

1 **THE WESTON FIRM**
 2 GREGORY S. WESTON (239944)
 3 888 Turquoise Street
 4 San Diego, CA 92109
 5 Telephone: (858) 488-1672
 6 Facsimile: (480) 247-4553
 7 greg@westonfirm.com

8 **JACK FITZGERALD (257370)**
 9 2811 Sykes Court
 10 Santa Clara, CA 95051
 11 Telephone: (408) 459-0305
 12 jack@westonfirm.com

13 **BECK & LEE BUSINESS TRIAL LAWYERS**
 14 JARED H. BECK (233743)
 15 ELIZABETH LEE BECK (233742)
 16 Courthouse Plaza Building
 17 28 West Flagler Street, Suite 555
 18 Miami, FL 33130
 19 Telephone: (305) 789-0072
 20 Facsimile: (786) 664-3334
 21 jared@beckandlee.com
 22 elizabeth@beckandlee.com

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

24 **UNITED STATES DISTRICT COURT**
 25 **NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

YELP! INC.,

Defendant.

Case No. 3:10-cv-02351 MHP
 Pleading Type: Class Action
 Action Filed: February 23, 2010

**DECLARATION OF GREGORY S.
 WESTON IN SUPPORT OF PLAINTIFFS’
 OPPOSITION AND CROSS-MOTION**

Judge: The Hon. Marilyn Hall Patel

Date: July 19, 2010
 Time: 2:00 p.m.

1 I, Gregory S. Weston, declare:

2 1. I am a member of good standing in the State Bars of California and Florida, and
3 the United States District Courts for the Northern, Central, and Southern Districts of California. I
4 make this declaration in support of Plaintiffs' Opposition to Yelp's Motion for Consolidation
5 (Dkt. No. 64) and Cross-Motion for:

6 (a1) Designation of *Cats and Dogs* as lead action and stay of *Levitt* action or, in the
7 alternative, (a2) Consolidation of *Cats and Dogs* and *Levitt* actions, deeming the *Cats*
8 *and Dogs* First Amended Complaint as the operative complaint;

9 (b) Appointment of The Weston Firm and Beck & Lee Business Trial Lawyers as
10 interim class counsel; and

11 (c) Submission of fully-briefed Motion to Dismiss for hearing.

12 2. My firm was appointed the sole Class Counsel by the Hon. Margaret M. Morrow
13 to represent purchasers of approximately 145 condominiums in *Adachi et al. v. Carlyle/Galaxy*
14 *San Pedro L.P. et al.*, No. 09-793 (C.D. Cal.), which settled in 2009 on a class-wide all-cash
15 basis for approximately \$1.35 million.

16 3. I am attorney of record for the indirect purchaser class in *In re Korean Airlines*
17 *Co. Ltd. Antitrust Litigation*, MDL No. 1891, a class action pending in the Central District of
18 California.

19 4. My firm is counsel for the proposed class of condominium purchasers in
20 *Kenneally v. Bank of Nova Scotia et al.*, No. 3:09-cv-02039-WQH-JMA (S.D. Cal.) a class
21 action involving fraud in the sale of approximately 250 condominiums in San Diego, and at least
22 nine other consumer class actions brought under California's Unfair Competition Law, False
23 Advertising Law and Consumer Legal Remedies Act..

24 5. I am a graduate of the Ohio State University and Harvard Law School and have
25 devoted substantially all of my practice to representing plaintiffs in class actions.

