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15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

Case No. 3:10-cv-02351 MHP  
 Pleading Type: Class Action

17  
 18 CATS AND DOGS ANIMAL HOSPITAL,  
 19 INC.; ASTRO APPLIANCE SERVICE;  
 20 BLEEDING HEART, LLC; CALIFORNIA  
 FURNISHINGS, INC.; CELIBRÉ, INC.; J.L.  
 21 FERRI ENTERTAINMENT, INC.; LE  
 PETITE RETREAT DAY SPA, LLC; SAN  
 22 FRANCISCO BAY BOAT CRUISES, LLC;  
 WAG MY TAIL, INC.; and ZODIAC  
 23 RESTAURANT GROUP, INC., on behalf of  
 themselves and all others similarly situated,

**JOINT CASE MANAGEMENT**  
**STATEMENT**

Judge: The Hon. Marilyn Hall Patel  
 Date: July 19, 2010  
 Time: 2:00 p.m.

24 Plaintiffs,

25 v.

26 YELP! INC.,

27 Defendant.  
 28

1 For the initial Case Management Conference (“CMC”) set for July 19, 2010, Plaintiffs  
2 Cats and Dogs Animal Hospital, Inc., et al. (“Plaintiffs”) and Defendant Yelp! Inc. (“Yelp,”  
3 together with Plaintiffs, the “Parties”) hereby submit this Joint Case Management Statement  
4 pursuant to Federal Rule of Civil Procedure 26(f), Local Civil Rule 16-9, and the Standing Order  
5 for All Judges of the Northern District of California entitled “Contents of Joint Case  
6 Management Statement.”

7 Pursuant to Federal Rule of Civil Procedure 26(f), the Parties held a telephonic meeting  
8 of counsel on Thursday, April 8, 2010. Gregory S. Weston, Jared H. Beck, and Elizabeth Lee  
9 Beck participated for Plaintiffs. Michael G. Rhodes, Matthew D. Brown, and Benjamin H.  
10 Kleine participated for Yelp.

11 **I. JURISDICTION AND SERVICE**

12 The Court has jurisdiction under 28 U.S.C. § 1332(d)(2) (The Class Action Fairness Act).  
13 There are no issues concerning personal jurisdiction or venue.<sup>1</sup> No parties remain to be served.<sup>2</sup>

14 **II. STATEMENT OF CLAIMS AND DEFENSES**

15 **A. Chronology of Facts – Plaintiffs’ Statement**

16 **1. The Yelp.com Website & Yelp’s Business Model**

17 Yelp operates Yelp.com, a website consisting of an online directory of businesses in  
18 multiple categories, like an online Yellow Pages. Although Yelp.com’s mantra is “Real people.  
19 Real reviews.”, Yelp in fact leverages an inherent conflict of interest and manipulates the content  
20 of its website in order to promote the sale of expensive advertising subscriptions to captive  
21 businesses.

22 Each business listed on Yelp.com has a unique Yelp.com listing page, which provides  
23 basic business information (such as address, phone number, and hours of operation), and user-  
24 generated ratings (on a scale of 1-star to 5-stars; generally, 3-stars and below is considered a  
25 negative rating) and reviews. Businesses become listed on Yelp.com when either (a) Yelp

26 \_\_\_\_\_  
27 <sup>1</sup> The action was originally brought in the Central District of California, but was transferred to  
this Court upon Yelp’s motion (*see* Docket No. 56).

28 <sup>2</sup> The Parties reserve the right to add additional parties until any cutoff date set by the Court.

1 employees or others working on behalf of Yelp or at Yelp’s direction, create a new listing for a  
2 business (usually around the time Yelp enters a new geographical market), (b) reviewers not  
3 associated with Yelp create a listing for a business while, at the same time, becoming the first  
4 person to review that business, or (c) a business creates its own listing. Once in the Yelp.com  
5 directory, business may not opt out of being listed.

6 Yelp’s content is primarily created by independent Yelp users, or reviewers. However,  
7 Yelp also employs “Scouts” to write reviews. Scouts are individuals paid by Yelp to ostensibly  
8 patronize businesses in a new geographic market and write reviews for those businesses. Yelp  
9 also compensates a particular group of reviewers, deemed the Yelp “Elite Squad,” for writing  
10 reviews. These are individuals who are particularly active in the Yelp community. Individuals  
11 must apply to Yelp to become Elite members. These “Elites” are then frequently invited to free  
12 parties, dinners and other events, and provided with free alcohol, food and goods, as  
13 compensation for their involvement in generating content on Yelp.com. Finally, Yelp personnel  
14 have themselves occasionally written reviews (including false negative reviews) of businesses  
15 listed on Yelp.

16 Yelp’s primary stream of revenue is through the sale of advertising subscriptions to  
17 businesses listed on Yelp.com.

