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12 **Attorneys for Plaintiffs and the Proposed Classes**

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

15
 16 CATS AND DOGS ANIMAL HOSPITAL,
 17 INC.; ASTRO APPLIANCE SERVICE;
 18 BLEEDING HEART, LLC; CALIFORNIA
 19 FURNISHINGS, INC.; CELIBRÉ, INC.; J.L.
 20 FERRI ENTERTAINMENT, INC.; LE
 21 PETITE RETREAT DAY SPA, LLC; SAN
 22 FRANCISCO BAY BOAT CRUISES, LLC;
 23 WAG MY TAIL, INC.; and ZODIAC
 24 RESTAURANT GROUP, INC., on behalf of
 25 themselves and all others similarly situated,

22 Plaintiffs,

24 v.

25 YELP! INC.,

26 Defendant.

Case No. 3:10-cv-02351 MHP
 Pleading Type: Class Action

**PLAINTIFFS' REPLY IN SUPPORT OF
 OPPOSITION TO YELP'S MOTION FOR
 CONSOLIDATION AND CROSS-
 MOTION FOR:**

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

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

**(C) SUBMISSION OF FULLY-BRIEFED
 MOTION TO DISMISS FOR HEARING.**

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

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13 **Rules**

14 Fed. R. Civ. P. 23(g)(1)(A)8

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1 Plaintiffs Cats And Dogs Animal Hospital, Inc.; Astro Appliance Service; Bleeding
2 Heart, LLC; California Furnishings, Inc.; Celibré, Inc.; J.L. Ferri Entertainment, Inc.; Le Petite
3 Retreat Day Spa, LLC; San Francisco Bay Boat Cruises, LLC; Wag My Tail, Inc.; and Zodiac
4 Restaurant Group, Inc. (collectively, “Plaintiffs”) submit this Reply Memorandum in support of
5 their Cross-Motion (*Cats and Dogs* Dkt. No. 65) to Yelp’s Motion for Consolidation (*Cats and*
6 *Dogs* Dkt. No. 64) seeking (1) the designation of the *Cats and Dogs* action as the lead action and
7 a stay of the *Levitt* action (No. 3:10-cv-01321-MHP, currently pending before this Court) or in
8 the alternative consolidation of actions, deeming the *Cats and Dogs* First Amended Complaint
9 the operative pleading; (2) appointment of The Weston Firm and Beck & Lee Business Trial
10 Lawyers as interim class counsel; and (3) the submission of Yelp’s fully-briefed Motion to
11 Dismiss for hearing. This Memorandum replies to both Yelp’s Opposition to Plaintiffs’ Cross-
12 Motion (*Cats and Dogs* Dkt. No. 71), and Mr. Levitt’s Opposition to Plaintiffs’ Cross-Motion
13 (*Levitt* Dkt. No. 16).

14 **I. INTRODUCTION**

15 *Cats and Dogs* is the public face of the nationwide fight by small businesses against
16 Yelp’s abusive and unlawful business practices. The New York Times,¹ Wall Street Journal,²
17 ABC News,³ Bloomberg Businessweek,⁴ Wired Magazine,⁵ CNET,⁶ TechCrunch,⁷ and dozens
18

19 ¹ Nick Bilton, Yelp Is Sued After Dispute Over a Review, N.Y. Times, Feb. 24, 2010,
20 *available at* <http://bits.blogs.nytimes.com/2010/02/24/yelp-is-sued-after-dispute-over-a-review/>.

21 ² Ashby Jones, Real People. Real Reviews. Real Extortion Scheme?, The Wall Street
22 Journal, Feb. 26, 2010, *available at* <http://blogs.wsj.com/law/2010/02/26/real-people-real-reviews-real-extortion-scheme/>.

23 ³ Ki Mae Heussner, Yelp Faces Extortion Claim, Class Action Suit, ABC
24 News/Technology, Feb. 26, 2010, *available at* <http://abcnews.go.com/Technology/TheLaw/yelp-faces-extortion-claim-class-action-suit/story?id=9944826>; ABC 7 News (SF Bay Area), Feb. 26,
2010, *available at* http://www.youtube.com/watch?v=h_y9k4ycO08.

25 ⁴ Edvard Pettersson & Joseph Galante, Yelp.com Accused of Extortion by California
26 Veterinary Hospital, Bloomberg Businessweek, Feb. 25, 2010, *available at*
27 [http://www.businessweek.com/news/2010-02-25/yelp-com-accused-of-extortion-by-california-](http://www.businessweek.com/news/2010-02-25/yelp-com-accused-of-extortion-by-california-veterinary-hospital.html)
28 [veterinary-hospital.html](http://www.businessweek.com/news/2010-02-25/yelp-com-accused-of-extortion-by-california-veterinary-hospital.html); Peter Burrows & Joseph Galante, Yelp: Advertise or Else?, Bloomberg
Businessweek, March 3, 2010, *available at*
http://www.businessweek.com/magazine/content/10_11/b4170027355708.htm.

1 of other newspapers, magazines, radio and TV shows, and online blogs, have written or
2 broadcasted about the *Cats and Dogs* lawsuit. Dr. Gregory Perrault, the owner of Plaintiff Cats
3 and Dogs Animal Hospital, Inc., and attorneys from The Weston Firm and Beck & Lee, have
4 been interviewed for and quoted in numerous articles, and have appeared on television and radio
5 discussing the lawsuit.⁸ In the wake of the nationwide interest in the *Cats and Dogs* lawsuit,
6 more than 60 small businesses representing diverse industries and locations throughout the
7 United States have retained The Weston Firm and Beck & Lee to represent them against Yelp.
8 Hundreds more have contacted the firms to lend their support and share their stories. The *Cats*
9 *and Dogs* Plaintiffs, not Mr. Levitt, have access to this vast body of evidence concerning Yelp’s
10 unlawful behavior.

11 Similarly, the *Cats and Dogs* action is much further advanced than Mr. Levitt’s. The *Cats*
12 *and Dogs* Plaintiffs filed an Amended Complaint extensively detailing Yelp’s unlawful practices
13 and have engaged in substantial discovery⁹ and motion practice, including fully briefing a Rule
14 12(b)(6) motion. By contrast, Yelp has not even responded to Mr. Levitt’s Complaint. The
15 dockets of the actions bear this out: *Cats and Dogs* has 72 entries, *Levitt*, 22.

16 Plaintiffs are anxious to proceed—each day this case is pending, Plaintiffs and thousands

17 ⁵ Kim Zetter, Yelp Accused of Extortion, Wired Magazine, Feb. 24, 2010, *available at*
18 <http://www.wired.com/threatlevel/tag/yelp/>.

19 ⁶ Caroline McCarthy, New Class Action Lawsuit Targets Yelp, CNET News, Feb. 24,
20 2010, *available at* http://news.cnet.com/8301-13577_3-10459197-36.html.

21 ⁷ Robin Wauters, Yelp Hit With Class Action Lawsuit For Running An “Extortion
22 Scheme”, TechCrunch, Feb. 24, 2010, *available at* [http://techcrunch.com/2010/02/24/yelp-class-](http://techcrunch.com/2010/02/24/yelp-class-action-lawsuit/)
23 [action-lawsuit/](http://techcrunch.com/2010/02/24/yelp-class-action-lawsuit/).

24 ⁸ *See, e.g.*, CBS Los Angeles, “Yelp Lawsuit,” Feb. 26, 2010, *available at*
25 <http://www.youtube.com/watch?v=kP3OgInCsMc> (interviewing Dr. Perrault); G4tv’s “Attach of
26 the Show,” Feb. 25, 2010, *available at* <http://www.youtube.com/watch?v=jbPjK6cTqAc>
27 (interviewing attorney Gregory Weston).