26 6. Before founding The Weston Firm, as an attorney at the firm now called Robbins,
27 Geller, Rudman & Dowd ("RGR&D"), I represented plaintiffs in the following class actions:

- 1 • *The Apple iPod iTunes Antitrust Litigation* (N.D. Cal.) (nationwide consumer class certified and RGR&D appointed class counsel)
- 2 • *Bruce v. Crompton Corp.* (Los Angeles Co. Sup. Ct.)
- 3 • *In re Carbon Black Antitrust Litigation* (D. Mass.)
- 4 • *In re Digital Music Antitrust Litigation* (S.D.N.Y.) (RGR&D appointed interim class counsel)
- 5 • *In re Graphics Processing Units Antitrust Litigation* (N.D. Cal.)
- 6 • *In re International Air Transportation Surcharge Antitrust Litigation* (N.D. Cal.)
- 7 • *In re Medical Waste Services Antitrust Litigation* (D. Utah) (RGR&D appointed interim class counsel)
- 8 • *Ross et al. v. Metropolitan Life Insurance Company* (W.D. Pa.)
- 9 • *Williams v. Interinsurance Exchange of the Automobile Club* (San Diego Co. Sup. Ct.) (California consumer class certified, RGR&D appointed class counsel)

11 7. On January 12, 2010, Dr. Gregory Perrault, the owner of Cats and Dogs Animal
12 Hospital, contacted me and informed me that he felt the sales employees of the website
13 Yelp.com were attempting to extort him into purchasing an advertising package that would
14 require him to spend \$3600 a year.

15 8. Dr. Perrault knew of me because he was a member of the class described above in
16 ¶ 2. Together with co-counsel, Beck & Lee Business Trial Lawyers, The Weston Firm spent the
17 next six weeks investigating Dr. Perrault’s claims and preparing the first Complaint, which was
18 filed February 23, 2010, and served on Defendant Yelp! Inc. the next day.

19 9. Subsequently, more than 200 other small business owners contacted The Weston
20 firm and Beck & Lee with stories similar to Dr. Perrault’s, and our firms continue to receive
21 numerous inquiries each day. Of these small businesses, 60 have retained The Weston Firm and
22 Beck & Lee to pursue claims against Yelp and serve as class representatives alongside Cats and
23 Dogs Animal Hospital, Inc.

24 10. Our firm, along with Beck & Lee, spent substantial further time interviewing
25 these small business owners and preparing the First Amended Class Action Complaint
26 (“Amended Complaint”), which was filed on March 16, 2010. The Amended Complaint added a
27 great amount of detail concerning Yelp’s unlawful business practices, included several more

1 claims for relief, and named nine additional small businesses as representative plaintiffs.

2 11. Since February when the first Complaint was filed, The Weston Firm and Beck &
3 Lee have, among other things:

- 4 • Filed a detailed 39-page Amended Complaint;
- 5 • Conferred with defendant's counsel, including in person in San
6 Francisco on March 18, 2010, on case management issues;
- 7 • Held our action's 26(f) discovery conference on April 8, 2010;
- 8 • Conferred with defendant's counsel on class certification, proposed
9 injunctive relief, and electronic discovery;
- 10 • Served Rule 26 disclosures;
- 11 • Fully briefed Yelp's Motion to Dismiss, which was on calendar for
12 hearing before Judge Fairbank, in the Central District of California,
13 before the action was transferred to this Court (Judge Fairbank
14 declined to consider the motion upon ordering the action transferred);
- 15 • Served and obtained first sets of interrogatories and requests for
16 production, including serving 120 and 510 responses and objections,
17 respectfully;
- 18 • Begun collecting and reviewing documents for production to Yelp; and
- 19 • Scheduled a deposition.

20 12. As a result of our efforts in prosecuting the *Cats and Dogs* lawsuit, Yelp has
21 already made substantial policy changes. Yelp now allows its users and business owners to
22 access "filtered" reviews—reviews that were previously completely hidden. Moreover, Yelp no
23 longer allows businesses to pay a monthly fee in order to keep a favorite review listed at the top
24 of their Yelp pages.

25 13. Yelp announced these changes on March 1, 2010—nearly two weeks before
26 Levitt filed his copycat Complaint (see Exhibit A).

27 14. Attached hereto as Exhibit B is a true and correct copy of the Deposition Notice
that Plaintiffs served on Yelp on May 5, 2010.

