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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 JACK FITZGERALD
 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, Jack Fitzgerald, declare:

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

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

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

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

13 2. Before joining The Weston Firm, I was associated with the law firms of Baker &
14 Hostetler, LLP, in New York, New York, and Mayer Brown LLP in Palo Alto, California. While
15 at Mayer Brown, I defended the class action, *In Re: Openwave Securities Systems, Inc. Securities*
16 *Litigation*, No. 07-cv-1309 (S.D.N.Y.). While at both Baker & Hostetler and Mayer Brown, my
17 practice was always focused on large-scale, complex litigation including, for example,
18 representing plaintiffs asserting antitrust and false advertising claims against various telephone
19 calling card manufacturers. My representation of plaintiffs in class action lawsuits includes
20 *Kenneally v. Bank of Nova Scotia et al.*, Case 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 3. I am a graduate of Cornell University and New York University School of Law,
25 where I was editor of the New York University Law Review.

26 4. Following our filing on February 23, 2010 of the first Complaint against Yelp, my
27 firm and Beck & Lee Business Trial Lawyers have been contacted by more than 200 other small

1 business owners with stories similar to Dr. Perrault's, of Plaintiff Cats and Dogs Animal
2 Hospital, Inc. The firms continue to receive numerous inquiries each day. Of these small
3 businesses, 60 have retained The Weston Firm and Beck & Lee to pursue claims against Yelp
4 and serve as class representatives alongside Cats and Dogs Animal Hospital, Inc.

5 5. Our firm and Beck & Lee spent substantial time interviewing these small business
6 owners, and preparing the First Amended Class Action Complaint ("Amended Complaint"),
7 which was filed on March 16. The Amended Complaint added a great amount of detail
8 concerning Yelp's unlawful business practices, included several more claims for relief, and
9 named nine additional small business representative plaintiffs.

10 6. Since February, when The Weston Firm and Beck & Lee filed the first Complaint,
11 counsel have, among other things:

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

27 7. On Friday, June 4, 2010, I met and conferred with counsel for Yelp, Matthew
Brown, concerning the substance of the instant Motion. Mr. Brown indicated he did not agree to
this request, instead indicating his client's position that Plaintiffs should file, along with Mr.
Levitt, an amended consolidated complaint, giving Yelp an additional 30 days time to respond,
and mooting the fully-briefed Motion to Dismiss the *Cats and Dogs* Amended Complaint.

1 8. As a result of our efforts in prosecuting the *Cats and Dogs* lawsuit, Yelp has
2 already made substantial policy changes. Yelp now allows its users and business owners to
3 access “filtered” reviews—reviews that were previously completely hidden. Moreover, Yelp no
4 longer allows businesses to pay a monthly fee in order to keep a favorite review listed at the top
5 of their Yelp pages.

6 9. Yelp announced these changes on March 1, 2010—nearly two weeks before
7 Levitt filed his copycat Complaint.

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

10 Executed on June 14, 2010 in Santa Clara, California.

11
12 s/ Jack Fitzgerald
13 Jack Fitzgerald

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1 Respectfully Submitted,

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3 /s/ Jack Fitzgerald
4 Jack Fitzgerald

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