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9 BORIS LEVITT, et al.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

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

14 Plaintiff,

15 v.

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

18 Defendants.

Case No. CV 10-01321 MHP

**PLAINTIFF BORIS Y. LEVITT'S
DISCOVERY PLAN**

1 Pursuant to the Court’s July 19, 2010 Order, Plaintiff Boris Y. Levitt (“Plaintiff” or
2 “Levitt”) submits the following discovery plan. In addition, and also pursuant to the Court’s
3 order, Levitt submits a joint case management plan with Defendant Yelp! Inc. (“Yelp” or
4 “Defendant”), which includes the timing of discovery. During the July 19, 2010 hearing, counsel
5 for Levitt and Yelp attempted to meet and confer with counsel for Cats & Dogs regarding the
6 submission of a joint discovery and case management plan by all parties, however, counsel for
7 Cats & Dogs were not interested in meeting with Levitt and Yelp. Levitt and Yelp have since
8 engaged in additional meet and confer efforts and have attempted to work with counsel for Cats &
9 Dogs. As of the filing of this Plan, however, counsel for Cats and Dogs have refused to join in the
10 joint submission.

11 **A. ANTICIPATED DISCOVERY DURING THE NEXT SIX MONTHS**

12 **Written Discovery:**

13 Once the pleadings are finalized, Levitt will engage in written discovery. Pursuant to
14 Levitt’s agreement with Yelp, Levitt has agreed that discovery will be bifurcated, with class
15 discovery occurring prior to class certification. Yelp and Levitt, however, have agreed that class
16 discovery will be broadly construed to include any matter reasonably calculated to lead to the
17 discovery of any matter listed in Rule 23 of the Federal Rules of Civil Procedure. Levitt
18 anticipates drafting approximately ten special interrogatories and twenty requests for production of
19 documents. These written discovery requests will be thoughtfully drafted with the intention of
20 avoiding unnecessary discovery disputes. Levitt anticipates that his written discovery will address
21 the following topics:

- 22 • Information relating to the class list;
- 23 • Yelp’s representations regarding its Review Filter;
- 24 • Yelp’s representations regarding manipulations of reviews;
- 25 • The manner in which the Review Filter functions;
- 26 • Yelp’s database and/or any other documents showing changes made to the automatic
27 portions of the Review Filter;
- 28

- 1 • A list of sales employees of Yelp who are no longer employees;
- 2 • Yelp's database and/or any other documents showing changes that have been made to
- 3 review pages pursuant to a) the Review Filter, b) violations of the terms of Yelp's
- 4 Terms of Service or Review Guidelines, and c) if the author of the review removes the
- 5 review;
- 6 • Yelp's database and/or other documents showing the names of businesses who have
- 7 been contacted for advertising and purchasing results;
- 8 • Yelp's internal guidelines and scripts for the solicitation of advertising;
- 9 • Yelp's internal guidelines regarding manual changes to the review filter;
- 10 • The code of conduct of Yelp employees who solicited businesses for advertising;
- 11 • Any Yelp documents relating to complaints filed by business owners that relate to the
- 12 conduct alleged in Levitt's complaint and any investigations and/or responses by Yelp;
- 13 • Any internal Yelp communications regarding the manipulation of reviews.

14 The written discovery requests are intended to assist Levitt in establishing that a class can and
15 should be certified.

16 **Depositions:**

17 **a. Deposition(s) of Yelp Representatives.**

18 Levitt proposes that a witness deposed in the class-certification phase will be questioned
19 only once on all topics, including merits-based discovery and will therefore not be re-deposed in
20 the merits phase, except for good cause shown (*e.g.*, if significant new documents related to the
21 witness's testimony are produced in the merits phase that would justify a new deposition) to avoid
22 unnecessary duplication and expense. Levitt intends to notice the 30(b)(6) deposition(s) of the
23 person(s) most knowledgeable at Yelp that can testify on the topics set forth below. Levitt
24 anticipates that to obtain the relevant information, he will need to take no more than two or three
25 depositions. Depending on the person(s) Yelp produces, Levitt intends to take the deposition(s)
26 over the course of one to two days, if possible, to consolidate attorney hours. The Yelp deposition
27 topics include, but are not limited, to the following:

- 1 • Information relating to the class list;
- 2 • Yelp's representations regarding its Review Filter;
- 3 • Yelp's representations regarding manipulations of reviews;
- 4 • The manner in which the technology relating to the Review Filter functions;
- 5 • Yelp's database and/or any other documents showing changes made to the automatic
- 6 portions of the Review Filter;
- 7 • Yelp's database and/or any other documents showing changes that have been made to
- 8 review pages pursuant to a) the Review Filter, b) violations of the terms of Yelp's
- 9 Terms of Service or Review Guidelines, and c) if the author of the review removes the
- 10 review;
- 11 • Yelp's internal guidelines and scripts for the solicitation of advertising;
- 12 • Yelp's internal guidelines regarding manual changes to the review filter;
- 13 • The code of conduct for Yelp employees who solicited businesses for advertising;
- 14 • Yelp's database showing complaints and responses filed by business owners;
- 15 • Any internal Yelp communications regarding the manipulation of reviews, solicitation
- 16 of advertising, targeting of potential advertisers, and complaints regarding the
- 17 solicitation of advertising;
- 18 • Oversight of Yelp employees who solicited businesses for advertising including any
- 19 reviews, critiques and awards issued that relate(d) to the sale of advertising; and
- 20 • Algorithms, log files and/or enabling fields that are used in Yelp's Review system.

