

1 LAWRENCE D. MURRAY, State Bar No. 77536
 NOAH W. KANTER, State Bar No. 224580
 2 MURRAY & ASSOCIATES
 1781 Union Street
 3 San Francisco, CA 94123
 Telephone: (415) 673-0555
 4 Facsimile: (415) 928-4084

5 DAVID R. ONGARO, State Bar No. 154698
 AMELIA D. WINCHESTER, State Bar No. 257928
 6 ONGARO BURTT LLP
 595 Market St., Suite 610
 7 San Francisco, CA 94105
 Telephone: (415) 433-3900
 8 Facsimile: (415) 433-3950

9 Attorneys for Plaintiff
 BORIS Y. LEVITT

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

13 BORIS Y. LEVITT, on behalf of himself and all
 14 others similarly situated,

15 Plaintiffs,

16 v.

17 YELP! INC.; and DOES 1 through 100, inclusive,

18 Defendants.

Case No. CV 10-01321 MHP

**PLAINTIFF LEVITT'S
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF ITS
 OPPOSITION TO CATS AND DOGS
 CROSS-MOTION FOR:**

**(A1) DESIGNATION OF CATS AND
 DOGS AS LEAD ACTION AND STAY
 OF LEVITT ACTION, OR IN THE
 ALTERNATIVE, (A2)
 CONSOLIDATION OF THE
 ACTIONS, DEEMING CATS AND
 DOGS FIRST AMENDED
 COMPLAINT AS THE OPERATIVE
 PLEADING; AND**

**(B) APPOINTMENT OF THE
 WESTON FIRM AND BECK & LEE
 AS INTERIM CLASS COUNSEL**

Judge: Hon. Marilyn Hall Patel
 Date: July 19, 2010
 Time: 2:00 p.m.

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

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. BACKGROUND..... 1

III. ARGUMENT 2

 A. Levitt Should Not be Stayed 2

 B. The Cats and Dogs Complaint Should Not be Designated as the Operative Pleading.....6

 C. Ongaro Burtt and Murray & Associates are Qualified to Act as Interim Class Counsel. ... 7

IV. CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Cats and Dogs v. Yelp! Inc., Case No. CV 10-1340-VBF (SSx) (C.D. Cal. May 3, 2010)..... 4

Four In One Company, Inc. v. Sk Foods, L.P., No. 2:08-cv-03017-MCE-EFB, 2009 WL 747160 (E.D. Cal. March 20, 2009)..... 8, 11

In Re Cathode Ray Tube (CRT) Antitrust Litigation, No. 07-5944 SC, 2008 WL 2024957 (N.D. Cal. May 9, 2008)..... 8

Johnson v. Manhattan Ry. Co., 289 U.S. 479, 496-97 (1933) 3

Katz et al. v. Fifield Realty Corp., et al., No. 07-61626-CIV, S.D. Fla. 10

Lac Anh Le v. Pricewaterhousecoopers LLP, No. C-07-5476 MMC, 2008 WL 618938 (N.D. Cal. March 4, 2008) 5, 6

Landis v. North Am. Co., 299 U.S. 248 (1936) 3

Medlock v. Taco Bell Corp., No. CV-F-07-1314 OWW/DLB, 2009 WL 1444343 (E.D. Cal. May 19, 2009) 8

Parkinson v. Hyundai Motor America, No. CV06-345AHS (MSGX) 2006 WL 2289801 (C.D. Cal. Aug. 7, 2006) 8, 11

Single Chip Sys. Corp., v. Intermec IP Corp., 495 F.Supp.2d 1052 (2007) 3

Southwest Marine, Inc., v. Triple A Machine Shop, Inc., 720 F.Supp. 805 (N.D. Cal. 1980) 6

Rivers v. Walt Disney Co., 980 F.Supp. 1358 (C.D.Cal.1997). 3

Takeda v. Turbodyne Technologies, Inc., 67 F.Supp.2d 1129 (C.D.Cal.1999) 3

Teamsters Local Nos. 175 & 505 Pension Trust Fund v. IBP Inc., 123 F.Supp.2d 514 (S.S.D. 2000)..... 5

Statutes

Federal Rules of Civil Procedure 5

California Business and Professions Code § 17200..... 4, 5

California Business and Professions Code § 17500..... 4

Other Authorities

Newburg on Class Actions § 9.34 7

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

I. INTRODUCTION

Cats and Dogs’ cross-motion to oppose consolidation, stay the Levitt action, deem its own complaint as the operative pleading, and its counsel as interim class counsel should be denied in all aspects. It is undisputed – based on the admissions of all parties – that Levitt and Cats and Dogs would be appropriately consolidated because of the existence of common questions of law and fact. Cats and Dogs’ motion to stay Levitt should be denied because it is unsupported by legal authority, would prejudice Levitt and potential class representatives, and would not serve to further judicial economy.