## 18 **2. Yelp’s Extortionate & Unlawful Business Practices**

19 Such subscriptions begin at a price of approximately \$300/month and increase to \$1,000  
20 or more per month. A Yelp sales team working on commission is responsible for selling these  
21 advertising subscriptions. In order to do so, Yelp sales employees promise to manipulate  
22 business listing pages favorably to those businesses that purchase Yelp advertising, and threaten  
23 to manipulate business listing pages detrimentally to those businesses that refuse to purchase  
24 Yelp advertising. After making such promises and threats, Yelp in fact manipulates business  
25 listing pages based on whether a business purchases or refused to purchase advertising. In  
26 addition, Yelp enforces its Terms of Service disparately, depending upon whether a business is a  
27 “Sponsor” (i.e., has purchased an advertising subscription) or not: reviews that violate Yelp’s  
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1 Terms of Service are nevertheless frequently permitted to remain on the pages of businesses  
2 which have refused to purchase Yelp advertising subscriptions.

3 **3. Plaintiff-Specific Allegations & Procedural History**

4 This putative class action was initially filed on February 23, 2010, in the Central District  
5 of California, by Cats and Dogs Animal Hospital, Inc., a Long Beach, California veterinary  
6 clinic. After defamatory negative reviews (which violated Yelp’s Terms of Service) appeared on  
7 Cats and Dogs’ Yelp.com listing page, Yelp sales employees contacted Cats and Dogs, offering  
8 to remove negative reviews in exchange for a payment of \$300 per month for an advertising  
9 subscription. Shortly after Cats and Dogs refused, more false negative reviews appeared on Cats  
10 and Dogs’ Yelp.com listing page, which Yelp refused to remove although they violated Yelp’s  
11 Terms of Service.  
12

13 Shortly after filing the action, Plaintiff and his counsel received communications from  
14 hundreds of small businesses across the nation seeking to join the fight against Yelp, and sharing  
15 similar stories of extortion and other unlawful behavior by Yelp. As a result, a First Amended  
16 Complaint was filed in March, which added nine new representative plaintiffs, several new  
17 factual allegations and claims, and which greatly detailed Yelp’s extortionate scheme and other  
18 unlawful practices.

19 **B. Chronology of Facts – Yelp’s Statement**

20 **1. Yelp’s Website**

21 Yelp operates a popular website, www.yelp.com (the “Yelp Website”), which allows  
22 Yelp users (known as “Yelpers”) to write reviews of local businesses and allows anyone to read  
23 these reviews. Since 2004, Yelpers have written millions of reviews about every kind of local  
24 business—from restaurants and cafes to mechanics and dentists. Yelpers rate these businesses  
25 on a scale of one to five stars. In May 2010, the Yelp website received more than 32 million  
26 unique visitors, and since inception, Yelpers have written over 11 million local reviews. Over  
27 85% of these reviews rate a business positively, *i.e.*, three stars or higher. Nationwide, many  
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1 local businesses benefit from the positive attention they receive from Yelp and recognize Yelp as  
2 a useful and unique marketing tool.

### 3 **2. Yelp’s Automated Review Filter**

4 Not all reviews placed on Yelp’s website are trustworthy. For example, some business  
5 owners write themselves positive reviews, or write negative reviews of competitors (sometimes  
6 opening sham accounts under a pseudonym to do so). Occasionally, disgruntled former  
7 employees may attempt to unfairly criticize their former employers. The problem of  
8 untrustworthy reviews permeates most online review websites, leading to artificial inflation or  
9 deflation of a business’s rating and, as a result, misled consumers. Yelp internally refers to less  
10 trustworthy reviews as “spam,” the same term often used to describe unwanted, “junk” email.

11 To combat this spam, Yelp uses proprietary and confidential software it calls the “Review  
12 Filter.” The automated Review Filter attempts to identify, and filter out, less trustworthy  
13 reviews. Reviews that are filtered out do not appear on a business’s page, and are not used to  
14 calculate a business’s overall rating. The Review Filter impacts both positive and negative  
15 reviews, and runs on a regular basis. As the circumstances surrounding any particular review  
16 change over time (*e.g.*, the Review Filter gleans new information about the review or the  
17 reviewer), a review may be designated or undesignated as spam. Therefore, any review may be  
18 unfiltered at one point in time, thus appearing on the business’s Yelp page, and filtered at another  
19 point in time, thus “disappearing” from the business’s page.<sup>3</sup> Because a business’s overall Yelp  
20 rating is calculated using only unfiltered reviews, this rating may also change as reviews are  
21 filtered or unfiltered.

### 22 **3. Yelp’s Advertising Offerings**

23 Like many websites, Yelp sells advertisements to local businesses, which can appear on  
24 the Yelp Website as “Sponsored Results” (clearly labeled as such) in response to certain  
25 searches. Previously, as part of its advertising package, Yelp also offered businesses the option  
26 to select a single “Favorite Review” (again, clearly labeled as such) to display prominently on

27 <sup>3</sup> Independent of the automated Review Filter, a review may be manually removed if it violates  
28 Yelp’s Terms of Service or Review Guidelines, or if the author of the review removes it. The  
content of such reviews ceases to be visible anywhere on the Yelp Website.

