

EXHIBIT A

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14
15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

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

24 Plaintiffs,

25 v.

26 YELP! INC.,
27 Defendant.

Case No: 2:10-cv-01340-VBF-SS

Pleading Type: Class Action

**PLAINTIFFS' SURREPLY &
NOTICE OF NEW
AUTHORITY IN OPPOSITION
TO DEFENDANT YELP! INC.'S
MOTION TO DISMISS
PLAINTIFFS' FIRST
AMENDED COMPLAINT**

Hearing Date: May 3, 2010

Hearing Time: 1:30 p.m.

Judge: Hon. Valerie Baker Fairbank

1 Defendant asserts that in *Walker v. Geico Gen. Ins. Co.*, 558 F.3d 1025 (9th
2 Cir. 2009) the Ninth Circuit radically altered UCL standing requirements such that
3 only parties who have suffered injuries eligible for restitution from the defendant
4 have standing to seek injunctive relief.

5 In fact, the discussion of UCL standing in *Walker* is limited to one
6 paragraph. The plaintiff in that action alleged no loss of money or property at all,
7 but rather the potential loss of income if the defendant insurance company did not
8 pay higher rates of auto repair service. Such injury, as the district court noted, did
9 not even rise to the level of a “vested legal interest” in lost money or property.
10 *Walker v. USAA Cas. Ins. Co.*, 474 F. Supp. 2d 1168, 1172-73 (E.D. Cal. 2007).

11 The plaintiff in *Walker* did not allege the types of losses that are traditionally
12 addressable by restitution, arguing instead that “although he cannot establish the
13 requisite ‘lost money or property’ for purposes of monetary relief under the UCL,
14 he is nevertheless entitled to an injunction[.]” 558 F.3d at 1027. By failing to allege
15 any loss of money or property, Walker failed to establish threshold standing. But
16 once that threshold is met, a plaintiff need not go further and show she is entitled to
17 restitution in the *specific case at bar*. Such a requirement would practically cripple
18 the UCL.

19 One district court has already rejected an identical attempt to misconstrue
20 *Walker*, and Judge Chesney’s reasoning is worth excerpting at some length:

21 In support of its argument, Logitech relies on *Walker v. Geico Gen. Ins.*
22 *Co.*, 558 F.3d 1025 (9th Cir. 2009), and *Buckland v. Threshold Enters.,*
23 *Ltd.*, 155 Cal. App. 4th 798, 66 Cal. Rptr. 3d 543 (2007), wherein
24 standing under the UCL was stated to be limited “to individuals who
25 suffer losses of money or property that are eligible for restitution.” See
26 *Walker*, 558 F.3d at 1027. In so stating, however, neither *Walker* nor
27 *Buckland* was suggesting that the only type of action that may be brought
28 under the UCL is one for restitution, nor would such a holding be
consistent with the language of the UCL, which, for purposes of standing,
requires only that the plaintiff have “suffered injury in fact and [] lost

1 money or property.” Rather, those courts, by the use of the phrase
2 “eligible for restitution,” were endeavoring to distinguish between the
3 losses claimed in the respective cases before them and the type of loss
4 cognizable under the UCL, specifically, a loss of “money or property” in
5 which the plaintiff has “either prior possession or a vested legal interest.”
6 See *Walker*, 474 F. Supp. 2d at 1172. In particular, as determined in both
7 *Walker* and *Buckland*, neither of the respective plaintiffs therein had
8 actually “lost money or property” of any sort. See *Walker*, 474 F. Supp.
9 2d at 1173 (finding plaintiff lacked vested interest where claim based on
10 “estimate for proposed work”; distinguishing case where claim based on
11 non-payment for work performed); *Buckland*, 155 Cal. App. 4th at 818 &
12 n.11 (noting *Buckland* “voluntarily [bought] [the] defendant’s product to
13 pursue a UCL action in the public interest,” and, consequently, her
14 purchase “[could not] reasonably be viewed as ‘lost’ money or property
15 under the standing requirement”).