In addition, Defendant has raised multiple pleading flaws with the Cats and Dogs First Amended Complaint (“FAC”), and the FAC contains different claims than the claims alleged in Levitt’s complaint. As a result, the Cats and Dogs FAC should not be deemed the “operative pleading.” Finally, Cats and Dogs counsel – Beck & Lee Business Trial Lawyers (“Beck & Lee”) of Miami, Florida and the Weston Firm – consist of attorneys who have, at most, less than 6 years of legal experience each. While Beck & Lee and the Weston firm might have “won” the race to the Courthouse, they simply do not have the trial, class action experience and resources necessary to best represent the class. Cats and Dogs’ cross-motion to appoint Beck & Lee and the Weston Firm as interim class counsel should be denied and the Court should appoint as interim class counsel the San Francisco law firms of Murray & Associates and Ongaro Burt LLP, whose two lead attorneys alone possess (collectively) more than 50 years of class action and trial experience.

II. BACKGROUND

Plaintiff Boris Levitt (“Plaintiff” or “Levitt”) was contacted by Yelp! Inc. (“Yelp” or “Defendant”) for advertising in July 2009. *See* Levitt Complaint (“Complaint”), ¶29. After declining advertising from Yelp, 6 out of 7 of Levitt’s positive Yelp reviews were immediately removed from his Yelp business webpage, leaving Levitt with an overall star review of 3.5 stars instead of the 4.5 stars his business had previously held. *See* Complaint ¶31. Thereafter, and in response to the corresponding decline in his business, Levitt began tracking his star reviews and the number of Yelp page views his business received. Levitt also began discussing and comparing his experiences with Yelp with other small business owners. In January 2010, Levitt contacted

1 Murray & Associates about his issues with Yelp. *See* Declaration of Lawrence D. Murray
2 [hereafter “Murray Decl.”] attached hereto as Ex. 1, ¶2. On January 15, 2010, Levitt met with
3 Larry Murray of Murray & Associates to discuss his experiences with Yelp and the possibility of
4 filing a lawsuit. Murray Decl. ¶3. Thereafter, Mr. Murray began an investigation into Levitt’s
5 allegations. On February 10, 2010, Levitt and Larry Murray met with David Ongaro, of Ongaro
6 Burt LLP (“Ongaro Burt”) to discuss his claims. Thereafter, Murray & Associates and Ongaro
7 Burt began a joint-investigation into Levitt’s claims.

8 On February 23, 2010, Murray & Associates organized a meeting for other business
9 owners that had contacted Levitt regarding their concerns about Yelp. Murray Decl., ¶5. That
10 same day, Cats and Dogs filed its complaint in the United States District Court for the Central
11 District of California. A little over two weeks later, Murray & Associates and Ongaro Burt,
12 having obtained enough information, filed a complaint on behalf of Boris Levitt in the San
13 Francisco County Superior Court. *See* Levitt Complaint (“Complaint”). In his complaint, Levitt
14 alleged that Yelp violated California Business & Professions Code sections 17200 and 17500, and
15 engaged in intentional and negligent misrepresentations. *See* Complaint. The Cats and Dogs
16 complaint – filed in the Central District -- originally alleged that Yelp violated California Business
17 & Professions Code section 17200 for unfair competition, however, Cats and Dogs has since
18 amended its complaint to include claims for extortion, attempted extortion, and intentional
19 interference with prospective business advantage. *See* Cats and Dogs, First Amended Complaint.

20 On March 29, 2010 Levitt’s complaint was removed to the United States District Court for
21 the Northern District of California. On May 3, 2010 Cats and Dogs was transferred from the
22 United States District Court for the Central District of California to the United States District
23 Court for the Northern District of California. On June 4, 2010 the actions were deemed to be
24 related.