[continued]

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

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

Executed on June 10, 2010 in San Diego, California.

s/ Gregory S. Weston
Gregory S. Weston

1 Respectfully Submitted,

2

3 /s/ Jack Fitzgerald
4 Jack Fitzgerald

4

5 **THE WESTON FIRM**
6 GREGORY S. WESTON
7 888 Turquoise Street
8 San Diego, CA 92109
9 Telephone: (858) 488-1672
10 Facsimile: (480) 247-4553
11 greg@westonfirm.com

9

10 JACK FITZGERALD
11 2811 Sykes Court
12 Santa Clara, CA 95051
13 Telephone: (408) 459-0305
14 jack@westonfirm.com

12

13 **BECK & LEE BUSINESS TRIAL LAWYERS**

13

14 JARED H. BECK
15 ELIZABETH LEE BECK
16 Courthouse Plaza Building
17 28 West Flagler Street, Suite 555
18 Miami, FL 33130
19 Telephone: (305) 789-0072
20 Facsimile: (786) 664-3334
21 jared@beckandlee.com
22 elizabeth@beckandlee.com

18

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

19

20

21

22

23

24

25

26

27

Exhibit A

« [Additional thoughts on last week's lawsuit, or How a Conspiracy Theory is Born](#) | [Main](#) | [More Updates to Yelp for Android \(and a few for iPhone\)](#) »

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.

Recent Posts

[Yelp for iPhone Updated! We Go Medieval on Check-Ins](#)

JUNE 09, 2010

[Vide-OH-my! That Makes Me Wanna Buy](#)

JUNE 07, 2010

[Yelp Eats! Week](#)

JUNE 07, 2010

[Yelp Mobile: The Bridge Between Online Search and Offline Buying](#)

JUNE 04, 2010

[No Reservations About It - Yelp Integrates OpenTable](#)

JUNE 03, 2010

 [Subscribe to the Yelp Blog!](#)

Search



Links

[Yelp.com](#)

[Press Page](#)

[FAQ](#)

[Community Blog](#)

[Jobs](#)

[Yelp Business Owner's Guide](#)

[Yelp on Facebook](#)

[Follow us on Twitter](#)

The Yelp Web Log

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.

Archives

[June 2010](#)

[May 2010](#)

[April 2010](#)

Now in the UK Sign Up for Yelp Log In Go to Yelp for Business Owners »

yelp
Real people. Real reviews.®

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

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. 11/26/2009

1 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. I'm 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. 12/1/2009

This review has been removed for violating our Review Guidelines

1 to 1 of 1

« Back to Carter Eye Center

- March 2010
- February 2010
- January 2010
- December 2009
- November 2009
- October 2009
- September 2009

[More...](#)

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

yelp
Real people. Real reviews.®

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


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

« Back to The Color Design Salon

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?](#)

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. 12/14/2009

5 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. Updated - 12/14/2009

5 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.

1 Previous Review: Show all »

Jessica Rogers 10/28/2009

5 Jessica Rogers, Jessica Rogers, Jessica Rogers
When someone as talented and professional a ... [Read more »](#)

Debbie L. 12/5/2009

5 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. 11/20/2009

5 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!!

Looking for the Community Blog?

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

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.

The screenshot shows the Yelp interface for a business page. At the top, there's a search bar and navigation tabs. The main content area features the business name 'Corrib Moving and Storage', its address, phone number, and a video of a moving truck. Below this, there are 194 reviews, with the top review from Benji J. dated 12/11/2009. The page also includes a map, a 'Browse Nearby' section, and a 'People Who Viewed This Also Viewed...' section.