28 ⁹ Mr. Levitt avers that he has not engaged in discovery because the Court scheduled the
initial case management conference for July (Opp. at 5, citing Rule 26(f)). However, Rule 26(f)
requires the parties to “confer as soon as practicable” and in any event at least 21 days before a
scheduling conference, and nothing in the Court’s standing order prevents a party from engaging
in discovery planning or actual discovery pending the CMC. It appears Mr. Levitt has failed to
even meet and confer pursuant to Rule 26(f) even though the scheduling conference is now fewer
than three weeks away.

1 of small businesses across the country continue to be tremendously harmed by Yelp. But Yelp
2 seeks to leverage the *Levitt* action, completely encompassed by the *Cats and Dogs* suit, to further
3 delay and obstruct a reasonably speedy resolution. If Yelp has its way, it will successfully have
4 delayed even *responding* to Plaintiffs’ allegations for at least *nine months*. Such delay, under the
5 guise of “simplification,” “judicial economy,” or—incredibly—“fairness,” should not be
6 countenanced. Instead, the Court should exercise its inherent power to simplify this case and
7 promote efficiency by staying or dismissing the *Levitt* action—which prejudices neither Yelp nor
8 Mr. Levitt as Mr. Levitt is a member of the Class the *Cats and Dogs* plaintiffs seek to
9 represent—and declining to award Yelp another round of pleadings and briefing simply because
10 Yelp successfully transferred the action from an adjacent judicial district.

11 Finally, The Weston Firm and Beck & Lee are best positioned and most qualified to
12 represent the Classes and should, therefore, be named interim class counsel. Mr. Levitt’s
13 response seeking the appointment of his attorneys as interim class counsel focuses largely on
14 their age. But age is not a factor and, if it were, it favors Plaintiffs’ attorneys, who have the
15 commitment necessary to prosecute this action and better understand the technologies and issues
16 involved in this internet case.¹⁰ But even Mr. Levitt does not seriously dispute that Plaintiffs’
17 attorneys are qualified to represent the Classes, in which case the Court should appoint the
18 counsel who have done most of the work, including the investigation, on the case—The Weston
19 Firm and Beck & Lee.

20 **II. ARGUMENT**

21 Yelp pretends it “has sought, for months now, to simplify the procedural setting of this
22 case,” (Opp. at 1) but Yelp is transparently interested only in delay. For example, Yelp claims
23 that Plaintiffs “stymie[d]” its motion to consolidate the *Cats and Dogs* and *LaPausky* actions by
24
25

26 ¹⁰ For example, Plaintiffs’ counsel set up a class action website
27 (<http://yelpclassaction.wordpress.com>) to facilitate the intake and sharing of information with
28 class members. By contrast, Murray & Associates does not even appear to have a firm website,
raising an issue of that firm’s competence to prosecute a class action lawsuit against a website.

1 dismissing the latter¹¹ to moot the motion (Opp. at 1 n.1). But by doing so, Plaintiffs *simplified*
2 the case and *decreased* the burden on the Court and the parties. What Plaintiffs did stymie—to
3 Yelp’s displeasure—was Yelp’s request to delay the case 90 days by the unnecessary filing of a
4 duplicative pleading “incorporating” the *LaPausky* word-for-word copy of the *Cats and Dogs*
5 Complaint.

6 Yelp seeks the same relief now with respect to the *Levitt* action, this time with the effect
7 of negating both the *Cats and Dogs* First Amended Complaint and the related and fully-briefed
8 Motion to Dismiss. As with Yelp’s previous attempt to obstruct the speedy resolution of this suit,
9 the most efficient course of action is also the most fair: stay or dismiss the *Levitt* action or
10 consolidate it with the *Cats and Dogs* action and deem the *Cats and Dogs* First Amended
11 Complaint the operative pleading, while setting a hearing on Yelp’s Motion to Dismiss. This
12 would do both of the things Yelp purports to want—simplify the case and reduce the costs to the
13 parties (for example, by not requiring the parties to spend resources filing a duplicative
14 complaint and rebriefing a motion that is ready to be heard).

15 Notably, Plaintiffs oppose consolidation only *insofar as it results in the unnecessary and*
16 *prejudicial delay Yelp seeks*. That is why Plaintiffs request *either* a stay of the *Levitt* action *or*
17 consolidation deeming the *Cats and Dogs* First Amended Complaint as the operative pleading.
18 What Plaintiffs ultimately want is to avoid the three-month-plus stall Yelp requests by the filing
19 of a duplicative “consolidated” complaint, discarding of a fully-briefed dispositive motion, and
20 engaging in a new round of duplicative briefing. Specifically, Yelp requests:

- 21 • Consolidated complaint, to be filed 30 days after order granting consolidation (Yelp
22 Notice of Mot., Dkt. No. 64 at ¶ 2) (August 19 if order is entered same day as July 19
23 hearing)
- 24 • Yelp’s response, to be filed 30 days after consolidated complaint is filed (Yelp Notice

25 ¹¹ Yelp’s claim that the “attitude” of Plaintiffs’ counsel toward Ms. LaPausky’s counsel
26 was “less than exemplary” (Opp. at 5) is nonsense. After an in-person meeting, Ms. LaPausky
27 and her counsel agreed that *Cats and Dogs* counsel were best situated to prosecute this action on
28 behalf of the Classes. Ms. LaPausky’s counsel therefore voluntarily transferred control of the
LaPausky action, and Ms. LaPausky retained *Cats and Dogs* counsel, all without any court
intervention or motion practice.

1 of Mot., Dkt. No. 64 at ¶ 3) (September 19)

- 2 • Briefing on motion to dismiss consolidated complaint (at least 35 days, L.R. 7-2, i.e.,
3 October 24, or longer based on Yelp’s chosen hearing date)

4 Compare Yelp’s proposed consolidation schedule to its claim that “Consolidation would not
5 result in delay.” (Opp. at 4.) To grant Yelp such relief would greatly harm Plaintiffs and the
6 Class members and is especially unfair where the *Cats and Dogs* Plaintiffs have already engaged
7 Yelp in substantial discovery (in both directions), including having already begun to collect and
8 review documents. All of this can be avoided, however, through the simplification of this action
9 by the means Plaintiffs suggest.

10 **A. The Court Should Stay Or Dismiss The *Levitt* Action.**

11 1. The Court Has The Inherent Power To Manage Its Docket.

12 The first-to-file rule permits a district court to decline jurisdiction over an action when a
13 complaint involving similar parties and issues has already been filed. *Pacesetter Sys., Inc. v.*
14 *Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982). “Exact parallelism between the two actions
15 need not exist; it is enough if the parties and issues in the two actions are ‘substantially similar.’”
16 *Alioto v. Hoiles*, No. C 04-1395 PJH, 2004 WL 2326367, at *5 (N.D. Cal. Oct. 12, 2004)
17 (citation omitted). Here, the *Levitt* action is subject to stay or dismissal under the first-to-file rule
18 because it is “substantially similar” to the *Cats and Dogs* action.