1 the business’s review page. Allowing a business to select a “Favorite Review” allowed a  
2 business to choose a pre-existing third-party review to be highlighted on their Yelp page.  
3 Choosing a “Favorite Review” did not remove any reviews from the business’s Yelp page, add  
4 any reviews, or affect a business’s overall Yelp rating. Advertisers have received other benefits  
5 at times, such as the ability to add a video to their business page.

6 **C. Statements of Principal Factual Issues in Dispute**

7 **1. Plaintiffs’ Statement**

8 Yelp operates a small business review website that derives its revenue primarily from the  
9 sale of “business sponsorship” of its review pages. Plaintiffs allege that Defendant’s large  
10 “sponsorship” sales force extorts business owners by manipulating or offering to manipulate its  
11 pages in favor those who purchase costly advertising subscriptions from Yelp, and detrimentally  
12 to businesses that refuse. Plaintiffs also allege that Yelp personnel write false reviews in  
13 furtherance of this scheme, and that Yelp wields the Yelp Elite Squad—especially active  
14 members of the Yelp community, who are frequently rewarded with free parties, alcohol, goods  
15 and services—as an agent of coercion in furtherance of this scheme. Plaintiffs also allege that  
16 Yelp enforces its Terms of Service in favor paid Sponsors, but frequently refuses to enforce the  
17 Terms of Service for the benefit of businesses who do not purchase advertising.

18 The principal factual issues in dispute include:

- 19 • Whether Yelp regularly offers, or has ever offered, to manipulate reviews, or a  
20 business’s Yelp listing page, in exchange for purchasing Yelp advertising services;
  - 21 • Whether Yelp regularly threatens, or has ever threatened, to manipulate reviews, or a  
22 business’s Yelp listing page, in exchange for declining to purchase Yelp advertising services;
  - 23 • Whether Yelp personnel regularly post, or have ever posted, false reviews;
  - 24 • Whether Yelp uses the Yelp Elite Squad as an agent to coerce businesses into  
25 purchasing advertising subscriptions; and
  - 26 • Whether Yelp differentially enforces its Terms of Service.
- 27  
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1                                   **2.     Yelp’s Statement**

2             Yelp denies Plaintiffs’ factual assertions. Plaintiffs look for a conspiracy where none  
3 exists. Despite Plaintiffs’ incendiary rhetoric, Yelp does not manipulate reviews to favor  
4 advertisers or to disfavor non-advertisers. Nor are reviewers instructed in any way to favor  
5 advertisers over non-advertisers. Plaintiffs’ misunderstanding appears to stem from one of the  
6 very features of Yelp that has made it the trusted source of reviews for over 30 million people a  
7 month—the automated Review Filter. Some business owners leap to the incorrect conclusion  
8 that any fluctuations in their reviews are connected to whether they purchase or decline to  
9 purchase advertising on Yelp. In reality, the automated Review Filter does not consider whether  
10 a business is an advertiser or not when it filters a review.

11             Earlier this year, due to continued misunderstandings about the automated Review Filter,  
12 Yelp made it possible for anyone to see the reviews that were filtered out, by clicking on a link at  
13 the bottom of each business page. Yelp also eliminated the Favorite Review feature—although  
14 there was nothing improper about it—in order to prevent any misconception that a business that  
15 advertised on Yelp could eliminate a review or add a review to its page.

16             Plaintiffs’ other assertions are equally unfounded. The “Yelp Elite Squad”—a program  
17 Yelp created to recognize the most passionate Yelpers—is not an agent of Yelp and is not  
18 involved in the sale of Yelp advertising subscriptions. Yelp enforces its Terms of Service to the  
19 benefit of consumers, advertisers, and non-advertisers, and Yelp’s employees, like other Yelpers,  
20 are expected to adhere to Yelp’s Terms of Service and review guidelines.

21 **III.   LEGAL ISSUES**

22             **A.     Plaintiffs’ Statement**

23             Plaintiffs assert their claims as counts for Civil Extortion and Civil Attempted Extortion,  
24 Intentional Interference With Prospective Economic Advantage, and violations of the  
25 “Unlawful,” “Unfair,” and “Fraudulent” prongs of the California Unfair Competition Law, Cal.  
26 Bus. & Prof. Code § 17200 *et seq.* Plaintiffs also seek to certify two Classes pursuant to Fed. R.  
27 Civ. P. 23.