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](#)

Exhibit B

1 **THE WESTON FIRM**
2 GREGORY S. WESTON (239944)
3 JACK FITZGERALD (257370)
4 888 Turquoise Street
5 San Diego, CA 92109
6 Telephone: (858) 488-1672
7 Facsimile: (480) 247-4553
8 greg@westonfirm.com
9 jack@westonfirm.com

10 **BECK & LEE BUSINESS TRIAL LAWYERS**
11 JARED H. BECK (233743)
12 ELIZABETH LEE BECK (233742)
13 28 West Flagler Street, Suite 555
14 Miami, FL 33130
15 Telephone: (305) 789-0072
16 Facsimile: (786) 664-3334
17 jared@beckandlee.com
18 elizabeth@beckandlee.com

19 Counsel for Plaintiffs and the Proposed Classes

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 CATS AND DOGS ANIMAL
23 HOSPITAL, INC., et al., on behalf of
24 themselves and all others similarly
25 situated,

26 Plaintiffs,

27 v.

28 YELP! INC.,

Defendant.

Case No: 2:10-cv-01340-VBF-SS
Pleading Type: Class Action

**PLAINTIFFS' NOTICE OF
TAKING RULE 30(B)(6)
DEPOSITION OF DEFENDANT**

Judge: The Hon. Valerie Baker
Fairbank

1 Pursuant to the Federal Rule of Civil Procedure 30(b)(6), Plaintiffs will take
2 before a notary public or officer duly authorized to administer oaths in the State of
3 California, the deposition of Defendant Yelp!, Inc. (“Yelp”) by the person(s) with
4 most knowledge regarding:

5 1. Issues related to class certification, including all elements under Fed.
6 R. Civ. P. 23;

7 2. The number and location of businesses listed on Yelp.com;

8 3. Yelp’s practices and policies regarding the solicitation of Sponsors or
9 advertisers on its website;

10 4. Yelp’s practices and policies regarding contacting businesses to sell
11 advertising subscriptions;

12 5. Yelp’s practices and policies regarding contacting businesses
13 concerning hosting Yelp “Sponsored Events”;

14 6. The division between sales and content management at Yelp;

15 7. Any manipulation or removal of content on Yelp.com in exchange for
16 payment;

17 8. The Yelp algorithm or review filter;

18 9. Yelp’s Terms of Service and Review Guidelines;

19 10. Yelp’s processes, practices and procedures concerning the review of
20 user-generated reviews claimed to have violated Yelp’s Terms of Service or
21 Review Guidelines;

22 11. The number and location of businesses which contract or have
23 contracted to become sponsors with Yelp;

24 12. The role of the “Yelp Elite Squad” in promoting or soliciting
25 businesses to become Yelp sponsors;

26 13. The role of Yelp “Scouts” or “Ambassadors,” or other persons
27 compensated by Yelp, in promoting or soliciting businesses to become Yelp
28

1 Sponsors;

2 14. All documents produced by any party or non-party relevant to class
3 certification issues; and

4 15. Yelp's financial information, including revenue from the sale of
5 advertising subscriptions.

6 Plaintiffs will take the deposition of the following, at the date and time
7 indicated below or a comparable date and time agreed to by the parties:

<u>Name</u>	<u>Date & Time</u>	<u>Location</u>
Corporate representative(s) of Yelp!, Inc.	June 21, 2010 at 9:00 am and continuing from day to day as necessary	650 Mission St., 2 nd Floor San Francisco, CA 94103

8 Dated: May 5, 2010

9 Respectfully Submitted,

10 

11 Gregory S. Weston
12 **THE WESTON FIRM**
13 GREGORY S. WESTON
14 JACK FITZGERALD
15 888 Turquoise Street
16 San Diego, CA 92109
17 Telephone: 858 488 1672
18 Facsimile: 480 247 4553

19 **BECK & LEE BUSINESS TRIAL**
20 **LAWYERS**
21 JARED H. BECK
22 ELIZABETH LEE BECK
23 Courthouse Plaza Building
24 28 West Flagler Street, Suite 555
25 Miami, FL 33130
26 Telephone: 305 789 0072
27 Facsimile: 786 664 3334

28 Counsel for Plaintiffs and the
Proposed Classes