19 Moreover, a Federal district court has “the inherent power to administer its docket in a
20 manner that conserves scarce judicial resources and promotes the efficient and comprehensive
21 disposition of cases,” and to avoid the “irrationality of tolerating duplicative litigation,”
22 especially when two duplicative cases are pending before the same judge. *McCracken v. Grand*
23 *Victoria Casino & Resort*, No. 02-143-C, 2002 U.S. Dist. LEXIS 21977, at *4 (S.D. Ill., Nov. 8,
24 2002) (citation omitted); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) (a “District Court
25 has broad discretion to stay proceedings as incident to its power to control its own docket.”). A
26 second-filed suit is duplicative if “the claims, parties, and available relief do not significantly
27 differ between the two actions.” *Id.* (citation omitted). In such situations, a federal court may
28 properly “dismiss the second-filed suit to the extent that it duplicates the first” *Id.*

1 (dismissing second-filed suit where “[a]lthough it is not clear that the two complaints are
2 precisely duplicative . . . they are sufficiently similar to warrant proceeding in a single lawsuit in
3 the interest of judicial economy.” *Id.* at *6.)

4 2. A Stay Or Dismissal Would Not Prejudice Yelp Nor Mr. Levitt.

5 Yelp’s (Opp. at 3-4) and Mr. Levitt’s (Opp., at 6) are wrong that they would be
6 prejudiced if Mr. Levitt’s action is stayed or dismissed.

7 Yelp claims prejudice through the supposed likelihood of needing to brief *res judicata*
8 issues with Mr. Levitt once the *Cats and Dogs* action has ended. But this ignores the realities of
9 class action litigation. Should *Cats and Dogs* obtain a class-wide judgment against Yelp, or enter
10 into a class-wide settlement with Yelp, Mr. Levitt’s claims will be extinguished unless he opts
11 out. If he does, Yelp may face an individual suit from Mr. Levitt, but Yelp faces the same
12 potential for individual suits from any Class members who opt out. Moreover, while Mr. Levitt
13 currently asserts two common-law fraud claims against Yelp which *Cats and Dogs* do not assert
14 (because of the near-impossibility of prosecuting those claims on a class-wide basis), Mr. Levitt
15 avers that he intends to strike at least one of those causes of action (*Levitt* Opp. at 7 n.5). Finally,
16 while there may be slight differences in causes of action, the facts and claims asserted in the
17 actions are so similar that it is highly doubtful Mr. Levitt would continue his action against Yelp
18 once the *Cats and Dogs* action is resolved. To the extent this risk is plausible, the potential
19 prejudice to Yelp is greatly outweighed by the prejudice to Plaintiffs and the Class members
20 from Yelp’s requested minimum three-month further delay.

21 Mr. Levitt claims prejudice because his business is being adversely impacted by Yelp’s
22 business practices, something Plaintiffs do not doubt. But Plaintiffs seek to end these very
23 practices; their interests are aligned with Mr. Levitt’s, and they seek to represent a Class of
24 businesses that includes Mr. Levitt’s business.¹² Thus, their prosecution of the action will help,

25 _____
26 ¹² Mr. Levitt claims he has dedicated “countless” hours to investigating Yelp, but
27 elsewhere says his counsel have expended 200 hours (Opp. at 9). In any case, the expenditure of
28 hours does not suggest prejudice, particularly when Mr. Levitt knew, in filing his action weeks
after the *Cats and Dogs* action was filed, that his action was duplicative and there would be a
chance his action would be stayed, dismissed, or subsumed into *Cats and Dogs*.

1 not harm, Mr. Levitt. Moreover, Mr. Levitt is always free to pursue his action individually, rather
2 than on behalf of the putative class represented by the *Cats and Dogs* Plaintiffs.

3 **B. If The Actions Are Consolidated, The *Cats and Dogs* Complaint Should Be**
4 **Deemed The Operative Pleading To Avoid Further Unnecessary Delay.**

5 Both Yelp and Mr. Levitt argue that the *Cats and Dogs* First Amended Complaint should
6 not be deemed the operative pleading because it does not incorporate facts about Yelp’s behavior
7 toward Mr. Levitt’s business. But that behavior is already well-detailed in the First Amended
8 Complaint, and it does not need additional, duplicative business-specific allegations to proceed.
9 Similarly, the *Cats and Dogs* Plaintiffs do not wish to assert the common law fraud causes of
10 action Mr. Levitt asserts—they offer no avenues of relief not already available under Plaintiffs’
11 counts and merely hinder the process of class certification (and in any event, Mr. Levitt
12 apparently intends to remove at least one of the claims (Opp. at 7 n.5)).

13 Mr. Levitt further argues that he would like to amend his Complaint to conform it more
14 to the *Cats and Dogs* First Amended Complaint, for example by adding plaintiffs who purchased
15 Yelp’s services.¹³ But the claims of Mr. Levitt’s theoretical new representatives are already
16 subsumed in the *Cats and Dogs* complaint, and their addition as named plaintiffs is unnecessary
17 to secure relief for them and the Classes.

18 Courts frequently deem one complaint the operative pleading upon consolidation. *See,*
19 *e.g., Day v. Taylor*, 400 F.3d 1272, 1274 n.1 (11th Cir. 2005) (noting district court’s order
20 deeming plaintiff’s complaint as operative complaint in consolidated action); *Pfizer Inc. v.*
21 *Apotex Inc.*, No. 08-cv-7231, 2010 U.S. Dist. LEXIS 65448, at *5 (N.D. Ill. June 30, 2010)

23 ¹³ Mr. Levitt asserts that he is “in the process” of adding other named class
24 representatives with “distinct” or “different” Yelp experiences, but does not provide any details.
25 Doing so may derail class certification if the differing experiences raise typicality issues. If,
26 however, Mr. Levitt means that their experiences differ simply because they are different
27 plaintiffs, those types of differences are already represented in the *Cats and Dogs* First Amended
28 Complaint. Moreover, while Mr. Levitt claims he is “in the process” of adding other named
representatives, The Weston Firm and Beck & Lee have already been retained by over 60
businesses across the country, many of whom may be added, if appropriate, after the Court hears
Yelp’s Motion to Dismiss. Thus to the extent that the addition of plaintiffs is beneficial, the *Cats*
and Dogs plaintiffs, not Mr. Levitt, are in the best position to make that amendment.

1 (noting “Court deemed the amended complaint that was filed in Delaware to be the operative
2 complaint in the consolidated action”); *Heusser v. Hale*, No. 07-cv-1660, 2009 U.S. Dist. LEXIS
3 105482, at *2 (D. Conn. Nov. 12, 2009) (after action was consolidated, Court granted Plaintiffs’
4 request that the Court view their Complaint as the operative complaint in the consolidated
5 matter); *see also Guohua Zhu v. UCBH Holdings, Inc.*, 682 F. Supp. 2d 1049, 1057 (N.D. Cal.
6 2010) (noting that, in consolidated action, “[o]rdinarily, the Court would order Lead Plaintiff
7 shall designate the instant Complaint as the operative complaint or file an amended complaint
8 within thirty (30) days”); *Tyler v. Alameida*, No. 04-cv-06638, 2010 U.S. Dist. LEXIS
9 60245, at *2 n.2 (E.D. Cal. June 17, 2010) (“It is the Court’s practice in cases such as this to
10 combine consolidated actions into a single action with one operative pleading”); *cf. Young v.*
11 *Medden*, No. 03-5432, 2010 U.S. Dist. LEXIS 39479, at *3 (E.D. Pa. Apr. 21, 2010) (ordering
12 that two complaints would be consolidated and together would function as operative pleading,
13 without need for filing new consolidated complaint). In the event actions are consolidated, the
14 court should follow suit and deem the *Cats and Dogs* First Amended Complaint the operative
15 pleading.