16 By contrast, where a plaintiff has adequately alleged “loss of income,”
17 “loss of financial resources,” or “economic loss,” a number of courts,
18 subsequent to the enactment of the UCL standing requirement at issue
19 herein, have found such plaintiff has standing under the UCL,
20 irrespective of any such plaintiff’s inability to seek restitution from the
21 defendant named therein. See, e.g., *White v. Trans Union LLC*, 462 F.
22 Supp. 2d 1079, 1084 (CD. Cal. 2006) (holding, where plaintiff alleges
23 “loss of income” and seeks only injunctive relief, UCL “does not require
24 that the losses in question were the product of the defendant’s wrongful
25 acquisition of the plaintiff’s property”); *So. Cal. Housing Rights Ctr. v.*
26 *Los Feliz Towers Homeowners Ass’n*, 426 F. Supp. 2d 1061, 1069 (CD.
27 Cal. 2005) (holding plaintiff Housing Rights Center had standing under
28 UCL “because it present[ed] evidence of actual injury based on loss of
financial resources in investigating [a discrimination] claim and diversion
of staff time from other cases to investigate the allegations [therein]”);
Aron v. U-Haul Co. of Cal., 143 Cal. App. 4th 796, 802-03 (2006)
(holding plaintiff had standing where plaintiff alleged “he suffered
economic loss by being required to purchase excess fuel” from third
party before returning rental truck to defendant).

Fulford v. Logitech, Inc., 2009 U.S. Dist. LEXIS 42296 at *2-6 (N.D.
Cal. May 8, 2009) (footnotes and some citations omitted).

1 Likewise, in *Swain v. Cach, LLC*, several months after Walker, the court
2 noted that “the UCL does not require a loss of money or property that is eligible
3 for restitution.” 2009 U.S. Dist. LEXIS 126340 at *7 (N.D. Cal. Nov. 4, 2009). See
4 also *Cedars-Sinai Med. Ctr. v. Global Excel Mgmt* (plaintiff hospital had UCL
5 standing against a third party that evaluated claims referred by insurance
6 companies) 2009 U.S. Dist. LEXIS 120411 at *24 (C.D. Cal. Dec. 4, 2009).

7 Even if *Walker* stood for what Defendant claims, UCL standing is purely an
8 issue of California law, and two decisions issued on April 19, 2010 from the
9 California Court of Appeal are controlling.

10 In *Wallace v. Geico Gen. Ins. Co.*, 2010 Cal. App. LEXIS 532 (Apr. 19,
11 2010), a plaintiff paid for repair work that Geico refused to cover. Plaintiff did not
12 seek restitution of her premium, but an order that Geico pay for this work:

13 Wallace “suffered injury in fact” and “lost money or property” as a result
14 of the practices at issue in this lawsuit. (§ 17204.) Specifically, Wallace
15 was injured by paying for the repair work to her vehicle that GEICO did
16 not agree to cover.

17 *Wallace*, 2010 Cal. App. LEXIS 532 at *21.

18 In *Hale v. Sharp Healthcare*, 2010 Cal. App. LEXIS 530 (Apr. 19, 2010) the
19 plaintiff adequately pled “injury in fact” where she was “imminently” obligated to
20 pay a large medical bill she alleged was the result of defendant’s overcharging.
21 Under Defendant’s erring “eligible for restitution” test she would not have UCL
22 standing since she had not paid the bill. Instead, the court held “this is not the type
23 of action Proposition 64 was intended to squelch” and the “contours of the injury-
24 in-fact requirement, while not precisely defined, are very generous, requiring only
25 that claimant allege some specific, ‘identifiable trifle’ of injury.” *Hale*, 2010 Cal.
26 App. LEXIS 530 at *15 (internal citations and quotation marks omitted).

1 DATED: April 21, 2010
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3

Respectfully Submitted,

4 /s/Gregory S. Weston

Gregory S. Weston

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