25 **III. ARGUMENT**

26 **A. Levitt Should Not be Stayed.**

27

1 Cats and Dogs – while conceding that consolidation is appropriate – argues that Levitt
2 should be stayed because it “mimics” the allegations in the Cats and Dogs complaint and because
3 Cats and Dogs have started discovery. Cats and Dogs’ position – as demonstrated by the contents
4 of its brief – is unsupported, misconstrues facts, and could only be interpreted as an attempt to
5 prejudice Levitt. As a result, the Court should, in the interest of judicial economy and fairness,
6 and pursuant to the stipulation agreed to between Yelp and Levitt, decline to stay Levitt and
7 consolidate Levitt with Cats and Dogs.

8 Pursuant to Federal Rule of Civil Procedure 42(a),

9
10 If actions before the Court involve a common question of law or fact, the court
11 may: (1) join for hearing or trial any and all matters at issue in the actions; (2)
12 consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or
13 delay.

14 “[I]n deciding whether to consolidate actions under Rule 42(a), a court must balance the savings
15 of time and effort consolidation will produce against any inconvenience, delay, confusion, or
16 prejudice that may result.” *Takeda v. Turbodyne Technologies, Inc.*, 67 F.Supp.2d 1129, 1132
17 (C.D.Cal.1999). Consolidation does not “merge the suits into a single cause, or change the rights
18 of the parties, or make those who are parties in one suit parties in another.” *Johnson v.*
19 *Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933).

20 Similar to the discretionary nature of a decision to consolidate, a court may issue a stay
21 “to control the disposition of the cases on its docket with economy of time and effort for itself,
22 for counsel, and for litigants.” *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). “In
23 determining whether to stay proceedings, the Court considers the following factors: (1) judicial
24 economy; (2) the moving party's hardship; and (3) potential prejudice to the non-moving party.”
25 *Single Chip Sys. Corp., v. Intermec IP Corp.*, 495 F.Supp.2d 1052 , 1057 (2007) citing *Rivers v.*
26 *Walt Disney Co.*, 980 F.Supp. 1358, 1360 (C.D.Cal.1997).

1 It is undisputed by all parties that Levitt and Cats and Dogs are well-suited for
2 consolidation because they involve common questions of law and fact.¹ See Yelp! Inc.’s Motion
3 to Consolidate, Cats and Dogs Opposition to Motion to Consolidate, 3 [hereafter “*Cats and Dogs*
4 *Opp’n*”]. Both Levitt and Cats and Dogs assert that Yelp’s manipulation of a business’s reviews
5 is linked to the business’s decision to advertise with Yelp. In addition, Judge Fairbank
6 specifically noted in her Order to Transfer Cats and Dogs from the United States District Court
7 for the Central District of California that, in light of the potential for consolidation with Levitt as
8 well as other factors that support venue in the Northern District, that a transfer “would serve the
9 interest of justice by lowering the costs to the courts, facilitating expeditious pre-trial
10 proceedings and discovery, and avoiding duplicative litigation and inconsistent results.” See *Cats*
11 *and Dogs v. Yelp! Inc.*, Case No. CV 10-1340-VBF (SSx) (C.D. Cal. May 3, 2010).

12 Despite Judge Fairbank’s remarks, Cats and Dogs argue that the Court should stay Levitt,
13 which was appropriately filed, upon the completion of his counsel’s own investigation, in the
14 San Francisco Superior Court² only 2.5 weeks after Cats and Dogs. Ignoring the judicial
15 standard courts use to determine whether to stay an action, Cats and Dogs assert that a stay is
16 appropriate because Levitt’s allegations “mimicked” the Cats and Dogs complaint. A quick
17 comparison of the original complaint that Cats and Dogs filed with Levitt’s complaint, however,
18 demonstrates that Cats and Dogs asserted only a claim for violation of California Business and
19 Professions Code section 17200 (unfair prong) whereas Levitt asserted claims of California
20 Business and Professions Code section 17200 (unfair and unlawful prongs), section 17500 (false
21 advertising), intentional misrepresentation and negligent misrepresentation. Cats and Dogs has
22 since amended its complaint to include claims for extortion, attempted extortion, and intentional
23 interference with prospective business advantage and California Business and Professions Code
24 § 17200 (unfair, unlawful, and fraudulent prongs). It is plain from the papers themselves that

25 ¹/ Given the consensus among the parties, it is unclear why Cats and Dogs are generating
26 unnecessary costs and fees to oppose consolidation.

