APP DEVELOPER DEFENDANTS, however, may file this
23 SETTLEMENT and/or the JUDGMENT in any action that may be brought against it in order to
24 support a defense or counterclaim based on principles of res judicata, collateral estoppel,
25 release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion
26 or issue preclusion or similar defense or counterclaim.

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1 14.4 The REPRESENTATIVE PLAINTIFFS have asserted, and continue to contend,
2 each REMAINING APP DEVELOPER DEFENDANT has liability for the claims asserted in
3 this LITIGATION and have denied and continue to deny each and all of REMAINING APP
4 DEVELOPER DEFENDANTS’ defenses alleged in this LITIGATION. Neither this
5 SETTLEMENT nor any act performed or document executed pursuant to or in furtherance of
6 this SETTLEMENT, whether approved or not approved by the Court, (i) is or may be deemed to
7 be, or may be used as, an admission of, or evidence of the invalidity of any RELEASED
8 CLAIM, or of any concession of an absence of wrongdoing or liability of REMAINING APP
9 DEVELOPER DEFENDANTS; or (ii) is or may be deemed to be, or may be used as, an
10 admission of, or evidence of the absence of wrongdoing or liability, or absence of fault or
11 omission of REMAINING APP DEVELOPER DEFENDANTS in any civil, criminal or
12 administrative proceeding in any court, administrative agency or other tribunal, other than in
13 such proceedings as may be necessary to consummate or enforce this SETTLEMENT or the
14 JUDGMENT.

15 14.5 Each of the SETTLING PARTIES has entered into this SETTLEMENT with the
16 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.
17 This SETTLEMENT is a settlement document and shall be inadmissible in evidence in any
18 proceeding, except an action or proceeding to approve, interpret, or enforce its terms or as
19 otherwise permitted by law.

20 14.6 CO-LEAD CLASS COUNSEL shall draft the FINAL APPROVAL MOTION
21 and give COUNSEL FOR THE REMAINING APP DEVELOPER DEFENDANTS a draft of
22 the same and proposed order in as close to final form as practicable to review at least seven (7)
23 days before the motion’s filing and service date/deadline. The REMAINING APP
24 DEVELOPER DEFENDANTS shall be permitted, but not required, to file their own brief or
25 statement of non-opposition in support of final approval of the SETTLEMENT AGREEMENT.

26 14.7 Unless otherwise specifically provided, all notices, demands or other
27 communications shall be in writing and shall be deemed to have been duly given as of the third

1 business day after mailing by United States registered or certified mail, return receipt requested,
2 addressed to REMAINING APP DEVELOPER DEFENDANTS' COUNSEL or CO-LEAD
3 CLASS COUNSEL.

4 14.8 This SETTLEMENT may be amended or modified only by a written instrument
5 signed by or on behalf of all SETTLING PARTIES or their respective successors-in-interest.

6 14.9 The SETTLING PARTIES agree that the terms and conditions of this
7 SETTLEMENT are the result of arms-length negotiations between the SETTLING PARTIES
8 and that this SETTLEMENT shall not be construed in favor of or against any party by reason of
9 the extent to which any party or his, her or its counsel participated in the drafting of this
10 SETTLEMENT.

11 14.10 This SETTLEMENT constitutes the entire agreement among the SETTLING
12 PARTIES, and no representations, warranties or inducements have been made to any party
13 concerning this SETTLEMENT, other than the representations, warranties and covenants
14 contained and memorialized in the SETTLEMENT.

15 14.11 Paragraph, titles or captions contained in this SETTLEMENT are a matter of
16 convenience and for reference, and in no way define, limit, extend, or describe the scope of this
17 SETTLEMENT or any provision. Each term of this SETTLEMENT is contractual and not
18 merely a recital.

19 14.12 Each counsel or other PERSON executing this SETTLEMENT on behalf of any
20 SETTLING PARTY hereby warrants that such person has the authority to do so.

21 14.13 This SETTLEMENT may be executed in one or more counterparts. All executed
22 counterparts, and each of them, shall be deemed to be one and the same instrument. A complete
23 set of originally executed counterparts shall be filed with the Court.

24 14.14 This SETTLEMENT shall be binding upon, and inure to the benefit of, the
25 successors and assigns of the SETTLING PARTIES.

26 14.15 This SETTLEMENT is only intended to benefit the SETTLING PARTIES and
27 their counsel, and does not create any rights, express or implied, in third parties.