1           **B.     Yelp’s Statement**

2           Yelp disagrees that Plaintiffs have stated a claim and intends to file a renewed motion to  
3 dismiss the Complaint for failure to state a claim upon which relief can be granted. Yelp  
4 previously filed a motion to dismiss the complaint in this matter in which Yelp made, inter alia,  
5 the following arguments:

- 6           • Plaintiffs lack standing under Cal. Bus. and Profs. Code § 17200 since they have not  
7 suffered injury in fact. *See Walker v. GEICO Gen. Ins. Co.*, 558 F.3d 1025, 1027 (9th  
8 Cir. 2009) (§ 17200 standing is “limited . . . to individuals who suffer losses of money  
9 or property that are eligible for restitution”).
- 10          • Plaintiffs fail to satisfy Rule 9(b)’s heightened pleading requirements for claims  
11 grounded in misrepresentation or fraud.
- 12          • Plaintiffs’ claim for extortion and attempted extortion fails as a matter of law because,  
13 among other reasons, (a) there is no right for a civil claim under the California Penal  
14 Code, and (b) there has been insufficient allegation of “wrongful use of fear” and of  
15 consent that was “coerced and unwilling.”
- 16          • Plaintiffs’ claim for intentional interference with prospective business advantage fails  
17 as a matter of law because Plaintiffs do not plead damages to their business goodwill  
18 or that the alleged interference was independently wrongful.

19           Yelp reserves the right to attack the Complaint or any future consolidated or amended  
20 complaint on these or other legal grounds. Yelp also reserves the right to assert all applicable  
21 defenses.

22           **IV.    MOTIONS**

23           **A.     Prior Motions**

24           Previously, Yelp moved to dismiss Plaintiffs’ First Amended Complaint (Docket No. 22)  
25 and that Motion was fully briefed (Docket Nos. 23, 27, 40, 51). Yelp also moved to transfer this  
26 action from the Central District of California to the Northern District of California (Docket No.  
27 25). That motion was granted (Docket No. 56). In light of the court’s decision to transfer the  
28 case, the court’s minute entry stated that “the separate Motion to Dismiss filed by Defendant  
Yelp!, Inc. (Docket No. 23) is moot and taken off calendar.” *Id.*

          Yelp also previously moved to consolidate this action with the related action titled  
*LaPausky v. Yelp! Inc.*, No. 2:10-cv-01340 VBF (C.D. Cal.) (Docket No. 26). That motion was  
mooted by the voluntary dismissal of the *LaPausky* action (*see* Docket No. 55).

1 Plaintiffs previously made a motion to compel Yelp’s 30(b)(6) deposition and for  
2 sanctions, together with a motion to shorten time for the briefing and hearing of those motions.  
3 (Docket No. 66.) Plaintiffs subsequently filed an amended notice of their motion for sanctions  
4 and to motion to compel, setting the motion for hearing on a regular schedule, with a hearing on  
5 July 26, 2010. (Docket No. 69.) The Court vacated the hearing date and stated “the matter will  
6 be taken up at the CMC on July 19 in connection with discovery plans, and not as a motion.”  
7 (Docket No. 76.)

8 **B. Pending Motions**

9 Yelp has moved to consolidate this action with the related action entitled *Levitt v. Yelp!*  
10 *Inc.*, No. 3:10-cv-01321-MHP (N.D. Cal.) (“*Levitt*”), currently pending before this Court  
11 (Docket No. 64). Yelp’s motion also requests that the Court order Plaintiffs to file a consolidated  
12 complaint. Plaintiffs have opposed the motion and filed a cross-motion (Docket No. 65) seeking  
13 the following relief: (1) designating this action as the lead action, and staying or dismissing the  
14 *Levitt* action, or in the alternative consolidating the actions and deeming the *Cats and Dogs* First  
15 Amended Complaint as the operative complaint; (2) appointing Plaintiffs’ counsel as Interim  
16 Class Counsel; and (3) submitting Yelp’s fully-briefed Motion to Dismiss for hearing.

17 **C. Anticipated Motions**

18 Plaintiffs may move for a preliminary injunction and anticipate moving for summary  
19 judgment upon the completion of discovery.

20 Yelp anticipates filing a motion to dismiss and/or strike the complaint or any  
21 consolidated or amended complaint. Yelp may also file a motion to deny class certification, a  
22 motion for summary judgment, and any necessary discovery motions. Yelp reserves the right to  
23 file other motions if necessary.

24 **V. AMENDMENT OF PLEADINGS**

25 **A. Per Plaintiffs**

26 Plaintiffs do not anticipate amending their First Amended Complaint prior to a hearing on  
27 Yelp’s Motion to Dismiss. Plaintiffs may, if necessary, amend their pleading in light of the  
28 Court’s ruling on such a motion. Once the pleadings are settled, Plaintiffs may voluntarily

1 dismiss certain representative plaintiffs and/or may seek leave to amend their pleading to add  
2 new representative Plaintiffs (but not new counts).

3 **B. Per Yelp**

4 In the event that this case and *Levitt* are consolidated, Yelp requests that a consolidated,  
5 amended Complaint be filed. If this occurs, Yelp will respond to or move to dismiss the  
6 consolidated amended complaint.