16 **C. The Weston Firm and Beck & Lee Should Be Designated Interim**
17 **Class Counsel.**

18 Mr. Levitt’s primary argument that his counsel, rather than The Weston Firm and Beck &
19 Lee—who are far more involved in and familiar with this case—be appointed interim class
20 counsel, is based on their relative age. But age is not a factor to be considered. Factors courts
21 *should* consider when appointing class counsel include: (1) the work the counsel have done in
22 identifying or investigating potential claims in the action; (2) counsel’s experience in handling
23 class actions, other complex litigation, and the types of claims asserted in the action; (3)
24 counsel’s knowledge of the applicable law; and (4) the resources that counsel will commit to
25 representing the class. Fed. R. Civ. P. 23(g)(1)(A); *see Levitte v. Google, Inc.* 2009 U.S. Dist.
26 LEXIS 18198, at *5 (N.D. Cal. Feb. 25, 2009) (court may consider Rule 23(g)(1)(A) factors in
27 appointing interim class counsel). Where there is no dispute that attorneys competing for lead
28 class counsel have adequate experience, skill and knowledge, “the first factor favors appointment

1 of [counsel who have] done a majority of the preparation work leading to the filing of these
2 actions, including investigation into the alleged misconduct and identification of the legal theory
3 of the case.” *Carlin v. Dairy Am., Inc.*, 2009 U.S. Dist. LEXIS 50493, at *7 (E.D. Cal. May 29,
4 2009) (appointing attorneys in first-filed suit as lead counsel where “a simple comparison of the
5 original complaint in this action with the [later filed complaints] reveals that they are almost
6 identical”).

7 1. Investigation

8 Mr. Levitt claims his counsel have spoken with dozens of business owners (Opp. at 9).
9 By contrast, The Weston Firm and Beck & Lee attorneys have spoken with *hundreds* of business
10 owners, and continue to receive more calls and e-mails from businesses each day. Over 60
11 businesses have retained The Weston Firm and Beck & Lee. While the *Cats and Dogs* attorneys
12 have already filed a detailed First Amended Complaint, Mr. Levitt alternatively claims he is “in
13 the process” (Opp. at 6) of adding plaintiffs (to conform his complaint to the *Cats and Dogs*
14 complaint), or has “delayed filing pending outcome” (Opp. at 9) of the consolidation motion—in
15 any case, the docket shows little or no activity in the *Levitt* action since the case was filed and
16 Mr. Levitt granted Yelp a long extension to respond. In sum, it is clear that *Cats and Dogs*
17 attorneys have both done more investigation, and have done more with the facts they learned
18 through investigation, than Mr. Levitt’s counsel.

19 2. Experience Handling Class Actions, Knowledge of the Law, And
20 Resources

21 Mr. Levitt states his counsel have collectively prosecuted and defended a total of nine
22 class action lawsuits this year involving California’s Unfair Competition Law. (Opp. at 10.) The
23 Weston Firm and Beck & Lee have *more* experience, all of it on the *plaintiff’s* side. This year,
24 The Weston Firm and Beck & Lee have prosecuted eleven class actions asserting claims under
25 the UCL.¹⁴ *Cats and Dogs* attorneys further detailed their class action experience in the

26 _____
27 ¹⁴ Mr. Levitt’s assertion that Beck & Lee are primarily handling *Cats and Dogs* (Opp. at
28 10) is baseless and untrue; all attorneys from both firms have been diligently working on this
lawsuit and have spent roughly equal amounts of time prosecuting it, dividing work in the most
efficient manner for the benefit of the Classes. Moreover, before opening their firm in Miami,

1 declarations attached to their Cross-Motion. Notably, Mr. Levitt does not argue that The Weston
2 Firm and Beck & Lee are not qualified to handle this action.

3 Finally, like Mr. Levitt's counsel, The Weston Firm and Beck & Lee routinely (indeed,
4 almost exclusively) take on contingency plaintiffs' class action cases, and are well-capitalized
5 and fully able to dedicate all necessary resources to this action, including hiring vendors and
6 experts and paying all case costs.¹⁵

7 **III. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that the Court deny Yelp's
9 motion to consolidate, and grant Plaintiffs' Cross-Motion by (a) either staying the *Levitt* action
10 or consolidating the *Cats and Dogs* and *Levitt* actions and deeming the *Cats and Dogs* First
11 Amended Complaint the operative pleading; (b) appointing The Weston Firm and Beck & Lee
12 interim class counsel; and (c) setting a hearing on Yelp's fully-briefed Motion to Dismiss.

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20 Mr. Beck and Ms. Lee Beck practiced civil litigation at Quinn Emanuel Urquhart & Sullivan
21 LLP in Los Angeles. They prosecute many California actions notwithstanding their Florida
location, and are very familiar with California law.

22 ¹⁵ Mr. Levitt accuses Plaintiffs' counsel of "doctoring" the date of the Yelp blog post
23 attached as Exhibit A to the Declaration of Gregory Weston in Support of Plaintiffs' Cross
24 Motion. (Opp. at 11-12, n.7.) A simple check of Yelp's website shows this accusation is
25 unfounded. See [http://officialblog.yelp.com/2010/03/announcing-steps-to-avoid-confusion-
26 increase-transparency.html](http://officialblog.yelp.com/2010/03/announcing-steps-to-avoid-confusion-increase-transparency.html) (dated March 1, 2010); see also Yelp Official Blog, March Archive,
27 accessed July 6, 2010, attached hereto as Exhibit 1, at 10 (showing blog post dated March 1,
28 2010). Nevertheless, even if Yelp's official blog is erroneous and the changes were announced
on April 5, two weeks after Mr. Levitt's suit was served on Yelp (on March 22), the changes
were plainly prompted by the *Cats and Dogs* action filed and served six weeks earlier, since the
policy changes addressed issues first raised in the *Cats and Dogs* complaint, and obviously
required substantial planning and implementation that could not have been accomplished in the
short time after Mr. Levitt's action was served.

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DATED: July 6, 2010

Respectfully Submitted,

/s/ Jack Fitzgerald
Jack Fitzgerald

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elizabeth@beckandlee.com

**Counsel for Plaintiffs and the
Proposed Classes**

1 **CERTIFICATE OF SERVICE**

2 I am a member of the bar of this court licensed to practice in California. My business
3 address is The Weston Firm, 2811 Sykes Court, Santa Clara, California, 95051. On July 6, 2010,
4 I served the following document(s):

- 5 **1. PLAINTIFFS’ REPLY IN SUPPORT OF OPPOSITION TO YELP’S MOTION**
6 **FOR CONSOLIDATION AND CROSS-MOTION FOR:**
7 **(A1) DESIGNATION OF *CATS AND DOGS* AS LEAD ACTION AND STAY OF**
8 **LEVITT ACT OR, IN THE ALTERNATIVE, (A2) CONSOLIDATION OF**
9 **ACTIONS, DEEMING *CATS AND DOGS* FIRST AMENDED COMPLAINT AS**
10 **THE OPERATIVE PLEADING;**
11 **(B) APPOINTMENT THE WESTON FIRM AND BECK & LEE AS INTERIM**
12 **CLASS COUNSEL; AND**
13 **(C) SUBMISSION OF FULLY-BRIEFED MOTION TO DISMISS FOR**
14 **HEARING.**

15 via the court’s Case Management/Electronic Case Filing system to all parties named “*Attorneys*
16 *to be Noticed.*”

17 I declare under penalty of perjury under the laws of the state of California and the United
18 States that the foregoing is true and correct.

19 Executed on this 6th day of July, 2010 in Santa Clara, California

20 s/ Jack Fitzgerald
21 Jack Fitzgerald

Exhibit 1

[« February 2010](#) | [Main](#) | [April 2010 »](#)

March 2010

MARCH 18, 2010

How to Learn More About Yelp

Posted by [Vince, Communications](#)

Some more news stories have run in the last day or two about the lawsuits filed against Yelp. Folks interested in getting the full story can read our CEO's in-depth response [here](#). The bottom line remains the same: Yelp does not manipulate review content to help advertisers or hurt businesses that don't. Never have, never will.

