

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

**PLAINTIFFS' REPLY IN SUPPORT OF
 MOTION TO COMPEL 30(B)(6)
 DEPOSITION AND FOR SANCTIONS**

Judge: The Hon. Marilyn Hall Patel

Date: Monday, July 26, 2010

Time: 2:00 p.m.

Location: Courtroom 15, 18th Floor

1 Plaintiffs, CATS AND DOGS ANIMAL HOSPITAL, INC.; ASTRO APPLIANCE
2 SERVICE; BLEEDING HEART, LLC; CALIFORNIA FURNISHINGS, INC.; CELIBRÉ,
3 INC.; J.L. FERRI ENTERTAINMENT, INC.; LE PETITE RETREAT DAY SPA, LLC; SAN
4 FRANCISCO BAY BOAT CRUISES, LLC; WAG MY TAIL, INC.; and ZODIAC
5 RESTAURANT GROUP, INC. (collectively, “Plaintiffs”) submit this Reply in support of their
6 Motion for Sanctions concerning Yelp’s last-minute failure to produce its corporate
7 representative for deposition, and to address several points raised in Yelp’s Opposition.

8 First, Plaintiffs served Yelp with the deposition notice on May 5, 2010, while the case
9 was still pending in the Central District of California, and 23 days before the transfer to this
10 Court occurred. Unlike this District, the Central District of California does not require the
11 parties to meet and confer on scheduling issues before serving a deposition notice. Thus, Local
12 Rule 30-1’s meet-and-confer requirement does not govern the deposition notice.

13 Second, once Plaintiffs served the deposition notice on May 5th, it was squarely *Yelp’s*
14 burden to advise Plaintiffs of any scheduling problems or objections reasonably in advance of the
15 noticed date. Had Yelp done so, Plaintiffs would have discussed any of Yelp’s substantive
16 objections as well as an alternative, mutually convenient date.¹ Instead, Yelp waited until a scant
17 *three business days* before the noticed date to advise Plaintiffs of its intention not to attend the
18 deposition.² Yelp’s failure to contact Plaintiffs up until then was plainly a “sharp” litigation
19 tactic designed to maximize the chance that Plaintiffs’ counsel would incur costs in making their
20 travel arrangements.³

21
22 ¹ Because the scheduled deposition date has passed, and along with it the emergency basis of
23 Plaintiffs’ Motion to Compel, Plaintiffs hereby respectfully request through the instant motion
24 that the Court award them fees and costs, and order Yelp to produce its corporate representative
on a date certain.

25 ² Several weeks after the deposition notice was served, Plaintiffs served document requests and
26 interrogatories on Yelp, to which Yelp has already fully responded. Yelp similarly served
27 Plaintiffs with 120 interrogatories and 510 document requests. This is inconsistent with Yelp’s
claim that Plaintiffs knew “Yelp’s position was that such discovery should await the Court’s
rulings on the issue of consolidation.” (Opp. at 5 n.5).

28 ³ Yelp accuses Plaintiffs of “tactical” conduct because their counsel, Elizabeth Lee Beck,
attended a 90-second hearing in another matter on the morning of June 21st in San Jose, the

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Third, Yelp is incorrect that Plaintiffs did not meet and confer prior to filing their motion (Opp. at 4). As discussed in their opening brief, promptly after Yelp announced on June 16th that it would not appear on June 21st, Plaintiffs contacted Yelp offering to accommodate Yelp on any issues relating to time or location to ensure that the deposition would go forward. (Mot. at 2). Yelp responded, asserting that “it was premature to move forward with depositions” (Mot. at 2) Having met and conferred on the substantive issue, Plaintiffs further sought, pursuant to Local Rule 6-3(a)(2), Yelp’s stipulation on a shortening of time (Brown Decl. ¶ 2, Ex. A.) That email properly requested a response within two hours owing to the emergency nature of the proposed motion, which Plaintiffs needed to file the same day in hopes that it would be heard by the Court in time to direct that the deposition proceed on the noticed date.⁴

Monday when the deposition was supposed to take place. (Opp. Mem. at 5 n.5). In fact, the necessity of covering conflicting obligations in two different cases venued in the Northern District of California being jointly litigated by the two Plaintiffs’ firms was the reason Ms. Beck and her law partner, Jared Beck, booked plane tickets from Florida to San Francisco in the first place. After Yelp indicated it had no intention of complying with the deposition notice, and rather than letting the ticket go to waste, Ms. Beck joined her California-based co-counsel, Gregory Weston and Jack Fitzgerald, in the Northern District’s San Jose Division for purposes of announcing that the parties had reached a settlement in *Red v. Unilever United States, Inc.*, Case No. 10 CV 00387 (N.D. Cal.). Had the deposition gone forward as noticed, Ms. Beck and Mr. Beck would have deposed Yelp in San Francisco, while Mr. Weston and Mr. Fitzgerald covered the *Unilever* hearing on their own in San Jose. See Declaration of Elizabeth Lee Beck ¶¶ 2-5.

⁴ While Local Rule 6-3 provides a default opposition time of four days, that period can be shortened by order, see L.R. 6-3(c). Accordingly, Plaintiffs properly sought an order that Yelp file an opposition, if at all, on June 17th, so that the Court could order the deposition to take place on June 21st.

1 Respectfully Submitted,

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3 /s/ Jack Fitzgerald
4 Jack Fitzgerald

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