7 **VI. EVIDENCE PRESERVATION**

8 Plaintiffs' counsel have provided each plaintiff with a Document Preservation  
9 Memorandum and have personally spoken to each representative plaintiff, providing further  
10 instructions on the preservation and collection of documents and other evidence. Plaintiffs are  
11 actively collecting and reviewing documents for production.

12 Yelp is aware of its obligation to preserve relevant evidence, including electronically  
13 stored information, and has taken steps to comply with its obligations.

14 **VII. DISCLOSURES**

15 The Parties served their initial disclosures on April 19, 2010.

16 **VIII. DISCOVERY**

17 **A. Discovery Taken to Date**

18 Plaintiffs served, on April 21, 2010, their First Set of Requests for Production and First  
19 Set of Interrogatories. Plaintiffs also served, on May 5, 2010, a Notice of Taking Rule 30(b)(6)  
20 Deposition of Defendant. Yelp served, on April 23, 2010, First Sets of Requests for Production  
21 to each of the named Plaintiffs. Yelp also served, on April 28, 2010, First Sets of Interrogatories  
22 to each of the named plaintiffs. Both Parties have served objections and responses to the  
23 requests for production and responses and objections to the interrogatories, and Yelp served  
24 objections to Plaintiffs' deposition notice. The Parties have not yet met and conferred with  
25 respect to the same.

1           **B.     Scope of Anticipated Discovery**

2                   **1.     Per Plaintiffs**

3           Plaintiffs anticipate seeking discovery on preliminary issues including, but not limited to,  
4   Yelp's internal organization and document retention policies; Yelp's sales practices and policies;  
5   Yelp's training supervision of sales employees; Yelp's "review filter"; financial information  
6   relating to the sizes of the classes and incentives for manipulating their business listing pages;  
7   complaints Yelp has received regarding its sales practices and its policies on these issues; its  
8   policies relating to "Scouts" and the "Yelp Elite Squad"; payments to Yelp "Scouts"; and Yelp's  
9   communications to business owners.

10                   **2.     Per Yelp**

11           Yelp's investigation and analysis of Plaintiffs' claims are ongoing. Presently, Yelp  
12   anticipates that it will seek discovery on subjects including, but not limited to, the following:  
13   Plaintiffs' communications with Yelp; present and historical reviews on Plaintiffs' Yelp page;  
14   Plaintiffs' Yelp account(s); Plaintiffs' purchase of any online advertising services (from Yelp or  
15   others); Plaintiffs' account information and reviews from any other online business review  
16   websites; complaints made by Plaintiffs' customers about Plaintiffs' business; Plaintiffs' sales  
17   and/or revenue and/or patronage statistics.

18           **C.     Changes to the F.R.C.P. and Local Rule Limits on Discovery**

19                   **1.     Timing of Discovery**

20                           **a.     Per Plaintiffs**

21           This action is already well into discovery, as noted in Section VIII(A), above. Both  
22   parties have served document requests and interrogatories, and responses to the same. Plaintiffs  
23   have already begun collecting and reviewing documents for production, and the parties have  
24   already agreed in principle to meet and confer with respect to each others' objections and  
25   responses. Yelp's request that discovery other than initial disclosures be deferred is, therefore,  
26   contrary to its behavior in fully participating in discovery to date. Moreover, Plaintiffs continue  
27   to be tremendously harmed by Yelp's ongoing unlawful practices. In light of that harm, Plaintiffs  
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1 respectfully believe it is inappropriate to stay this action as the likelihood that it will be  
2 dismissed outright is extremely minimal.

3           Moreover, the assertion that a defendant’s proposed motion is potentially dispositive does  
4 not constitute good cause for staying discovery. “Discovery need not cease during the pendency  
5 of a motion to dismiss.” *SK Hand Tool Corp. v. Dresser Indus., Inc.*, 852 F.2d 936, 945 n.11 (7th  
6 Cir. 1988). Motions to stay discovery—even pending a potentially dispositive motion—“are  
7 disfavored because discovery stays may interfere with judicial efficiency and cause unnecessary  
8 litigation in the future.” *O’Neal v. NCO Fin. Sys., Inc.*, No. 06cv16, 2006 U.S. Dist. LEXIS  
9 83505, at \*4-5 (S.D. Cal. Nov. 16, 2006). A party seeking a discovery stay “carries a heavy  
10 burden of making a ‘strong showing’ why discovery should be denied” by showing “a particular  
11 and specific need . . . as opposed to making stereotyped or conclusory statements.” *Skellerup*  
12 *Indus. v. City of Los Angeles*, 163 F.R.D. 598, 600 (C.D. Cal. 1995) (citing *Blankenship v.*  
13 *Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975); Wright & Miller, Federal Practice and  
14 Procedure, § 2035). Where the defendant “merely urges that compliance with plaintiff’s  
15 discovery request should be stayed pending the District Judge’s ruling on its motion to dismiss. .  
16 . . [he] has done no more than to argue in conclusory fashion that its motion to dismiss will  
17 succeed. This idle speculation does not satisfy Rule 26(c)’s good cause requirement.” *Id.* (citing  
18 *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990).