27 ²/ Judge Fairbank, in her Order dated May 3, 2010, specifically noted the existence of
28 Yelp’s forum selection clause (which specifies San Francisco County).

1 while Levitt asserts similar factual allegations due to the nature of his own experiences with
2 Yelp, he did not copy the Cats and Dogs complaint or its allegations.

3 With regard to Cats and Dogs’ assertion that Levitt should be stayed because Cats and
4 Dogs is already “well-along in discovery” – which again, is not a factor that is directly relevant
5 to whether a stay should be granted – Levitt did not serve discovery requests earlier on in this
6 litigation because Levitt’s case management conference is not scheduled to take place until July
7 19, 2010. *See* FRCP 26(f). To stay Levitt’s case due to his compliance with the federal rules
8 would be prejudicial.³ Moreover, it is unclear how Cats and Dogs’ service of a total of 42
9 interrogatories and requests for production of documents on Yelp due its earlier-scheduled case
10 management conference could possibly result in a hardship to Cats and Dogs, or why it would
11 serve to weaken judicial economy. Murray Decl. ¶7.

12 With respect to the factors courts consider when determining whether a case should be
13 stayed, they weigh against staying Levitt’s case. Indeed, judicial economy will be furthered if
14 two actions that are currently before the *same* judge in the *same* federal district court – both of
15 which are in the early stages of litigation – proceed as one consolidated action. It will not
16 prejudice Cats and Dogs if the actions are consolidated. Indeed, the only real hardship Cats and
17 Dogs points to is that “counsel for Cats and Dogs do not wish to work with Counsel for Mr.
18 Levitt.” This complaint is hardly within the realm of issues that normally warrant the issuance of
19 stays – such as the existence of concurrent state and federal actions (or even concurrent federal
20 court actions in different districts) where the risk of inconsistent judgments (without
21 consolidation) is real. *See e.g., Teamsters Local Nos. 175 & 505 Pension Trust Fund v. IBP*
22 *Inc.*, 123 F.Supp.2d 514, 518 (S.S.D. 2000) (in case of pending state and federal actions, staying
23 federal action and noting concern for inconsistent federal and state results); *Lac Anh Le v.*

25 ^{3/} Given that Cats and Dogs knew that there was a pending action in the Northern
26 District where discovery could not begin, and with which it would likely be consolidated, it is
27 unclear why it has been aggressively pursuing discovery and the scheduling of deposition dates.
28 *See* Cats and Dogs Emergency Motion to Shorten Time Relating to Motion to Compel Rule
30(b)(6) Deposition.

1 *Pricewaterhousecoopers LLP*, No. C-07-5476 MMC, 2008 WL 618938 at *1 (N.D. Cal. March
2 4, 2008) (“A district court has discretion to stay an action where ‘a complaint involving the same
3 parties and issues has already been filed in another district.”). Finally, staying the action would
4 plainly prejudice Levitt, whose business has and is being adversely impacted by Yelp’s business
5 practices, who has dedicated countless hours to investigating Yelp, and who is in the process of
6 adding other named class representatives – with distinct Yelp experiences – to his complaint.
7 Notably absent from Cats and Dogs brief are any legal citations that would support an order
8 granting a stay against Levitt, which makes sense given that the relevant factors weigh against
9 it.⁴ Levitt should not be stayed; it should be consolidated with Cats and Dogs.

10
11 **B. The Cats and Dogs Complaint Should Not be Designated as the Operative Pleading.**

12 Cats and Dogs maintain that its FAC should be deemed the operative pleading because 1) a
13 motion to dismiss was briefed in the Central District prior to the transfer; 2) it seeks no further
14 plaintiffs; 3) it does not want to add claims of intentional and negligent misrepresentation to its
15 complaint; and 4) because Levitt does not allege that he paid funds to Yelp. The Cats and Dogs
16 FAC as it stands, however, will likely require amendment. Moreover, Levitt’s complaint currently
17 alleges different claims than Cats and Dogs and seeks to add class representatives with different
18 Yelp experiences. As a result, it is not appropriate for the Court to designate the Cats and Dogs
19 FAC as the operative pleading.

20 Given that the cases are ripe for consolidation, there is no reason why the Cats and Dogs
21 and Levitt complaints should not be amended and consolidated in the interest of judicial economy.