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IN WITNESS WHEREOF, the SETTLING PARTIES hereto have executed the SETTLEMENT as of the dates indicated below:

DATED: 3/29/17, 2017



Allen Beuershausen

DATED: _____, 2017

Giuliana Biondi

DATED: _____, 2017

Lauren Carter

DATED: _____, 2017

Stephen Dean

DATED: _____, 2017

Stephanie Cooley

DATED: _____, 2017

Jason Green

DATED: _____, 2017

Claire Hodgins

DATED: _____, 2017

Gentry Hoffman

DATED: _____, 2017

Rachelle King

DATED: _____, 2017

Nirali Mandalaywala

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
Telephone: (415) 398-0900

1 **IN WITNESS WHEREOF**, the SETTLING PARTIES hereto have executed the
2 SETTLEMENT as of the dates indicated below:

3
4 DATED: _____, 2017 _____
5 Allen Beuershausen

6 DATED: _____, 2017 _____
7 Giuliana Biondi

8
9 DATED: _____, 2017 _____
10 Lauren Carter

11 DATED: _____, 2017 _____
12 Stephen Dean

13
14 DATED: **March**, 2017 _____
15 **24** 
16 Stephanie Cooley

17 DATED: _____, 2017 _____
18 Jason Green

19 DATED: _____, 2017 _____
20 Claire Hodgins

21 DATED: _____, 2017 _____
22 Gentry Hoffman

23 DATED: _____, 2017 _____
24 Rachelle King

25 DATED: _____, 2017 _____
26 Nirali Mandalaywala

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
Telephone: (415) 398-0900

1 **IN WITNESS WHEREOF**, the SETTling PARTIES hereto have executed the
2 SETTLEMENT as of the dates indicated below:

3
4 DATED: _____, 2017 _____
5 Allen Beuershausen

6 DATED: _____, 2017 _____
7 Giuliana Biondi

8 DATED: _____, 2017 _____
9 Lauren Carter

10 DATED: _____, 2017 _____
11 Stephen Dean

12 DATED: _____, 2017 _____
13 Stephanie Cooley

14 DATED: _____, 2017 _____
15 Jason Green

16 DATED: _____, 2017 _____
17 Claire Hodgins

18 DATED: 3, 24, 2017 _____
19 
20 Gentry Hoffman

21 DATED: _____, 2017 _____
22 Rachelle King

23 DATED: _____, 2017 _____
24 Nirali Mandalaywala

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
Telephone: (415) 398-0900



1 DATED: March 29, 2017

Claire Moses

2
3 DATED: _____, 2017

Judy Paul

4
5 DATED: _____, 2017

Gregory Varner

6
7 DATED: _____, 2017

David M. Given
Nicholas A Carlin
PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201
San Francisco, CA 94129
Tel: (415) 398-0900

Michael von Loewenfeldt
James M. Wagstaffe
Frank Busch
KERR & WAGSTAFFE LLP
101 Mission Street, 18th Floor
San Francisco, CA 94105
Tel: (415) 371-8500
Fax: (415) 371-0500

Interim Co-Lead Counsel for Plaintiffs

8
9
10
11
12
13
14
15
16
17 DATED: _____, 2017

Michael H. Page
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111
Tel: (415) 362-6666
Fax: (415) 236-6300

Counsel for Defendants Foodspotting, LLC and
Yelp Inc.

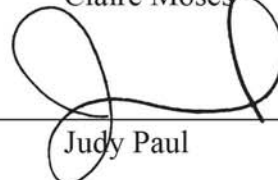
PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
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San Francisco, CA 94129
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DATED: _____, 2017

Claire Moses



DATED: March 29, 2017

Judy Paul

DATED: _____, 2017

Gregory Varner

DATED: _____, 2017

David M. Given
Nicholas A Carlin
PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
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San Francisco, CA 94129
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San Francisco, CA 94105
Tel: (415) 371-8500
Fax: (415) 371-0500

Interim Co-Lead Counsel for Plaintiffs

DATED: _____, 2017

Michael H. Page
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111
Tel: (415) 362-6666
Fax: (415) 236-6300

Counsel for Defendants Foodspotting, LLC and
Yelp Inc.

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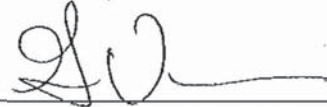
DATED: _____, 2017

Claire Moses

DATED: _____, 2017

Judy Paul

DATED: MARCH 28, 2017



Gregory Varner

DATED: _____, 2017

David M. Given
Nicholas A Carlin
PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
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San Francisco, CA 94129
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Fax: (415) 371-0500

Interim Co-Lead Counsel for Plaintiffs

DATED: _____, 2017

Michael H. Page
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111
Tel: (415) 362-6666
Fax: (415) 236-6300

Counsel for Defendants Foodspotting, LLC and
Yelp Inc.

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DATED: _____, 2017

Claire Moses

DATED: _____, 2017

Judy Paul

DATED: _____, 2017

Gregory Varner

DATED: April 3 _____, 2017

/s/ David M. Given

David M. Given
Nicholas A Carlin
PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201
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Frank Busch
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Fax: (415) 371-0500


Interim Co-Lead Counsel for Plaintiffs

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DATED: _____, 2017

FOODSPOTTING, LLC


By: Christa Quarles
Title: President

DATED: _____, 2017

FOURSQUARE LABS, INC.

