

Exhibit 1

Cats and Dogs Animal Hospital, Inc. et al. v. Yelp! Inc., Case No. 3:10-CV-02351 MHP
EXH. ISO STATEMENT OF WITHDRAWAL OF MOTION FOR APPOINTMENT OF BECK & LEE AS
INTERIM CLASS COUNSEL

BECK & LEE BUSINESS TRIAL LAWYERS

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EVANGELINE RED, JENNIFER RED, and
RACHEL WHITT, on Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

v.

UNILEVER PLC and UNILEVER UNITED
STATES, INC.,

Defendants.

Case No: 3:10-cv-00387 JW (HRLx)

Pleading Type: Class Action

**BECK & LEE BUSINESS TRIAL
LAWYERS' OPPOSITION TO NOTICE
OF TERMINATION OF BECK & LEE
AND REESE RICHMAN LLP BY
PLAINTIFFS EVANGELINE RED,
JENNIFER RED, AND RACHEL WHITT
AND [PROPOSED] ORDER**

Judge: The Honorable James Ware

1 The Notice of Termination of Beck & Lee and Reese Richman LLP by Plaintiffs
2 Evangeline Red, Jennifer Red, and Rachel Whitt and [Proposed] Order (“Termination Notice”)
3 [D.E. 70] filed by The Weston Firm (“Weston”) on August 16, 2010, is the latest episode in a
4 shocking course of unethical and bad-faith conduct undertaken by Weston in recent days.

5 Three weeks ago, Roz Sutton, presently The Weston Firm’s paralegal and sole employee,
6 indicated in conversation with one of Beck & Lee’s two attorneys, Elizabeth Lee Beck, that
7 Weston engaged in certain practices which, if true, are illegal: (1) Gregory Weston had offered a
8 “kickback” to Ms. Sutton’s roommate in return for serving as a named plaintiff in class actions;
9 (2) Mr. Weston had promised Ms. Sutton a “finder’s fee” in exchange for “signing up” her
10 roommate as a named plaintiff; and (3) The Weston Firm has agreed to compensate its non-
11 lawyer employees on a percentage basis from settlement proceeds.¹ See Declaration of Elizabeth
12 Lee Beck (“ELB Decl.”) ¶ 9. The details of Ms. Beck’s conversation with Ms. Sutton in Los
13 Angeles on Thursday, July 29, 2010, a conversation witnessed by Beck & Lee’s other attorney,
14 Jared Beck, are set forth in Ms. Beck’s concurrently filed declaration. *Id.*

15 Upon her return to Florida the next day, Ms. Beck asked her paralegal, Alejandro
16 Gutiérrez, to assemble a list of all plaintiffs in the 10 consumer class actions being jointly
17 prosecuted by Beck & Lee and Weston who originally retained Weston, which includes
18 Evangeline Red, Jennifer Red, and Rachel Whitt, the named Plaintiffs in this action. See *id.* ¶
19 11. Ms. Beck also directed Mr. Gutiérrez to obtain from Weston the contact information for
20 each of these plaintiffs, so that she could speak with them directly to investigate the
21 circumstances of how they retained Weston, and to ascertain whether any of them had been
22 promised “kickbacks” by Weston in return for serving as class representatives. *Id.* ¶¶ 10, 11.
23 Additionally, Ms. Beck investigated the whereabouts of one of Weston’s former employees,
24 Evan Lee, in preparation to contact him regarding Weston’s practices. *Id.* ¶ 13. Mr. Gutiérrez
25 proceeded to contact Weston’s office by e-mail and phone, but Weston did not respond; then, on

26 _____
27 ¹ See *U.S. v. Lerach*, CR-07-964 (C.D. Cal.) (criminal matter involving kickbacks to class
28 representatives); Cal. Bus. & Prof. Code § 6154 (prohibiting use of runners and cappers by attorneys);
Rule 1-320, Cal. Rules of Prof. Conduct (sharing of fees between lawyers and non-lawyers is illegal);
Matter of Nelson, 1990 WL 140525 (Cal. Bar. Ct. 1990) (same).

1 August 12, 2010, Weston abruptly sent 12 separate and unexplained “termination” notices to
2 Beck & Lee, demanding that Beck & Lee not communicate with any of the class representatives
3 who originally retained Weston. Declaration of Alejandro Gutiérrez Decl. ¶¶ 7-9; Declaration of
4 Jared H. Beck (“JHB Decl.”) ¶ 19 & Ex. C. Since then, Weston has refused to take Beck &
5 Lee’s calls or provide any response to its multiple e-mails and requests for information about the
6 plaintiffs who originally retained Weston. See ELB Decl. ¶¶ 14-16, JHB Decl. ¶ 22.