22 _____
23 ^{4/} Indeed, Cats and Dogs cites to *Southwest Marine, Inc., v. Triple A Machine Shop, Inc.*,
24 720 F.Supp. 805, 807 (N.D. Cal. 1980) in support of its proposition that the Court should stay,
25 rather than consolidate Levitt and Cats and Dogs, however, *Southwest Marine* is obviously
26 distinguishable in that it did not involve common facts or causes of action. In *Southwest Marine*,
27 the court stated that, “[t]his action and *Service Engineering* do not state the same causes of
action, nor do they involve the same alleged fraudulent scheme. The facts necessary to prove the
claims in the respective actions are not in common, nor do the actions necessarily concern the
same Navy contracts. Allowing plaintiff to pursue its claims against defendants in this separate
action will not involve a substantial duplication of effort. Consolidation of the two actions would
likely delay the trial of *Service Engineering* set for September 25, 1989.”

1 While Cats and Dogs maintain that the earlier briefing on a motion to dismiss in the Central
2 District weighs in favor deeming its complaint the “operative pleading,” the papers currently on
3 file have demonstrate that Defendant has challenged the Cats and Dogs FAC as having numerous
4 pleading flaws. *See* Yelp’s Motion to Dismiss. As a result, even if those briefs were before the
5 Court now, it would likely result in Cats and Dogs filing another amended complaint (and a
6 subsequent motion to dismiss briefing schedule that would undoubtedly “delay” the case just as
7 long – if not longer – than permitting Levitt and Cats and Dogs to consolidate their complaints
8 now).

9 More certainly, Levitt has spent the last several months investigating the claims of new and
10 potential clients – many of whom paid Yelp for advertising – and had different experiences than
11 the Cats and Dogs class representatives, yet are typical of those in the putative class. Levitt has
12 been – in conjunction with discussions with new and potential clients – already developing an
13 amended complaint. Even further, Levitt has claims for California Business and Professions Code
14 section 17500, which is not in the Cats and Dogs FAC, and claims for negligent and intentional
15 misrepresentation.⁵ Finally, any delays in the case that Cats and Dogs attributes to Levitt – such
16 as stipulating to allow Yelp extra time to file a response given the pendency of the three actions –
17 were simply permitted as a matter of professional courtesy and due to the date of Levitt’s case
18 management conference, something which Levitt and other clients of Levitt’s counsel should not
19 now be faulted for. Given the above, Cats and Dogs should not -- on its papers and already-
20 challenged claims alone – be permitted to have its FAC deemed the operative pleading.

21
22 **C. Ongaro Burt and Murray & Associates are Qualified to Act as Interim Class
Counsel.**

23 Pursuant to Rule 23(g)(1), in appointing class counsel, a federal court must consider:

- 24
25 (i) the work counsel has done in identifying or investigating potential claims
in the action;

26
27 ^{5/} Assuming he has the opportunity, Levitt will likely amend and/or remove at least one
of these claims in his amended complaint.

- 1 (ii) counsel’s experience handling class actions, other complex litigation, and
the types of claims asserted in the action;
- 2 (iii) counsel’s knowledge of the applicable law; and
- 3 (iv) the resources that counsel will commit to representing the class.

4 In addition, the court “may consider any other matter pertinent to counsel’s ability to fairly
and adequately represent the interests of the class.” FRCP 23(g)(B). Courts will also apply the
5 Rule 23(g)(1) criteria to the appointment of interim class counsel. *See In Re Cathode Ray Tube*
6 *(CRT) Antitrust Litigation*, No. 07-5944 SC, 2008 WL 2024957 at *1 (N.D. Cal. May 9, 2008). In
7 making a determination on the appointment of class counsel, courts will often examine the
8 experience of the proposed class counsel. *See e.g., Four In One Company, Inc. v. Sk Foods, L.P.*,
9 No. 2:08-cv-03017-MCE-EFB, 2009 WL 747160 at *3 (E.D. Cal. March 20, 2009); *Parkinson v.*
10 *Hyundai Motor America*, No. CV06-345AHS (MSGX) 2006 WL 2289801 at*3 (C.D. Cal. Aug. 7,
11 2006).