19                           **b. Per Yelp**

20           The Parties have engaged in only limited discovery to date. As agreed to by counsel for  
21 plaintiff in *Levitt*, Yelp proposes that discovery should not proceed until the legal sufficiency of  
22 Plaintiffs’ claims is determined. Thus, Yelp requests that, except for initial disclosures under  
23 Federal Rule of Civil Procedure 26(a), discovery be deferred until the pleadings have closed (*i.e.*,  
24 until after any motions to dismiss are decided and, if necessary, Yelp has filed an Answer in this  
25 action).

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**2. Bifurcation of Discovery**

**a. Per Plaintiffs**

Plaintiffs do not oppose bifurcating discovery so that class certification discovery comes before merits discovery, so long as there is sufficiently broad discovery on all issues affecting class certification. Plaintiffs agree to meet and confer in good faith on disagreements to determine appropriate limits to class discovery.

**b. Per Yelp**

Yelp proposes that discovery (including depositions) should be bifurcated, with discovery on matters not bearing on class certification issues to be conducted only after the Court issues a decision on class certification. Phased discovery of this sort (precertification discovery first, followed later by merits discovery) is contemplated by the Manual for Complex Litigation (*see, e.g.*, §§ 21.11, 21.14), which states that allowing full merits discovery before a decision on certification “can create unnecessary and extraordinary expense and burden” (*id.* § 21.14). Yelp recognizes that the line between merits and class discovery is not always easy to delineate and agrees to meet and confer in good faith on disagreements to determine appropriate limits to class discovery.

**3. Modification to Discovery Rules**

In light of the number of named plaintiffs in this case (10), the Parties agree that the limit of 10 depositions set forth in Federal Rule of Civil Procedure 30 be modified for this case. The Parties agree that Defendant Yelp, and the named Plaintiffs, should be permitted to take a total of 20 depositions per side (excluding expert depositions), without prejudice to the Parties mutually agreeing to further modify the number of depositions, and without prejudice to either party seeking leave of the Court to take additional depositions if they believe it is necessary to do so (for example, if more named plaintiffs are added).

The Parties agree that, in the event the *Cats and Dogs* and *Levitt* actions are not consolidated, plaintiffs in both cases should coordinate depositions so that Yelp’s employees are not subject to multiple depositions or duplicative Rule 30(b)(6) topics and questions. Plaintiffs’

1 position is that although there should be coordination, each set of plaintiffs in the two cases  
2 should be entitled to take a full seven-hour deposition of each witness.

3 **D. Proposed Discovery Plan**

4 See “Scheduling,” Section XVII, below.

5 **IX. CLASS ACTIONS**

6 **A. Plaintiffs’ Statement**

7 Before filing their motion for class certification, Plaintiffs anticipate serving written  
8 discovery and taking depositions of Yelp management and sales employees directed to class  
9 certification issues. Plaintiffs do not anticipate but reserve their right to designate an expert on  
10 class certification issues. Plaintiffs propose, therefore, that discovery on class certification issues  
11 proceed for a period of four (4) months, ending on November 25, 2010, after which Plaintiffs  
12 will file their Motion for Class Certification no later than December 1, 2010. Yelp will have  
13 three (3) weeks in which to oppose the Motion (Opposition due no later than December 22,  
14 2010), and Plaintiffs will have two (2) weeks in which to reply (Reply due January 5, 2011).

15 **B. Yelp’s Statement**

16 Yelp denies that a class should be certified in this action and will oppose any motion for  
17 class certification.

18 **X. RELATED CASES**

19 The Court has ordered this case and *Levitt v. Yelp! Inc.*, No. 3:10-cv-01321-MHP (N.D.  
20 Cal.), to be related. There is a related case pending in California Superior Court, County of San  
21 Francisco, titled *Gelareh Rahbar and Rahbar Dentistry, PC v. Yelp! Inc.*, No. CGC 10 499227.

22 **XI. RELIEF**

23 **A. Plaintiffs’ Statement**

24 Plaintiffs seek injunctive relief, equitable relief, damages, punitive damages, and costs,  
25 expenses and reasonable attorneys’ fees.

26 **1. Injunctive Relief**

27 Plaintiffs seek to permanently enjoin Yelp from engaging in the unlawful practices  
28 complained of, *i.e.*, the extortion of small business owners, and the manipulation of their Yelp

1 listing pages as a means to coerce business owners to purchase advertising subscriptions from  
2 Yelp. Plaintiffs may seek this general injunctive relief through any, or several, specific means,  
3 including, but not limited to: (A) requiring Yelp to allow businesses to “opt out” of being listed  
4 on Yelp; (B) requiring Yelp to implement or discontinue certain business policies and controls;  
5 (C) preventing Yelp personnel from posting reviews; (D) preventing Yelp from compensating  
6 Yelp Elite Squad Members for reviewing businesses; (E) limiting the manner in which the  
7 “review filter” identifies and removes purportedly “untrustworthy” reviews; (F) limiting the  
8 ability of Yelp personnel to manually manipulate business listing pages; (G) requiring Yelp to  
9 uniformly enforce its Terms of Service; (H) requiring Yelp to respond to complaints about  
10 violations of its Terms of Service within a certain time; (I) requiring Yelp to establish means of  
11 live communication with a person; and (J) monitoring Yelp’s compliance with any such Court  
12 Order.

