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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

**PLAINTIFFS' NOTICE OF MOTION AND
 MOTION TO SHORTEN TIME, COMPEL
 30(B)(6) DEPOSITION, AND FOR
 SANCTIONS**

Judge: The Hon. Marilyn Hall Patel

Date: TBD
 Time: TBD

1 TO ALL PARTIES AND THEIR COUSNEL OF RECORD:

2 PLEASE TAKE NOTICE THAT in accordance with Northern District of California
3 Local Rule 37, Plaintiffs hereby move the Court for an Order compelling Defendant Yelp! Inc.
4 (“Yelp”) to produce for deposition on Monday, June 21, 2010, a corporate representative
5 pursuant to Rule 30(b)(6) (the “Motion to Compel”).

6 PLEASE TAKE FURTHER NOTICE THAT in accordance with Federal Rule of Civil
7 Procedure 37(d)(1)(A)(i) and Local Rule 37-1(a), Plaintiffs move for sanctions in the amount of
8 \$5,119.80, representing the costs incurred by Plaintiffs because of Yelp’s last-minute
9 cancellation of the noticed deposition (\$954.80), and for the fees associated with bringing this
10 Motion (\$4,165).

11 PLEASE TAKE FURTHER NOTICE THAT in accordance with Local Rule 6-3,
12 Plaintiffs move for an Order shortening time on the Motion to Compel, and request that Yelp’s
13 Opposition, if any, be due on Thursday, June 17, 2010, and that the Motion to Compel be heard
14 and decided thereafter without Reply. Plaintiffs’ Motion for Shortening of Time is based on the
15 concurrently-filed Declaration of Jared H. Beck, dated June 16, 2010 (the “Beck Decl.”).

16 **Facts Giving Rise to This Motion**

17 1. On May 5, 2010, Plaintiffs served upon Yelp a Notice of Deposition pursuant to
18 Rule 30(b)(6), scheduling the deposition of Yelp’s corporate representative for June 21, 2010 in
19 San Francisco, where Yelp is based. (*See* Beck Decl., Ex. A.)

20 2. On June 13, 2010, Plaintiffs’ attorneys Jared H. Beck and Elizabeth Lee Beck,
21 both of Beck & Lee based in Miami, Florida, purchased non-refundable airfare for travel to San
22 Francisco. (*See* Beck Decl. Exs. B-C.)

23 3. At 9:57 p.m. PST on June 15, 2010—six weeks after the deposition notice was
24 served, but only three business days before it was scheduled to take place—Yelp served
25 Plaintiffs with its Objections to Plaintiffs’ Notice of Taking Fed. R. Civ. P. 30(B)(6) Deposition
26 (the “Objection”). (*See* Beck Decl. Exs. D-E.) The Objection asserted that the deposition was
27 “premature,” despite the fact that the parties have already exchanged discovery and conducted
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1 the Rule 26(f) conference over two months ago, on April 8, 2010. *See* Fed. R. Civ. P. 26(d)(1)
2 (permitting the parties to conduct discovery after they have conferred pursuant to Rule 26(f)).

3 4. At 1:19 a.m. PST on June 16, 2010, Mr. Beck emailed counsel for Yelp seeking
4 clarification as to whether Yelp was refusing to produce a witness for the deposition. Mr. Beck
5 offered to accommodate Yelp on any issues relating to time or location to ensure that the
6 deposition would go forward on June 21st. (*See* Beck Decl. Ex. F.)

7 5. At 7:27 p.m. EST on June 16, 2010, Yelp’s counsel responded by email, asserting
8 that “it is premature to move forward with depositions before the issues of consolidation and
9 coordination have been resolved.” (Beck Decl. Ex. G.)

10 **Argument**

11 Yelp’s last-minute attempt to cancel the 30(b)(6) deposition Plaintiffs noticed six weeks
12 ago is unfair and, if permitted, will force Plaintiffs to incur substantial costs, including non-
13 refundable airfare.