12 In addition to its request that its complaint become the “operative pleading” against Yelp,
13 Cats and Dogs also argues that its counsel, The Weston Law Firm and Beck and Lee, should
14 become interim class counsel. Cats and Dogs primarily argues that its counsel is best-suited for
15 this role because it filed a complaint and was able to start discovery before Levitt. It is well-
16 settled, however, that “the first attorney to file is not entitled to special consideration for
17 appointment as lead counsel simply by winning the race to the courthouse.” *Medlock v. Taco Bell*
18 *Corp.*, No. CV-F-07-1314 OWW/DLB, 2009 WL 1444343 at *6 (E.D. Cal. May 19, 2009) citing
19 *Newburg on Class Actions* § 9.34. Instead, the court must evaluate counsel based on the Rule
20 23(g)(1) factors. Given that Murray & Associates and Ongaro Burt LLP have diligently
21 investigated the claims in this case, dedicated resources, and collectively, have many more years
22 of trial and class action experience (in California) than Cats and Dogs counsel, they are better-
23 suited to be interim class counsel.

24 Cats and Dogs attempt to portray Levitt’s counsel as being insufficient, stating that counsel
25 filed “a copycat complaint in March, and then stipulate[d] to a stay of all activity until August,”
26 however, this characterization is unfair and blatantly misconstrues the facts. Levitt – and his
27 counsel – began investigating Levitt’s claims long before Cats and Dogs filed their complaint.

1 Levitt – having noticed the relationship between his Yelp reviews and his choice to decline
2 advertising – began tracking his experiences with Yelp in July 2009. In January and February
3 2010 – prior to the filing of the Cats and Dogs complaint -- attorneys from Murray & Associates
4 and Ongaro Burttt met with Mr. Levitt, investigated his claims, and began working on a complaint.
5 See Murray Decl. ¶3, Declaration of David R. Ongaro [hereafter “Ongaro Decl.”], ¶2. As described
6 above, and as evidenced by the noticeably absent details in Cats and Dogs’s cross-motion, Levitt’s
7 complaint did not copy the Cats and Dogs complaint.

8 Since meeting with Levitt, Murray & Associates and Ongaro Burttt LLP have met and
9 spoken with dozens of business owners, even organizing large meetings of those who were
10 interested in a Yelp investigation. See Murray Decl. ¶5. Attorneys from Murray & Associates and
11 Ongaro Burttt LLP have spent over 200 hours on the investigation, however, they are also
12 cognizant of not racking up needless attorneys’ fees, which can themselves be detrimental to the
13 interests of class members.⁶ See Murray Decl. ¶9, Ongaro Decl. ¶3. Murray & Associates and
14 Ongaro Burttt LLP have been in the process of drafting an amended complaint (although they have
15 delayed filing pending the outcome of Yelp’s request and motion to consolidate the complaints).
16 Moreover, the two firms together have investigated each business closely, weeding out businesses
17 whose owners have issues with various Yelp practices, but who are not putative class members.
18 As stated above, Murray & Associates and Ongaro Burttt LLP have not completed discovery
19 because of the scheduling of the case management conference in the Northern District for late
20 July.

23 ^{6/} Counsel for Cats and Dogs purport to have spent 1,000 attorney hours and 1,000 law
24 firm hours investigating, preparing, and prosecuting the case, however, they also claim to be
25 content with the 10-named class representatives (added to their complaint on March 16, only
26 weeks after their original complaint was filed). As a result, it appears that the majority of these
27 hours have been dedicated to opposing a motion to transfer and two motions to consolidate with
other cases and conferring with opposing counsel – including an *in person* meeting in San
Francisco regarding case management issues -- hours and costs which *have not* been spent
identifying or investigating potential claims. Moreover, they are also pursuing – based on an
objective reading of the court’s docket – a frivolous Emergency Motion to Shorten Time
Relating to Motion to Compel Rule 30(b)(6) deposition.

1 employ several associates, paralegals, and contract attorneys. As a result, they will be able to staff
2 the Levitt case as necessary, and are not limited to the resources of two two-person law firms.