By: _____
Title: _____

DATED: _____, 2017

GOWALLA, INC.

By: _____
Title: _____

DATED: _____, 2017

INSTAGRAM, LLC

By: _____
Title: _____

DATED: _____, 2017

KIK INTERACTIVE INC.

By: _____
Title: _____

PHILLIPS, ERLIOWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 - The Presidio
San Francisco, CA 94129
Telephone: (415) 398-0900

1 DATED: _____, 2017

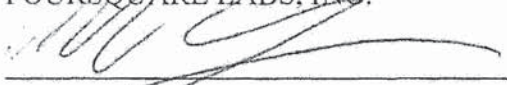
FOODSPOTTING LLC

2 _____
3 By: _____

4 Title: _____
5

6 DATED: March 30, 2017

FOURSQUARE LABS, INC.

7 
8 _____

By: Matt Ellenbogen

9 Title: General Counsel & Chief Compliance Officer
10

11 DATED: _____, 2017

GOWALLA, INC.

12 _____
13 By: _____

14 Title: _____
15

16 DATED: _____, 2017

INSTAGRAM, LLC

17 _____
18 By: _____

19 Title: _____
20

21 DATED: _____, 2017

KIK INTERACTIVE INC.

22 _____
23 By: _____

24 Title: _____
25

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PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 - The Presidio
San Francisco, CA 94129
Telephone: (415) 398-0900

1 DATED: _____, 2017

FOODSPOTTING LLC

2 _____
3 By: _____

4 Title: _____

6 DATED: _____, 2017

FOURSQUARE LABS, INC.

7 _____
8 By: _____

9 Title: _____

11 DATED: 3/28, 2017

GOWALLA, INC.

12 
13 _____

14 By: Gilman Louie

15 Title: Director

16 DATED: _____, 2017

INSTAGRAM, LLC

17 _____
18 By: _____

19 Title: _____

21 DATED: _____, 2017

KIK INTERACTIVE INC.

22 _____
23 By: _____

24 Title: _____

27

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 - The Presidio
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DATED: _____, 2017

FOODSPOTTING LLC

By: _____

Title: _____

DATED: _____, 2017

FOURSQUARE LABS, INC.

By: _____

Title: _____

DATED: _____, 2017

GOWALLA, INC.

By: _____

Title: _____

DATED: _____, 2017

INSTAGRAM, LLC

By:  **Mike Johnson**

Title: **Assistant Secretary**

DATED: _____, 2017

KIK INTERACTIVE INC.

By: _____

Title: _____

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 – The Presidio
San Francisco, CA 94129
Telephone: (415) 398-0900

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DATED: _____, 2017

FOODSPOTTING LLC

By: _____

Title: _____

DATED: _____, 2017

FOURSQUARE LABS, INC.

By: _____

Title: _____

DATED: _____, 2017

GOWALLA, INC.

By: _____

Title: _____

DATED: _____, 2017

INSTAGRAM, LLC

By: _____

Title: _____

DATED: 3/30/2017, 2017

KIK INTERACTIVE INC.

DocuSigned by:

Peter Heinke

7B87491A-1614-4168-8000-000000000000
Peter Heinke

By: _____

Title: COO&CFO

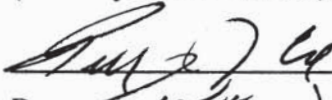
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DATED: _____, 2017

KONG TECHNOLOGIES, INC.
(formerly known as Path, Inc.)


By: _____
Title: Ramon S. Rodriguez / Trustee

DATED: _____, 2017

TWITTER, INC.

By: _____
Title: _____

DATED: _____, 2017

YELP INC.

By: _____
Title: _____

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 - The Presidio
San Francisco, CA 94129
Telephone: (415) 398-0900

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DATED: _____, 2017

KONG TECHNOLOGIES, INC.
(formerly known as Path, Inc.)

By: _____

Title: _____

DATED: _____, 2017

TWITTER, INC.

Vijaya Gadde

By: *Vijaya Gadde*

Title: *General Counsel & Secretary*

DATED: _____, 2017

YELP INC.

By: _____

Title: _____

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DATED: _____, 2017

KONG TECHNOLOGIES, INC.
(formerly known as Path, Inc.)

By: _____

Title: _____

DATED: _____, 2017

TWITTER, INC.

By: _____

Title: _____

DATED: 30 MARCH, 2017

YELP INC.

Chal C Baker

By: CHARLES C BAKER

Title: CFO

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP
39 Mesa Street, Suite 201 - The Presidio
San Francisco, CA 94129
Telephone: (415) 398-0900