14 Yelp’s Objection and unilateral cancellation of the 30(b)(6) deposition are also improper.
15 Yelp bases its Objection on the “procedural history and posture of this case,” purportedly
16 because of Yelp’s pending motion to consolidate this action with the *Levitt* action (Dkt. No. 64).
17 (Objection at 2.) But Yelp knew it would seek such consolidation no later than April 9, 2010,
18 when it moved to transfer this action from the Central District to this Court on that basis. (*See*
19 Dkt. No. 25 at 12:2-3 (“If *LaPausky* and *Cats and Dogs* are transferred to the Northern District,
20 Yelp would seek consolidation of the three actions [i.e., the *Levitt* action]”). Yelp could have
21 objected to the 30(b)(6) deposition on this basis from the time it was served in May, but chose
22 not to.

23 Moreover, Yelp has been fully participating in discovery since first engaging in the Rule
24 26(f) conference on April 8, 2010, including serving Plaintiffs with 120 interrogatories and 510
25 requests for document—all of which Plaintiffs have substantively responded to. Similarly, Yelp
26 has responded and objected to the full sets of interrogatories and document requests which
27 Plaintiffs served on Yelp. Having wetted its toes in the garden hose of discovery—even while the
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1 *LaPausky* and *Levitt* copycat actions were pending—Yelp cannot reasonably shut off the spigot
2 now, especially at the last minute.

3 Nor has Yelp met and conferred with Plaintiffs in good faith.¹ Instead, Yelp ignored
4 Plaintiffs’ attempt to devise a solution that would avoid the expense and inconvenience incurred
5 by Yelp’s cancellation. After the close of business, Yelp merely responded that it was “hard to
6 believe” Plaintiffs legitimately expected the deposition to proceed, or that Plaintiffs purchased
7 non-refundable airfare in order to attend the deposition. (*See* Beck Decl. Ex G.) This Motion
8 should suffice to disabuse Yelp of its apparent doubts.

9 Finally, Yelp’s reliance upon the pendency of *Levitt* as a basis to withhold production of
10 witness for a duly noticed Rule 30(b)(6) deposition of its corporate representative—without
11 having filed an appropriate motion for protective order or to stay discovery—is without merit.
12 As detailed in Plaintiffs’ Memorandum of Points of Points & Authorities in Opposition to Yelp’s
13 Motion for Consolidation (Dkt. No. 65-1), *Levitt* is a copycat of this action. The *Levitt* plaintiff’s
14 lawyers have done no more than file a complaint mimicking the allegations in this case, after
15 which they stipulated to allow Yelp an additional *four months* to respond.² Any concerns on
16 Yelp’s part that discovery in this case be coordinated with *Levitt* could have been easily handled
17 simply by asking, in a timely manner, that the lawyers for the *Levitt* plaintiff be invited to attend
18 the deposition, a request to which Plaintiffs’ counsel would have readily agreed. Instead, Yelp
19 waited until the eleventh hour and then raised the pendency of *Levitt* as an “excuse” not to
20 produce a witness. Such gamesmanship is improper. And even now Yelp persists in refusing to
21 provide alternate dates for the deposition.

22 _____
23 ¹ Yelp has similarly refused to meet and confer concerning the discovery that the parties have
24 already exchanged, unless Mr. Levitt is involved, even though Mr. Levitt was not involved in
25 Plaintiffs’ discovery and has not engaged in any discovery himself. (*See* Declaration of Jack
26 Fitzgerald, dated June 16, 2010, at ¶ 3.)

27 ² Pursuant to the generous stipulation, Yelp’s response to *Levitt* was due to be filed on August
28 18, 2010, even though the *Levitt* complaint was filed on March 12, 2010. By contrast, Yelp filed
its Motion to Dismiss in this case on April 1, 2010 – after the original Complaint was filed on
February 23, 2010, and the First Amended Complaint on March 16, 2010. The Motion to
Dismiss has been fully briefed and was scheduled for hearing on May 10, 2010 before Judge
Fairbank in the Central District of California, prior to transfer to this Court.

1 Respectfully Submitted,

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3 /s/ Jack Fitzgerald
4 Jack Fitzgerald

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