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13 **Attorneys for Plaintiffs Cats and**  
 14 **Dogs Animal Hospital, Inc.,**  
 15 **California Furnishings, Inc.,**  
 16 **Wag My Tail, Inc., and the**  
 17 **Proposed Classes**

18 **UNITED STATES DISTRICT COURT**  
 19 **NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

YELP! INC.,

Defendant.

BORIS Y. LEVITT, on behalf of himself and all  
 others similarly situated,

Plaintiff,

v.

YELP! INC.; and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 10-CV-02351 MHP

Pleading Type: Class Action  
Action Filed: February 23, 2010

**SUPPLEMENTAL STATEMENT**  
**BY THE WESTON FIRM**  
**RELATING TO APPOINTMENT**  
**OF INTERIM LEAD COUNSEL**

Case No. 10-CV-01321 MHP

Judge: Hon. Marilyn Hall Patel

1 With apologies to the Court and the parties, The Weston Firm regrets having to, but is  
2 nevertheless compelled, to advise the Court of an issue substantially bearing on the pending  
3 matter of appointment of interim class counsel. In sum, named Plaintiffs represented by The  
4 Weston Firm—including Cats and Dogs Animal Hospital, the first Plaintiff to bring a class  
5 action action against Yelp—last week terminated their relationship with the Beck & Lee firm of  
6 Miami after irreconcilable differences arose between the firms, and today filed notices to the  
7 Court of this. (*See* Dkt. Nos. 90 – 92.) The dispute between The Weston Firm and Beck & Lee  
8 has culminated in a lawsuit between the firms now pending in the Southern District of California,  
9 and arose in part because of the unprofessional behavior of the Beck & Lee attorneys toward co-  
10 and opposing counsel, recently witnessed by Mr. Weston and Mr. Fitzgerald in this *and other*  
11 *actions*, and to which both Mr. Levitt’s and Yelp’s counsel have accurately attested.<sup>1</sup>

12 By contrast, The Weston Firm would have little trouble sharing lead counsel duties with  
13 Mr. Levitt’s counsel, Ongaro Burt, a situation the Court at the last hearing seemed inclined  
14 toward, particularly because The Weston Firm has one attorney in this District and another in  
15 San Diego, an hour’s plane ride away. The Weston Firm is also located near the majority of the  
16 named Plaintiffs in Southern California, while Beck & Lee’s attorneys are in Miami. And, since

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19 <sup>1</sup> At the July 19 hearing, the Court ordered counsel to meet and confer and produce a discovery  
20 plan, but the parties returned without one. Mr. Ongaro then explained:

21 [W]hen we went to sit down, Ms. Beck Lee became agitated, was screaming at me,  
22 pointing her finger at me. Literally, her finger was this close (indicating). I asked her to  
23 please sit down and stop pointing her finger. It was a scene I have never seen in 19 years  
24 of practicing law. . . . Again, they yelled at me, saying I'm in cahoots with them and I  
25 shouldn't be on this case. Every single item we went to became very contentious. . . . And  
26 Mr. Brown can certainly attest to what happened.

27 To which Matt Brown, counsel for Yelp, replied:

28 [...] I have not had a conference quite like the one I experienced, in my years of practice  
here either. It was not productive.

*See* Transcript of July 19, 2010 Hearing, pp. 22-24, attached hereto as Exhibit A.

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1 the July 19 hearing, The Weston Firm and Mr. Ongaro have had cordial and productive  
2 telephone conversations.

3 As a result of disputes Beck & Lee has had with both Ongaro Burt and The Weston  
4 Firm, the Court's options in choosing interim lead counsel now seem relatively limited: the  
5 Court could appoint any one the three firms as sole interim lead counsel, or it could appoint both  
6 The Weston Firm and Ongaro Burt co-lead counsel.