As we've discussed before, one reason businesses may get the wrong idea is because of [the automated review filter](#) we have in place to protect the integrity of the site's content. We admit: it can be confusing. And as part of our [continuing education efforts](#) and outreach to the business community, we wanted to make sure you saw [this video](#) we created to specifically address confusion around our review filter.

Additionally, our second webinar in our weekly series: [Yelp for Your Business](#), is airing today at 1pm PT. It's an interactive opportunity to learn more about Yelp, as well as get your Yelp questions answered. Make sure you [register here](#) and if you can't make today's, we will be archiving these discussions -- and you can also join us same time next week!

Posted at 12:02 PM | [Permalink](#)

Yelp's Review Filter Explained

Posted by [Luther, Local Business Outreach](#)

We frequently get asked about our [review filter](#). As part of our ongoing efforts to educate the business community, we worked with [Epipheo Studios](#) to create this video. It's designed to help folks understand why Yelp's review filter exists and how it works.

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The official voice of Yelp HQ in San Francisco. It's a place for us to talk about press, product and policy at Yelp.com.

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Here are 5 important things to understand about the review filter:

1. Reviews that reflect perfectly legitimate experiences are sometimes filtered out by the review filter's algorithmic processes. We agree this can be frustrating, but it's the high cost we accept to avoid being a *laissez-faire* review site that [people stop using](#). Everyone loses when that happens.

2. Reviews are never "deleted" by the review filter; they are always shown on users' profile pages. The review filter simply syndicates established users' reviews from their **user** pages onto **business** pages. This automated process sometimes creates the perception that reviews are being deleted and re-added over time; what's actually happening is users are becoming more-or-less established over time.

3. The best word of mouth is organic and unsolicited. As counter-intuitive as it may seem, [Yelp discourages business owners from asking people to write reviews about their businesses](#). It's tough for an algorithm to tell the difference between a business owner aggressively putting a laptop in front of a client and saying, "Give me 5 stars!" and that same business owner flipping the laptop around and manufacturing a fake 5-star review about themselves.

4. We're purposely not elaborate about all the variables that go into defining an "established" user, because it's a [Catch-22](#): the more descriptive we are about what makes an established user, the less effective our filter is at fighting shills and malicious content.

5. Both positive and negative reviews can be affected. This is to protect Car Mechanic A from Car Mechanic B's writing of malicious 1-star reviews about his competitor. It also protects someone with a toothache from being lured into [the wrong dentist's office](#) based on 25 fake 5-star reviews he wrote himself.

Posted at 11:49 AM | [Permalink](#)

MARCH 17, 2010

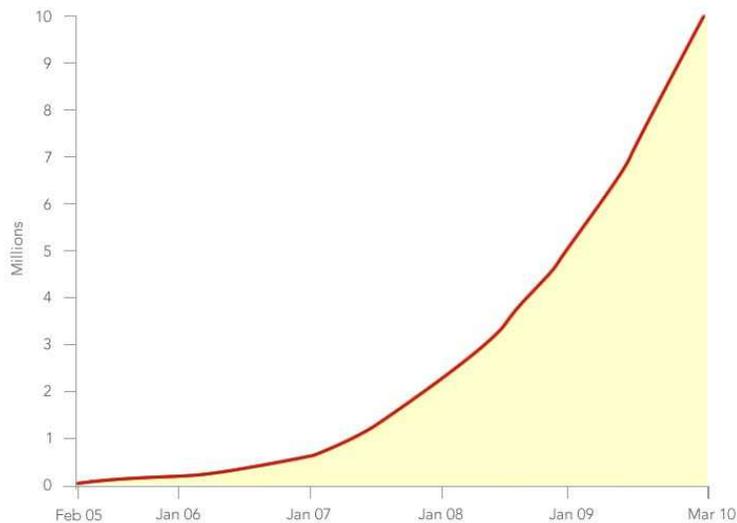
Over 10 Million Reviews Served!

Posted by [Chantelle, Communications](#)

That's right, in less than just 3 months, yelpers have rated and reviewed more than 1 million local businesses. That means there are now over a whoppin' **10 million reviews on Yelp!**

Looking for the Community Blog?

See what's going on in other [Yelp Communities!](#)



On top of that, Yelp.com clocked in more than 30 million unique visitors in the last 30 days and frankly, we think that's cause for celebration! (Though we doubt you needed another excuse to kick back a cold one on St Paddy's Day.)

Posted at 05:49 PM | [Permalink](#)

MARCH 12, 2010

John and Gabe: Boys with (homemade iPhone) toys

Posted by [John B, Engineer](#)

I dig electronics, remote controlled cars and iPhones. A couple of summers ago, I got really excited about the idea of building electronics that I could control with my iPhone. By connecting a router to an RC Car from my childhood, I wrote an iPhone app, and built a RC Car that could be controlled from the iPhone's accelerometers. Then one night after a few beers - Gabe and I came up with the idea to add a camera that would stream video back to the iPhone.

But I'm not the only one who likes building electronic gadgetry. During a recent Hack Day at Yelp, Julian, Bakun and I teamed up to decorate the office with a hand made Yelp burst. In the video you'll see that it lights up every time a review is posted to the site - and it flashes with the corresponding star rating of that review (three flashes - three stars). OK so it doesn't turn corners like the IC car (iPhone controlled), but it looks damn fine in our work space.

See the car in action at Dorkbot 23's event at SXSWi, March 13th 6pm Brush Square Park, Austin, TX

Posted at 05:01 PM | [Permalink](#)

MARCH 11, 2010

SXSW: Where's the party at?

Posted by [Kevin](#), South Regional Lead

Here in Austin we're getting ready for THE annual conference/festival/party known as SXSW. Being the music lovin', soiree seekin', iPhone tappin' brood that Austin yelpers are, we thought we'd honor the week-long festivities with a few little gems of our own.

More than 200 parties...

Next week's list of events in Austin keeps growing and they're all listed on our [Yelp Events](#) page. We've got everything from the neighborhood [bacon takedown](#) to free drinks at the [mashbash](#), and even the Gibson guitar giveaways at the [IFC Crossroads House](#). And wouldn't you know it? More events are added by the minute. Decisions. Decisions.

Our nerds put the party in your pants!

Some of our engineers are headed to SXSW and they wanted an easy way to view all parties/events in Austin on their iPhones, so they went out and built one. Download our app for the iPhone and you'll find a link to **Yelp's SXSW party guide** from the home page. Not in Austin? Point your iPhone browser (Safari) to yelp.com/events/sxsw. OK enough gawking - now put that back in your pocket.



Yelp Open Party: We go out BIG.

Capping off a week of web wonders, cool flicks and juicy gems for your ears, [Yelp Austin Presents A Saturday Stomp](#) on March 20.

Imagine: amazing bands, hundreds of music lovin' yelpers from all over the U.S. and THE Ice Cream Man. Words can't describe the evening we have lined up.

Party over here. Heeeeeey.

Kevin N. is a long time Austinite and our regional community lead in the South.

Posted at 05:09 PM | [Permalink](#)

MARCH 09, 2010

Yelp for Your Business - Tune in!

Posted by [Dylan](#), Director of Local Business Marketing

In our ongoing effort to educate business owners on ways they can use Yelp, we are excited to kick off **Yelp for Your Business**, a webinar series. The inaugural webinar will be held this Thursday, 3/11 at 3pm PT/6pm ET. The subject will be "How to use the free tools on Yelp to promote your business." [Click here](#) to learn more or to register for the webinar.