7 Also on August 12, the same day it sent the 12 “termination” notices, and equally without
8 any prior notice, explanation, demand or warning, Weston filed a federal lawsuit against both
9 Beck & Lee and its other co-counsel firm, Reese Richman LLP (“Reese Richman”), in the
10 Southern District of California. Through the lawsuit, Weston seeks to invalidate two separate
11 Joint Prosecution Agreements, which have been in place between and among the firms since
12 February and March 2010.²

13 The Joint Prosecution Agreements cover both the instant action, *Red et al. v. Unilever et*
14 *al.* (“*Red*”) and its related case, *Rosen et al. v. Unilever et al.*, Case No. 09-02563-JW (“*Rosen*”),
15 along with a number of other consumer class actions currently pending in California federal
16 courts. See JHB Decl. Ex. A at p. 1; Ex. B at p. 1. In its own complaint, Weston does not deny
17 signing the Joint Prosecution Agreements or jointly prosecuting *Red* and *Rosen* with Beck & Lee
18 and Reese Richman up until now. Rather, Weston takes the position that the Joint Prosecution
19 Agreements are null and void and may be terminated on the eve of a preliminary settlement
20 hearing – after Beck & Lee has expended substantial hours and costs, all with Weston’s
21 knowledge, consent, encouragement, and cooperation, see JHB Decl. ¶ 13³ – because the
22

23 ² A copy of the complaint is attached as **Exhibit D** to the Declaration of Mr. Beck which is being
24 filed concurrently with this opposition. The Joint Prosecution Agreements are attached as **Exhibits A** and
25 **B** to Mr. Beck’s declaration.

26 ³ In addition to doing the lion’s share of the research and writing on Plaintiffs’ Opposition to
27 Unilever United States Inc.’s Motion to Dismiss [D.E. 23], Beck & Lee has spearheaded the parties’
28 settlement negotiations, starting with the parties’ mediation on March 18, 2010, in San Francisco, and
culminating with the settlement term sheet signed by the parties on June 21, 2010 in San Jose. See JHB
Decl. ¶ 13.

1 plaintiffs purportedly did not consent in writing to the Joint Prosecution Agreements. *See* JHB
2 Decl. Ex. D ¶¶ 3-4.⁴

3 Weston's claim depends on a flawed reading of a California Rule of Professional
4 Conduct that applies to actual divisions of fees, *not joint prosecution agreements*. *See* JHB
5 Decl. Ex D ¶ 3 (complaint citing Cal. R. Prof. Conduct 2-200); *Cohen v. Brown*, 173 Cal. App.
6 4th 302, 320 (2009) ("We also note that rule 2-200 only requires that the client's consent to a
7 division of fees be given prior to the actual *division* of the fees. It does not require client consent
8 prior to the commencement of work by the associated in attorney/law firm." (emphasis in
9 original)). Of course, as this is a proposed class action, any division of fees between counsel
10 would have to be approved not only by the class representatives, but by the Court and then
11 subject to any objections from absent class members.

12 That aside, Weston's conduct shows a shocking lack of ethics, not to mention bad faith.
13 Ms. Sutton's conversation with Ms. Beck – and Weston's endeavor to seal off its co-counsel
14 from communicating with the named plaintiffs in the wake of this conversation – raises serious
15 concerns about Weston's fitness to serve as class counsel. *See Brame v. Ray Bills Fin. Corp.*, 85
16 F.R.D. 568, 577 (N.D.N.Y. 1979) ("the ethical competence of attorneys desiring to represent a
17 class is relevant to the question of adequacy of representation"); *Carlisle v. LTV Electrosystems,*
18 *Inc.*, 54 F.R.D. 237, 240 (N.D. Tex. 1972) (denying class certification where counsel solicited
19 class representatives). Moreover, Weston has demonstrated its utter disregard for agreements it
20 acknowledges having signed, as well as its willingness to adopt frivolous legal positions. On
21 these grounds, Beck & Lee submits that Weston should be disqualified from continuing to
22 represent the proposed Classes.

23 Also pertinent to the sudden timing of Weston's actions is the fact that the Court is
24 scheduled to hear the parties' Motion for Preliminary Approval of Settlement on September 27,
25 2010. *See* Order Setting Hearing on Motion for Preliminary Approval of Settlement [D.E. 69].

26
27 ⁴ Other than the 12 form "termination" letters signed and sent by Weston, none of the plaintiffs
28 have contacted Beck & Lee to express dissatisfaction with the representation or to seek termination of the
attorney-client relationship. *See* ELB Decl. ¶ 15; JHB Decl. ¶ 19.

1 The preliminary approval motion is due by September 3, 2010. *See id.* Among other things,
2 Weston appears to be trying to gain leverage on the eve of settlement by: (1) purporting to fire its
3 co-counsel; and then (2) suing them in its own backyard.⁵

4 Weston's conduct is beyond the pale. Weston should not be permitted to abuse the
5 judicial system, and terminate its co-counsel in a retaliatory manner on the eve of settlement.
6 Beck & Lee respectfully requests that the Court: (1) strike the Notice of Termination of Beck &
7 Lee and Reese Richman LLP by Plaintiffs Evangeline Red, Jennifer Red, and Rachel Whitt and
8 [Proposed] Order; (2) disqualify The Weston Firm as counsel for the proposed Classes; and (3)
9 grant such other and further relief as may be necessary and proper.

10 DATED: August 18, 2010

11 Respectfully Submitted,

12
13 s/Elizabeth Lee Beck
Elizabeth Lee Beck

14 **BECK & LEE BUSINESS TRIAL**
15 **LAWYERS**

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19 Counsel for Plaintiffs and the Proposed
20 Class

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26 ⁵ In addition to bringing suit in San Diego against Beck & Lee and Reese Richman, Weston also
27 filed unauthorized "Notices of Termination" against Beck & Lee on August 16 and 17 in five other
28 federal class actions covered by the firms' Joint Prosecution Agreement, and then filed an unauthorized
pleading and memorandum stripping Beck & Lee from the caption and signature pages in two of those
cases. JHB Decl. ¶ 21.