7 To the extent the Court is inclined to appoint one firm interim lead counsel, The Weston  
8 Firm respectfully believes it should be so appointed. Cats and Dogs Animal Hospital retained  
9 The Weston Firm after its owner, Dr. Gregory Perrault, received a settlement as a class member  
10 in an unrelated class action in which The Weston Firm was appointed sole lead counsel and  
11 negotiated a \$1.35 million all-cash settlement. Cats and Dogs then filed the first putative class  
12 action lawsuit against Yelp for its unlawful business practices. Since then, as described in  
13 previous filings, The Weston Firm has dedicated a substantial amount of time and resources to  
14 prosecuting this action. The Weston Firm has primarily drafted nearly all filings on behalf of  
15 Plaintiffs, including the original and amended complaints, and has primarily conducted discovery  
16 to date running in both directions (for example, The Weston Firm exclusively interviewed the  
17 named plaintiffs in order to draft and serve interrogatory responses on their behalves).

18 There are several other reasons to appoint The Weston Firm interim class counsel  
19 (whether alone or together with Ongaro Burt). Jack Fitzgerald works and resides in Santa Clara  
20 in this District, making attendance at hearings and depositions, and any necessary in-person  
21 meetings with co- or opposing counsel, efficient and economical. And, to the extent Mr.  
22 Weston's presence may also be required, several airlines run frequent and inexpensive one-hour  
23 commuter flights from San Diego to the San Francisco and Oakland airports, and such trips do  
24 not require an overnight stay.<sup>2</sup>

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26 \_\_\_\_\_  
27 <sup>2</sup> On a normal weekday there are 39 non-stop flights from San Diego to San Francisco and 12  
28 non-stop flights from San Diego to Oakland. These flights frequently cost as little as \$49 each  
way before taxes and fees.

1 Both Mr. Fitzgerald and Mr. Weston are familiar with the rules and procedures of this  
2 Court. Mr. Fitzgerald formerly was a litigation associate at Mayer Brown's Palo Alto office, and  
3 Mr. Weston was associated with the firm now known as Robbins Geller Rudman & Dowd LLP,  
4 where he worked on complex, technology-related class actions resolved or pending in this  
5 district including the *DRAM Antitrust Litigation* and *iPod iTunes Antitrust Litigation*, as well as  
6 the *Digital Music Antitrust Litigation*, which was pending before this Court as a related action to  
7 *In re: Napster Copyright Litigation* before being transferred by the Judicial Panel on  
8 Multidistrict Litigation to the Southern District of New York.

9 Moreover, if appointed interim lead counsel, The Weston Firm will follow the guidelines  
10 for efficient and economical resolution of this action described in the previous joint submission  
11 (Dkt. No. 86), specifically:

- 12 • The Weston Firm will not seek fees greater than 25% of any settlement or judgment if it  
13 is primarily a monetary award, or 1.5 times the lodestar if settlement or judgment is primarily  
14 injunctive relief;
- 15 • The Weston Firm will not bill any costs for Westlaw or Lexis legal research;
- 16 • The Weston Firm will not charge for in-house copying;
- 17 • The Weston Firm will not bill for more than two attorneys when taking depositions, or  
18 one attorney when defending depositions;
- 19 • The Weston Firm will not bill for more than two attorneys attending hearings.

20 From the standpoint of quickly filing a consolidated amended complaint, The Weston  
21 Firm represents businesses able to assert claims on behalf of **both** putative classes defined in the  
22 amended *Cats and Dogs* complaint: the Sponsor Class seeking monetary relief and the Non-  
23 Sponsor Class seeking only injunctive relief. Mr. Levitt, however, paid Yelp no money and  
24 cannot assert claims for restitution, like those asserted in the amended *Cats and Dogs* complaint.

25 Finally, if appointed interim lead counsel (whether alone or together with Ongaro Burt),  
26 The Weston Firm will reestablish in this case a level of civility that has been missing, and will  
27 work diligently on behalf of the Classes for an optimal, speedy, and cost-efficient resolution.

1 For the foregoing reasons, The Weston Firm respectfully requests that the Court appoint  
2 it interim class counsel, whether alone or together with Ongaro Burt.

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DATED: August 16, 2010

Respectfully Submitted,

/s/Gregory S. Weston  
Gregory S. Weston

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**Animal Hospital, Inc., California**  
**Furnishings, Inc., Wag My Tail, Inc., and**  
**the Proposed Classes**