## 13 **2. Equitable Relief**

14 Plaintiffs seek an Order compelling Yelp to disgorge all monies, revenues and profits  
15 obtained by means of its unlawful acts and practices. Specifically, Plaintiffs seek, without  
16 limitation, the disgorgement of monies, revenues and profits obtained from the Sponsor Class  
17 members, who agreed to purchase Yelp advertising because of Yelp’s threats to detrimentally  
18 manipulate their pages if they refused.

## 19 **3. Damages**

20 Plaintiffs will seek damages in an amount to be determined at trial. Plaintiffs have not yet  
21 calculated damages but seek damages on the basis of Yelp’s intentional interference with  
22 Plaintiffs’ and the Class Members’ prospective economic advantages.

## 23 **4. Punitive Damages**

24 Plaintiffs will seek punitive damages based on Yelp’s malicious, fraudulent and willful  
25 conduct.

## 26 **5. Costs, Expenses and Reasonable Attorneys Fees**

27 Plaintiffs will seek their costs and expenses in bringing this action, along with their  
28 reasonable attorneys’ fees.

1           **B.     Yelp’s Statement**

2           Yelp does not currently anticipate any counterclaims but reserves the right to add such  
3 counterclaims in the event that facts arise to support them. Yelp denies that Plaintiffs are entitled  
4 to any equitable relief, damages, costs, or fees.

5           Yelp will oppose any motion for injunctive relief by Plaintiffs, including the extraordi-  
6 nary and unprecedented proposed injunctive relief described above.

7 **XII.   SETTLEMENT AND ADR**

8           **A.     General Statement**

9           Pursuant to the Court’s ADR Order (Docket No. 58), the parties were given until August  
10 19, 2010 to meet and confer with respect to the ADR process selection. Upon meeting and  
11 conferring in the context of filing this Joint Case Management Statement, the parties were unable  
12 to agree to a particular ADR process (see each party’s statement below). Thus, pursuant to ADR  
13 L.R. 3-5(c), the Parties will file a Notice of Need for ADR Telephone Conference. Pursuant to  
14 ADR L.R. 3-5(e), the Court may discuss with the Parties the selection of an option at the  
15 conference.

16           **B.     Per Plaintiffs**

17           Plaintiffs prefer Early Neutral Evaluation (ADR L.R. 5) for a variety of reasons,  
18 including the belief that there is a greater likelihood of settlement where each party is required to  
19 have present an individual with the authority to settle; that there is great value in having the  
20 Court provide a neutral evaluation of the case to the parties; and because ENE is cost efficient.

21           **C.     Per Yelp**

22           Yelp prefers to submit to non-judicial private mediation, with such mediation to be held  
23 within 45 days of a decision on a class certification motion.

24 **XIII.   CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

25           The Parties do not consent to have a magistrate judge conduct all further proceedings  
26 including trial and entry of judgment.

27  
28

1 **XIV. OTHER REFERENCES**

2 The Parties do not believe, at this time, that this case is suitable for reference to binding  
3 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

4 **XV. NARROWING OF ISSUES**

5 The Parties believe there may be opportunity and means to narrow the issues and/or the  
6 presentation of evidence at trial, but believe that it is too early now to predict how that may be  
7 accomplished. The Parties will work together to determine ways in which issues may be  
8 narrowed through agreement and/or motion practice.

9 **XVI. EXPEDITED SCHEDULE**

10 The Parties do not believe this is the type of case that can be handled on an expedited  
11 basis with streamlined procedures.

12 **XVII. SCHEDULING**

13 **A. Plaintiffs' Proposed Schedule**

Event	Plaintiffs
Opening of Class Certification Discovery	Immediately
Completion of Class Certification Discovery (Including Any Expert Discovery)	November 25, 2010
Opening of Merits Discovery	November 26, 2010
Deadline for Plaintiffs To File Motion for Class Certification	December 1, 2010
Deadline for Defendant To File Opposition to Motion for Class Certification	December 22, 2010
Deadline for Plaintiffs to File Reply in Support of Motion for Class Certification	January 5, 2011
Hearing on Motion for Class Certification	January 12, 2011 / At Court's Convenience
Closing of Merits Discovery	April 1, 2011
Designation of Experts	May 1, 2011
Closing of Expert Discovery	July 1, 2011
Deadline For Filing Dispositive Motions	August 1, 2011