3 Unlike Murray & Associates and Ongaro Burt LLP, whose lead attorneys *each* have over
4 19 and 30 years of litigation and class action experience in California, counsel for Cats and Dogs
5 have far less trial and litigation experience. For example, Jared Beck and Elizabeth Lee Beck of
6 Beck and Lee were each admitted to practice law in California and Florida in 2004 and 2006,
7 respectively. *See* Murray Decl. ¶15, Ex 1. Gregory Weston was admitted to practice law in
8 California in 2005, and Jack Fitzgerald was admitted to the California bar in 2008. *See* Murray
9 Decl. 16, Ex. 2. Beck & Lee highlight that they were appointed interim class counsel in *Katz et al.*
10 *v. Fifield Realty Corp., et al.*, No. 07-61626-CIV (S.D. Fla.), however, the docket reflects that
11 their motion to become class counsel was unopposed. Similarly, with regard to Judge Morrow’s
12 finding that the “Weston Firm is qualified to serve as Class Counsel,” referenced in the Cats and
13 Dogs Cross-Motion, that quotation appears to have been lifted out of a proposed order that was
14 submitted to the court for a proposed settlement. The appointment of the Weston Firm in that case
15 – like Beck & Lee in *Katz* -- similarly appears to be unopposed. While the attorneys at both firms
16 appear to possess some litigation experience, they simply do not possess the decades of trial
17 experience and resources that both Mr. Ongaro and Mr. Murray can bring to the table. *See e.g.*,
18 *Four In One Company, Inc. v. Sk Foods, L.P.*, No. 2:08-cv-03017-MCE-EFB, 2009 WL 747160 at
19 *3 (E.D. Cal. March 20, 2009) (appointing firm as class counsel “with far-reaching experience and
20 expertise as well as trial experience necessary to litigate a case of this magnitude.”); *Parkinson v.*
21 *Hyundai Motor America*, No. CV06-345AHS (MSGX) 2006 WL 2289801 at*3 (C.D. Cal. Aug. 7,
22 2006) (appointing firm as class counsel whose attorneys had “more experience” and “greater
23 resources”).⁷

24 _____
25 ^{7/} In addition to Cats and Dogs counsel’s lack of experience, Cats and Dogs incorrectly
26 takes credit for relief its counsel allegedly already obtained from Yelp. Specifically, Cats and
27 Dogs leads off its brief with the statement that “Cats and Dogs has already brought about
28 substantial changes to Yelp’s business practices – changes which Yelp made in direct response to
Cats and Dogs action, but almost two weeks before Mr. Levitt filed his third-filed copycat
complaint.” Cats and Dogs goes on to explain that Yelp now permits business owners and users to

1 In sum, Murray & Associates and Ongaro Burttt are best qualified and well suited to
2 become interim class counsel. The trial and class action experience of both of the lead attorneys
3 will ensure that the interests of the class members are protected. In the event, however, the Court
4 determines that The Weston Law Firm and Beck and Lee, are also qualified, Levitt respectfully
5 requests that Murray & Associates and Ongaro Burttt be deemed co-interim class counsel.

6 **IV. CONCLUSION**

7 For the reasons set forth herein, Levitt respectfully requests that the Court appoint Murray
8 & Associates and Ongaro Burttt as interim class counsel and that the Court deny: Cats and Dogs’
9 Cross-Motion to Designate Cats and Dogs as Lead Action and Stay Levitt action; Cats and Dogs’
10 Cross-Motion to Deem the First Amended Complaint as the Operative Pleading; and Cats and
11 Dogs’ Cross-Motion for appointment of the Weston Firm and Beck and Lee as Interim Class
12 Counsel.

13
14 DATED: June 28, 2010

ONGARO BURTT LLP

15 By: _____ /s/
16 David R. Ongaro

17 Attorneys for Plaintiff
18 BORIS Y. LEVITT

19
20 see “filtered” reviews on its website and no longer allows businesses to pay to designate a
21 “favorite” monthly review to be featured at the top of its page, which Cats and Dogs claims
22 occurred in direct response to its lawsuit. While Cats and Dogs blindly takes credit for these
23 changes, it misleads the reader – both through the text of its brief and in its declarations – into
24 believing that Yelp made the described changes on March 1, 2010, in direct response to its
25 complaint and prior to the filing of Levitt’s complaint. However, as all parties’ in this lawsuit
26 should be (and are likely) aware, Yelp did not make the aforementioned changes until April 5,
27 2010. See Murray Decl. 17, Ex. 3. The incorrectly dated “blog” post, attached as Exhibit A to the
28 Declaration of Gregory S. Weston, which is dated March 1, 2010, is plainly “doctored” as it
includes a snapshot of a video (on a Yelp review page) that was posted on Yelp’s Blog almost
three weeks later on March 18, 2010. In any event, the newspaper articles Levitt submits in
support of this Opposition demonstrate that the change did not occur until April 5, after the Levitt
action was filed.