21 **Forensics Expert.**

22 To avoid any unnecessary delay in the case, Levitt intends to hire a forensics expert to review
23 the Review Filter software and any other software or database run by Yelp that would show when
24 and why changes were made to reviews. Levitt has consulted with an expert in the field and has
25 determined that the length of an expert forensics review could range from several weeks to several
26 months depending on the size and complexity of the database(s), and software.

1 **B. OTHER PERTINENT INFORMATION**

2 **a. Planned Efficiencies**

3 **Discovery**

4 To litigate the class action against Yelp in the most efficient and economical manner,
5 Levitt’s counsel intends to immediately begin working with Yelp’s counsel on stipulating to a
6 protective order. Levitt has already consulted with Yelp’s counsel about the need to finalize a
7 protective order early on in the litigation to avoid any potential disputes that may arise after
8 discovery begins; especially given the likelihood that discovery will involve confidential company
9 information. To further streamline the process, Levitt intends to propose that the parties adopt one
10 of the Northern District’s form protective orders, which can then be edited depending on the
11 requirements of both parties.

12 Once discovery begins, Levitt’s counsel intends to – as described above – serve Yelp with
13 very precise interrogatories and requests for production of documents. Levitt’s written discovery
14 requests will be reasonably drafted and well-planned to avoid potential discovery disputes. Levitt
15 anticipates that the drafting of the discovery requests will take approximately one to two hours. In
16 the event that a discovery dispute arises, Levitt will meet and confer with Yelp to resolve the
17 dispute, and will act reasonably to avoid court intervention. Given the proximity of Yelp’s
18 counsel’s office to Levitt’s counsel’s office, Levitt’s counsel is available to meet in-person
19 whenever necessary to facilitate the resolution of any disputes or agreements. Should
20 incompatible differences arise, Levitt – pursuant to the Court’s standing order – will contact the
21 court to arrange a telephone conference. Levitt anticipates that the resolution of a discovery
22 dispute – assuming letter briefs are not required – should take less than two hours to resolve. If
23 letter briefs are required, the resolution of a discovery dispute may take approximately five to
24 seven hours to resolve, depending on the issues involved. Levitt anticipates that its counsel will
25 require additional time to review Yelp’s documents and responses. Without knowing the size of a
26 production, Levitt is unable to estimate the time it will take to review discovery, however,
27 assuming that the production is reasonable in size, Levitt anticipates that a review will take
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1 approximately one day (excluding any forensics reviews).

2 With regard to depositions, as noted above, Levitt anticipates that the Yelp depositions
3 should take one to two days. The engagement of a forensics expert could range from
4 approximately several weeks to several months.

5 **Counsel Efficiencies.**

6 Levitt's counsel is – and has been – cognizant of attorneys' hours in this case. Levitt's
7 counsel believes that with an effective discovery plan, attorney hours will be limited and well-
8 spent. Prior to filing an amended complaint, Levitt's counsel intends to ensure that the complaint
9 is well-drafted so that pleadings challenges will be streamlined. Levitt's counsel further intends to
10 staff the case minimally, with one associate working primarily with one lead attorney with staffing
11 increases only if necessary.

12 **Anticipated Estimates of Attorneys' Hours – Discovery through Class Certification**

13 Levitt anticipates that the following estimates of attorneys' hours will be spent on litigation
14 tasks after the pleadings are finalized:

- 15 • Drafting written discovery – 1-5 hours
- 16 • Responding to written discovery (including production requests) – 5-10 hours
- 17 • Resolution of Discovery disputes – 2-10 hours
- 18 • Deposition preparation (for depositions for both sides) – 10-25 hours
- 19 • Taking Depositions – 8-20 hours
- 20 • Defending Depositions – 16-25 hours
- 21 • Document review (for documents for both sides) – 8-20 hours
- 22 • Expert Discovery & Depositions (for experts for both sides) – 20-30 hours
- 23 • Investigating, researching and drafting motion for class certification – 40-200 hours
- 24 • Drafting Reply to Opposition to Motion for Class Certification – 15-25 hours
- 25 • Preparing for and attending Motion for Class Certification – 5 hours

26 Total Estimated Attorneys' hours through Class Certification: 130-375 hours.

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c. Extent and Nature of Contact with Named and Potential Plaintiffs

Since early this year, Plaintiff Boris Levitt has been contacted by approximately fifty other potential class members and has given many of the potential plaintiffs the information of his counsel. Levitt’s counsel has organized meetings for business owners who have contacted Levitt’s counsel’s offices. Levitt’s counsel has several putative class members who are interested in becoming named class representatives in this lawsuit. Levitt’s counsel has spent the majority of the two hundred hours it has in the case interviewing and investigating the claims of the potential plaintiffs who have contacted the offices of Levitt’s counsel. Nearly all of the potential plaintiffs that are interested in becoming named class representatives are located in California. As a result, should these particular class members become named in the amended complaint, their depositions will require minimal travel expense.

DATED: July 26, 2010

ONGARO BURTT LLP

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David R. Ongaro
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BORIS LEVITT

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