Additionally, the folks here at Yelp try to speak to as many business groups as possible -- both in person and via webinar. Here are a couple of other events we're participating in that might be of interest to specific groups of business owners:

- This Wednesday, 3/10 at 2pm ET, [Luther Lowe](#), Manager of Small Business Outreach, is talking with the [National Restaurant Association](#) on how to manage your reputation on sites like Yelp. If you are a

member of the National Restaurant Association, you can register to be part of the webinar here: <http://www.restaurant.org/events/webinars/>

- Next Wednesday, 3/17 at 10:35am ET, Paul Reich, Director of East Coast Sales, will be chatting at [The Vision Monday Conference](#) on ways businesses - specifically ones in the optometry profession - should think about leveraging user-generated sites like Yelp. Register to attend here: <https://www.jobsoneducation.com/vm/gls2010/regmain.asp?ID=330>
- For our friends abroad, [Miriam Warren, Head of European Community Management](#), will be talking at [The Location Business Summit](#) on 4/28 about local search and recommendations, profit potential and vital strategies:
<http://www.thewherebusiness.com/locationsummit/agenda.shtml>

If you're a small business owner curious about why you should leverage Yelp, or if you are already involved and are interested in learning more about how to engage online, we encourage you to dial in or attend! And if you're the head of a business organization that would benefit from an in-person appearance from Yelp, [let us know](#). Additionally, we'll be creating a way for you to submit your own suggestions on topics to discuss and highlight in this series, so stay tuned!

Posted at 11:57 AM | [Permalink](#)

MARCH 04, 2010

Different Day, Different Lawyer, Same Meritless Claim: A Classic Race to the Courthouse

Posted by [Jeremy, Yelp CEO](#)

As many folks know, a [lawsuit](#) was filed against Yelp last week alleging we move reviews around to reward advertisers and punish non-advertisers. Of course, we don't. As I've explained on this blog [here](#), the allegations are false and easily refuted. They are borne from a [lack of understanding](#) of how Yelp works to provide consumers with useful information about local businesses and protect users from fake, or shill, reviews.

These misconceptions are also fueled by lawyers, who may have heard about Yelp's [recent financing round](#) and may be seeking a share. So it's no surprise that today another lawyer has filed a virtually identical lawsuit making the same inaccurate claims. (Don't worry; they're still not true.)

These copy cat suits get filed in what is known as a "race to the courthouse," where lawyers jockey to be named the lead lawyer of the case and take the biggest share of legal fees; being among the first to file a suit increases the chance of being put in charge of the case.

So, as I said: it's not a surprise to see another such frivolous suit. In fact, it's kind of expected.

This doesn't change a thing however: this suit, like the other, is without merit, we will fight it aggressively and we believe we will win.

Why? Well, beside many of the reasons I stated [here](#), the business in this suit, D'ames Day Spa of San Diego County, admits it solicited the reviews in question.

1 15. LaPausky began asking her customers to leave feedback regarding their D'ames Day
2 Spa experience on Yelp.com. In a short while, D'ames Day Spa's reviews on Yelp.com totaled
3 approximately fourteen, many of them very positive and very detailed.

As we have explained in the [past](#), solicited reviews, more so than naturally occurring ones, are more likely to be detected by Yelp's [review filter](#), which we employ to protect consumers from shill reviews and businesses from malicious reviews from competitors. If a business could garner a top rating on Yelp simply by soliciting 5-star reviews from friends, family, and favored customers, how useful would such a site be?

The resulting trust in Yelp reviews is why more than 30 million consumers used Yelp in the past 30 days to find a great local business. That trust is what makes Yelp useful to consumers and businesses alike and we will always fight to protect it.

I do want to ensure you that we don't take any of these allegations or events lightly. Especially the fact that misunderstandings about Yelp have arisen in the first place. We understand some businesses can find us confusing or a source of anxiety. We are working hard to make our business even clearer. This will include continuing to incorporate feedback from you, our community, directly on ways we can improve, in addition to further developing the customer service and FAQ tools we already have in place. In the meantime, it remains my priority to ensure you are as informed as possible. You can expect additional blog posts, as well as other forms of communication from me.

Posted at 02:29 PM | [Permalink](#)

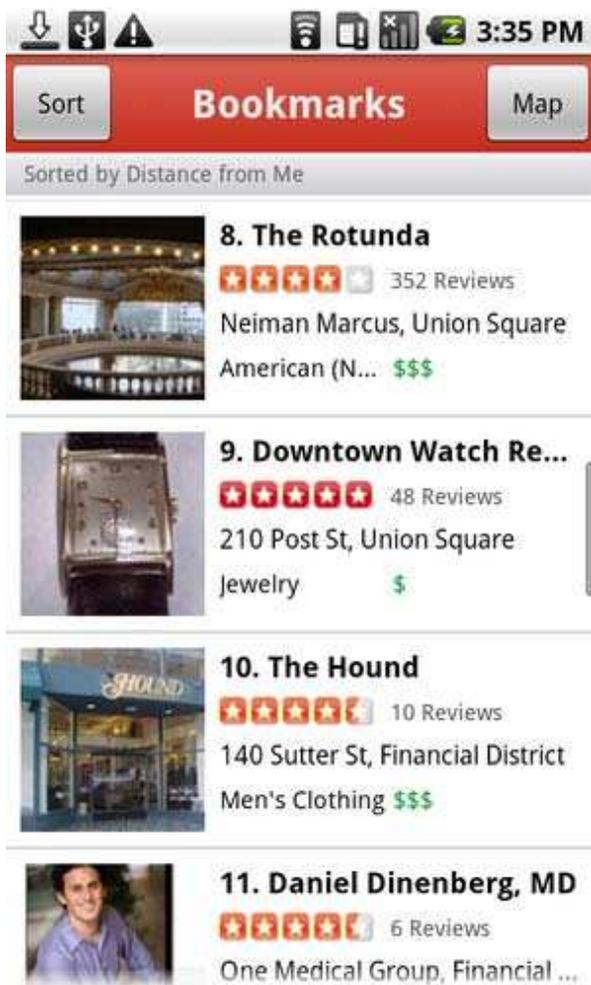
MARCH 03, 2010

More Updates to Yelp for Android (and a few for iPhone)

Posted by [Eric](#), Director of Consumer & Mobile Products

We promised 2010 was going to be an even bigger year for Yelp Mobile and today, we are excited to announce **V1.4 of our Yelp for Android application**. In addition to our [previous updates](#), this release will give Android owners the ability to:

Bookmark Businesses: Two-way bookmark syncing; any business you bookmark on Yelp.com will show up in the Yelp Android app and vice versa.



Draft Reviews: Draft Yelp.com reviews from your phone and they'll be waiting for you to polish your prose when you're back at your home base. Read more on why we currently don't allow publishing of full reviews from mobile devices [here](#).



Rate



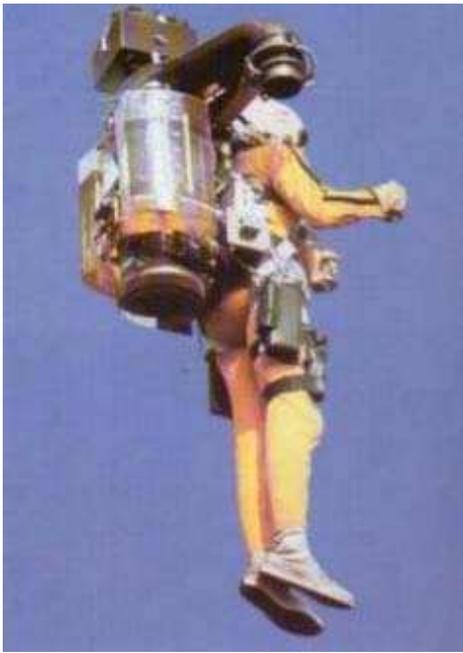
Draft a Review

Great mojitos. Loved the pulled
pork sandwiches.

