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6 Attorneys for Defendant  
 7 YELP! INC.

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

11 CATS AND DOGS ANIMAL  
 12 HOSPITAL, INC., et al., on behalf of  
 13 itself and all others similarly situated,

14 Plaintiffs,

15 v.

16 YELP! INC.,

17 Defendant.

No. CV 10-02351 MHP

**DECLARATION OF MATTHEW D. BROWN IN  
 SUPPORT OF DEFENDANT YELP! INC.'S  
 OPPOSITION TO PLAINTIFFS' MOTION TO  
 COMPEL AND MOTION FOR SANCTIONS**

Date: July 19, 2010  
 Time: 2:00 p.m.  
 Judge: Honorable Marilyn Hall Patel  
 Trial Date: None Set

18 I, Matthew D. Brown, hereby declare as follows:

19 **1.** I am an attorney duly licensed to practice law in the State of California and am a  
 20 partner with the firm of Cooley LLP, counsel of record for Defendant Yelp! Inc. ("Yelp") in the  
 21 above-entitled action. I have personal knowledge of the facts set forth herein, except where  
 22 otherwise stated, and, if called as a witness, I could and would competently testify thereto.

23 **2.** Yelp served Plaintiffs' counsel with formal objections to their 30(b)(6) deposition  
 24 notice by email on June 15 at 6:57 p.m. PST. On June 16 at 1:19 a.m. PST (though I did not read  
 25 it until much later), Plaintiffs' counsel, Jared Beck, emailed me and threatened to move for  
 26 sanctions against Yelp if Yelp did not agree to the proposed June 21 deposition date.  
 27 (Declaration of Jared Beck ("Beck Decl.") Ex. F.) Without waiting for a response, a different  
 28 Plaintiffs' counsel, Jack Fitzgerald, emailed me at 4:25 p.m. PST that same day, stating Plaintiffs'

1 intent to file a motion to compel and giving me two hours in which to take a position on  
2 stipulating to shortened time for the hearing of the motion. Plaintiffs' counsel did not offer any  
3 response to Yelp's grounds for why the deposition is premature, nor did they offer to discuss any  
4 of the underlying objections on individual topics. Attached as **Exhibit A** is a true and correct  
5 copy of the email sent from Jack Fitzgerald to me on June 16 at 4:25 p.m. PST.

6 **3.** I replied to Plaintiffs' first email at 4:27 p.m. PST, well within standard business  
7 hours in California, where Yelp's counsel and this action are located. In my reply email, I  
8 reiterated my concerns with holding the deposition prior to the hearing on consolidation, and,  
9 again, offered to meet and confer. (Beck Decl. Ex. G.)

10 **4.** Yelp never agreed to the June 21 date, which was unilaterally set by Plaintiffs'  
11 deposition notice without any prior meet and confer.

12 **5.** In the parties' calls and correspondence over the weeks after the deposition notice  
13 was served, Plaintiffs themselves never once raised the issue of the deposition, the location, the  
14 topics to be covered, the number of witnesses to be deposed, or the date or dates on which they  
15 might proceed.

16 **6.** Attached as **Exhibit B** is a true and correct copy of the Docket Report from a case  
17 currently in the Northern District of California, before Judge Ware, entitled *Red v. Unilever*  
18 *United States, Inc.*, Case No. 10 CV 00387 JW ("*Red*"), which lists Plaintiffs' counsel, shows  
19 Judge Ware's May 21 order setting the motion to dismiss hearing date for June 21, 2010, at 9:00  
20 a.m., and shows the May 23 formal notice of appearance of Elizabeth Lee Beck. (See Ex. B,  
21 Docket Nos. 62 and 63.)

22 **7.** Attached as **Exhibit C** is a true and correct copy of the Civil Minutes entered by  
23 the Court in the *Red* action after the hearing held June 21, 2010 at 9:00 a.m., which states that  
24 Elizabeth Beck appeared on behalf of Plaintiffs.

25 **8.** Attached as **Exhibit D** is a true and correct copy of a Help Page printed on June 17  
26 from JetBlue's website entitled, "Changes, Cancellations, and Standby Guidelines," which  
27 explains that "JetBlue Nonrefundable Fares, changes or cancellations may be made prior to  
28 scheduled departure for a fee of \$100 per person plus any applicable difference in airfare."

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 6th day of July 2010 at San Francisco, California.

/s/ Matthew D. Brown  
Matthew D. Brown