1	Hearing on Dispositive Motions	September 19, 2011 / At Court's Convenience
2	Pretrial Conference	November 7, 2011
3	Trial	December 5, 2011

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5 **B. Yelp's Proposed Schedule**

6	Event	Deadline
7	Opening of Initial Phase of Fact Discovery	Discovery should be bifurcated into class certification and merits discovery. Class certification discovery would commence after the pleadings have closed ( <i>i.e.</i> , after any motions to dismiss have been decided and, if necessary, Yelp has filed an Answer).
8	Completion of Class Certification Fact Discovery	Six months from commencement of class certification discovery
9	Completion of Class Certification Expert Discovery(If Any)	Two months after completion of class certification fact discovery. During this period, the following will occur on a schedule to be worked out by the parties: disclosure of experts, service of initial expert reports, rebuttal reports, and depositions.
10	Deadline to File Any Motion for or to Deny Class Certification	If expert discovery takes place, then two months and two weeks after completion of class certification fact discovery. If there is no expert discovery, then two weeks after completion of class certification fact discovery or two weeks after the Parties have confirmed that there will be no expert discovery, whichever is later.
11	Deadline to File Any Opposition to Motion for Class Certification	Two months and eight weeks after completion of class certification fact discovery.
12	Deadline to file Any Reply on Motion for Class Certification	Twenty-one days after filing of opposition to motion for class certification.
13	Class Certification Hearing	At the Court's convenience
14	Completion of Fact Discovery	Six months after order on motion for class certification
15	Completion of Expert Discovery	Three months after completion of fact discovery. Includes disclosure of experts, service of initial expert reports and rebuttal reports, and depositions on dates to be agreed upon by the Parties.
16	Deadline for Dispositive Motions (Including <i>Daubert</i> Motions)	Two months from completion of expert discovery
17	Hearing on Dispositive Motions	At the Court's convenience
18	Pre-Trial Conference	One month after Court's ruling on dispositive motions, or as soon as possible based on the Court's schedule
19	Trial	Two weeks after Pre-Trial Conference

20  
21 **XVIII. TRIAL**

22 The Parties anticipate that the case will be tried to a jury and is likely to last  
23 approximately 10 court days.  
24

1 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

2 Plaintiffs filed their Certification and Notice of Interested Parties on March 1, 2010  
3 (Docket No. 2), and March 16, 2010 (Docket No. 11) identifying Cats and Dogs Animal  
4 Hospital, Inc., Astro Appliance Service, Bleeding Heart, LLC d/b/a Bleeding Heart Bakery,  
5 California Furnishings, Inc. d/b/a Sofa Outlet, Celibré, Inc., J.L. Ferri Entertainment, Inc. d/b/a  
6 Adult Socials, Le Petite Retreat Day Spa, LLC, San Francisco Bay Boat Cruises, LLC d/b/a  
7 Mermaids Cruise, Wag My Tail, Inc., and Zodiac Restaurant Group, Inc. d/b/a Scion Restaurant,  
8 as having a direct, pecuniary interest in the outcome of the case.

9 Pursuant to Civil Local Rule 3-16, Yelp filed its Certificate of Interested Entities or  
10 Persons on July 15, 2010. The following listed persons, firms, partnerships, corporations  
11 (including parent corporations) or other entities have either (i) a financial interest in the subject  
12 matter or controversy; or (ii) any other kind of interest that could be substantially affected by the  
13 outcome of the proceeding: Jeremy Stoppelman (co-founder and Chief Executive Officer of  
14 Yelp), Russel Simmons (co-founder and former Chief Technology Officer of Yelp), Geoff  
15 Donaker (Chief Operation Officer of Yelp), Max Levchin (Investor), Bessemer Venture Partners  
16 (Investor), DAG Ventures (Investor), Elevation Partners LP (Investor), and Admiral Insurance  
17 Company (Insurance Carrier). Yelp had previously filed, on March 24, 2010 (*see* Docket No.  
18 15-5) a Certification as to Interested Parties pursuant to the Central District of California local  
19 rule.

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1 **XX. OTHER MATTERS**

2 The Parties agree that a protective order should be entered governing the production of  
3 confidential documents and information, and that such protective order should include a  
4 “clawback” agreement for privileged materials. The Parties will meet and confer to submit a  
5 protective order for the Court’s consideration.

6 [Per Plaintiffs] Plaintiffs sent a proposed Stipulation Governing Electronic Discovery to  
7 Yelp for review. Plaintiffs would anticipate that the parties would meet and confer, and that they  
8 may wish to submit such a stipulation and proposed order for the Court’s consideration.

9

10 Respectfully Submitted,

11

Dated: July 15, 2010

COOLEY LLP

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13

/s/ Matthew D. Brown

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Matthew D. Brown (196972)  
Attorneys for Defendant YELP! INC.

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17

Dated: July 15, 2010

THE WESTON FIRM

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19

/s/ Jack Fitzgerald

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Jack Fitzgerald (257370)  
Attorneys for Plaintiffs

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