Your review will be saved and waiting for you
on Yelp.com.

Since launching [Yelp for Android in December 09](#), our team has worked hard to iterate consistently and we promise we'll have additional updates for this application, as well as others, soon. (Yes, we are talking about Check-ins... as well as some other really cool stuff!)

Additionally, you may have seen earlier this week we released a few updates to our [Yelp for iPhone](#) application. For lucky 3GS owners, you get even more "Magical Map" features including when you're on business page maps, tap "Orient the Map" to orient the map to the direction you're facing. Compass schumpuss when you got Yelp in your corner! Because you've been busy bees, for [Check-ins](#), we'll highlight the places you're a Regular at on your profile. And in addition to those updates, we've also given you some bug fixes as well as the long anticipated iPhone Jet Pack feature.



OK, not really. But you gotta admit, it would be pretty bad ass.

Posted at 11:45 AM | [Permalink](#)

MARCH 01, 2010

We're Increasing Transparency and Eliminating 'Favorite Review'

Posted by [Jeremy](#), Yelp CEO

User trust is the foundation on which Yelp is built and the reason 31 million consumers turned to the site last month to find a great local business. Today we're announcing two important product changes to reinforce that trust and make it even more clear that Yelp treats review content equally for all businesses, with no connection between advertising and reviews.

Specifically, we're adding **the ability to see reviews filtered by our [review filter](#)** and we're **discontinuing the "Favorite Review" feature** that's part of our advertising package.

Why? Because while Yelp has seen tremendous growth in just a few years, we're still new to a lot of people. Despite our best efforts to educate consumers and the small business community, myths about Yelp have persisted. [We've said all along](#) we believe these incorrect notions stem from the combination of the filter and this advertising feature -- [and we're practicing what we preach](#). Lifting the veil on our review filter and doing away with "Favorite Review" will make it even clearer that displayed reviews on Yelp are completely independent of advertising -- or any sort of manipulation. We also hope it will demonstrate the importance of a safeguard such as our filter and the unique challenge we face daily to maintain the integrity of the review content on our site.

Now you can take a look at any business listing on Yelp and see for yourself the work the review filter has done behind the scenes. Perhaps helping to protect one business from malicious reviews that might stem from a competitor.

Now in the UK | Sign up for Yelp | Log In | Go to Yelp for Business Owners

Search for (e.g. taco, cheap dinner, Max's) | Near (Address, City, State or Zip) | san mateo, ca | Search

Welcome | About Me | Write a Review | Find Reviews | Invite Friends | Messaging | Talk | Events | Member Search

« Back to Carter Eye Center

Review Filter - Huh?

Yelp has an automated review filter to keep the site's content as useful and trustworthy as possible. [Read More](#)

Yelp's Review Filter Explained



Learn More About the Review Filter

- Why does Yelp have a review filter?
- Why were these reviews filtered?
- Can I ask my customers for reviews?
- What are Yelp's review guidelines?

1 Filtered Review for Carter Eye Center

Note: The reviews below are not factored into the business's overall star rating.

bob c. Teaneck, NJ | 11/26/2009

I had recently had lasik surgery at Dr Harvey Carter and my eyes feel like they have been burnt, as if I have been staring at a bright welding rod all day. I have pain when I sleep as well but its the worst when I am trying to read or working on the computer. Dr Carter said I will be fine in a couple of weeks but my eyes don't seem to want to work together even after two months. Im worried that I will have these problems for the rest of my life. I now have problems walking down a hall with blurry vision, I did not have this before even without glasses. These things can go bad, done through private clinics that only have making money in mind and not always the patients best interest.

1 to 1 of 1

1 Review Removed for Violating our Review Guidelines or Terms of Service

mark w. Teaneck, NJ | 12/1/2009

This review has been removed for violating our Review Guidelines

1 to 1 of 1

« Back to Carter Eye Center

Or, conversely, protecting consumers from reviews that look like they could have come from an employee, not a customer.

Search for (e.g. taco, cheap dinner, Max's) | Near (Address, Neighborhood, City, State or Zip) | San Francisco, CA | Search

Welcome | About Me | Write a Review | Find Reviews | Invite Friends | Messaging | Talk | Events | Member Search

« Back to The Color Design Salon

Review Filter - Huh?

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Yelp's Review Filter Explained



Learn More About the Review Filter

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- Why were these reviews filtered?
- Can I ask my customers for reviews?
- What are Yelp's review guidelines?

Is this your business?

[Claim your Yelp business page](#)

45 Filtered Reviews for The Color Design Salon

Note: The reviews below are not factored into the business's overall star rating.

Holly S. San Francisco, CA | 12/14/2009

Shirley gives the best haircut in town!! After sitting down with a glass of champagne anticipating the best haircut around I am never disappointed. I have followed Shirley Lau around town at 3 different salons have always received lot of compliments on my haircut.

Marsha O. San Francisco, CA | Updated - 12/14/2009

Quick update: I have visited my amazing colorist Jessica a few times. I am so thrilled to say I am even happier at the Color Design Salon. It's a great salon and Ryan at reception is professional, friendly and down right cute. Everyone in the salon has a smile and a hello. I love that about this salon.

† Previous Review: Show all †

Jessica Rogers - Jessica Rogers, Jessica Rogers | 10/28/2009

When someone as talented and professional as... [Read more](#)

Debbie L. San Francisco, CA | 12/6/2009

I've been getting my hair cut by Shirley for over 10 years, first at Yosh, and I've followed her ever since she left there. She is wonderful -- I always leave with a terrific cut, and she has a great sense of when I would (or wouldn't) like to try something a bit different. She is low-key and responsive to my requests. The salon itself is nice, too, not stuffy at all. Thanks Shirley!

Charlene P. San Jose, CA | 11/20/2009

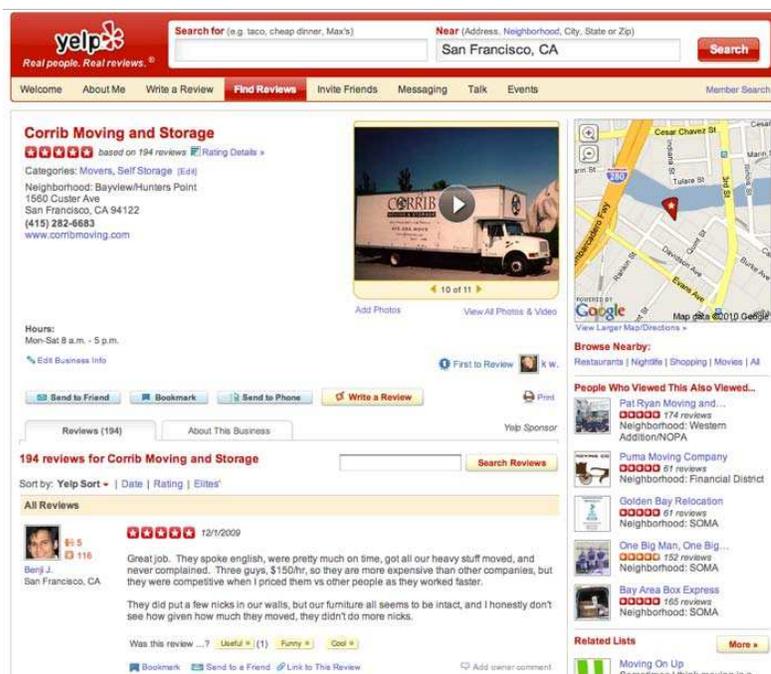
I LOVE, LOVE, LOVE my hair cut that Alex did. Jessica colored my hair and it is AMAZING!!! I could not have been more happy with the results. I will recommend The Color Design Salon to all my friend because they are THE BEST salon in San Francisco!!!

But most importantly, you can see that Yelp's review filter works just the same for advertisers and non-advertisers alike. There is not -- nor ever has been -- a

bias. So will Yelp be easier to game now? No, our engineers remain hard at work to make sure that Yelp is the most useful and helpful online resource for everyone.

Additionally, while the "Favorite Review" feature as part of our ad product was clearly labeled as such, it led some people to the wrong conclusions about whether businesses could control the review content on their page. (They can't.) So, to eliminate the opportunity for that misconception, we've eliminated the feature.

These aren't the only changes we've made today. We've also announced that advertisers on Yelp will soon have the ability to add a video to the slide show on their business page -- a suggestion made most recently during Yelp's ongoing series of educational meetings with business owners across the country. Additionally, in an effort to more formally integrate feedback from the business community, we've created a Small Business Advisory Council whose members will provide Yelp management with guidance and perspective regarding the concerns of small business owners.



Most consumers probably won't notice the product changes announced here, but we hope this new ability to "look under the hood" will help everyone understand the lengths we've taken to ensure Yelp is the most trusted resource on the internet for connecting people with great local businesses.

Posted at 10:49 AM | [Permalink](#)

Additional thoughts on last week's lawsuit, or How a Conspiracy Theory is Born

Posted by [Jeremy](#), [Yelp CEO](#)

(The following is a continuation of [my blog post from last Friday](#).)

I have said that false allegations that Yelp [manipulates reviews for money](#)

ignore empirical evidence to the contrary and instead rely on conspiracy theories. In this post -- aimed at folks who want to take a deep dive into how Yelp works and why there might be confusion -- I want to directly address two major myths at the heart of these allegations and explain how a conspiracy theory is born.

Myth #1: Yelp offers to remove or reorder reviews in exchange for money.

Truth: Yelp Sales Representatives sell sponsored search results, enhanced listings and targeted advertisements. Period.

Advertising and content on Yelp is like the separation of Church and State: with the exception of a single review at the top of their review list (clearly marked as such), advertisers gain no control over how reviews appear on their business page. So what do Yelp advertisers get? Two things:

1. Page enhancements --

(a) 1 clearly marked "Favorite review" that appears at the top of the review list. Here's a [screenshot of what that single review at the top looks like](#).

(b) 1 animated photo slideshow. To see what this looks like, check out our own [Yelp page in the top right corner](#).

2. Targeted ads. It's simply an [SEM](#) product. In this way, our local business advertising model is very similar to that of major search engines. A single ad for the advertiser business -- again, clearly marked as such -- appears above organic search results and/or in the center of similar business's Yelp listings. For an interactive demo of this SEM ad product, go [here](#).

The two-piece product described above is the only thing our local ad sales team sells.

Myth #2: Yelp's sales department has the ability to suppress and/or add reviews (and this ability is somehow used to coerce would-be advertisers or punish businesses that decline to advertise)

Truth: Our entire sales department is prohibited from creating any review content on the site. No member of the sales department has the administrative capability to remove reviews.

We take the church/state separation thing seriously. Sales representatives (also known as Account Executives or "AEs") cannot write reviews on Yelp. This is clearly communicated internally, and employees within the sales department are trained and re-trained that any deviation from these high standards would result in their termination. (Don't take our word for it. Here's a [link](#) to a discussion with one of our former employees, Jon Bishop, mentioning his inability to modify content during his time as an AE.)

Despite hundreds of AEs making thousands of points of contact via email and over the phone with potential advertisers every single day, no evidence in the form of an email or phone recording has ever emerged to suggest any member of our sales team has misrepresented the product described above. (And, of course, if anyone ever did bring such an email or phone call to our attention, you'd better believe we'd do something about it.) In addition, we layer extensive safeguards in place to ensure our advertising product is communicated clearly

to would-be advertisers.

We employ Account Managers and require them to complete a verbal check-list with new advertisers within 48 hours of agreeing to advertise with Yelp. Just in case they missed it in the contract itself, advertisers are reminded reviews and advertising are unrelated. Following the call, advertisers are directed to [this survey](#). In the rare instance an advertiser answers "No" to any of the questions within #4, the advertiser is called, and this aspect of the program is re-explained. If the business owner still believes a connection exists between their ads and reviews, we provide a refund to the advertiser and the sales representative receives no commission. This ensures no incentive exists for an Account Executive to "go rogue".

So why do these myths continue to live?

We'll be the first to admit that, by conventional standards, Yelp can seem weird. We're different than other review sites and that can throw people off. The main basis for confusion: Yelp has an automated system in place that helps to maintain the legitimate quality of content. This automated system often removes reviews from business pages that people don't want removed.

What does that even mean?

It means through an [automated software algorithm](#), we filter reviews that might be [shills or malicious spam](#). Because this is a difficult task, sometimes that results in legitimate reviews being suppressed from business pages.

It's worth repeating: Legitimate content, i.e. real reviews, will sometimes not appear on a business page.

It's counter-intuitive, right? You'd think we would want as much content on Yelp as possible, so why wouldn't we show all of it?

We've written in depth as much as we can about our review filter and why we believe it to be inherent to Yelp's value proposition, including in this [blog post](#). We accept the high cost of this approach to avoid the fate of [predecessors' failed models](#): When people trust our content, everyone wins -- businesses (get traffic to their business pages) and users (discover great local businesses). We purposely stop short of describing the review filter's mechanics as it's a [Catch 22](#): the more descriptive we are about what makes an established user or a valued review, the less effective our filter is at fighting shills and malicious content. Spammers become super-spammers; consumers stop trusting the site; businesses stop receiving traffic to their listings. Everyone loses.

Why might some business owners think Yelp is shady? Here's the anatomy of a typical Yelp conspiracy theory:

Step 1. Business owner gets a sales call from Yelp that explains an advertising product which seems nuanced; hears stuff like "Favorite review at top" and "Enhance your presence". Business owner eventually decides, "Thanks, but no thanks on the ads, Yelp."

Step 2. Business owner newly-exposed to Yelp decides it's interesting and aggressively solicits all their family and friends to write reviews.

Step 3. [We've already cautioned against this practice](#) and this is why: a few days later, our automated filter suppresses the suspicious-looking

reviews.

Step 4. Business assumes algorithmic process in Step 3 is actually a Yelp employee manually punishing the business for declining to advertise in Step 1.

Optional Step 5. Now-angry business finds the [Orly Taitz](#) of internet lawyers who may or may not have read about our recent [funding round](#).

As I've said, many might say we're weird, but we have nothing to hide. We're doing things differently, but we have never and will never extort businesses; the accusation is beyond ludicrous. In fact, it's deeply ironic that the very mechanisms and processes we've created to preserve Yelp's integrity generate these accusations that we have no integrity.

Millions of people rely on Yelp each week to figure out where to spend their hard-earned money and thousands of business owners benefit from the word-of-mouth Yelpers provide. We know [this case](#) is without merit, and we will continue to fight these false claims aggressively, [as well as fight the guys who are actually being shady with reviews](#).

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