

Exhibit 3

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

JARED H. BECK (233743)
ELIZABETH LEE BECK (233742)
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, FL 33130
Telephone: 305 789 0072
Facsimile: 786 664 3334
jared@beckandlee.com
elizabeth@beckandlee.com

Counsel for Plaintiffs and the Proposed Classes

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

**DECLARATION OF JARED H. BECK IN
SUPPORT OF BECK & LEE BUSINESS
TRIAL LAWYERS' OPPOSITION TO
NOTICE OF TERMINATION OF BECK
& LEE BY PLAINTIFFS EVANGELINE
RED, JENNIFER RED, AND RACHEL
WHITT AND [PROPOSED] ORDER**

Judge: The Honorable James Ware

1 I, Jared H. Beck, declare:

2 1. My name is Jared H. Beck. I am over 18 years of age, and I have personal
3 knowledge of the facts set forth in this Declaration.

4 2. I am an active member of the California and Florida Bars, and have worked as an
5 attorney since 2004. From 2004 to 2005, I worked as an associate at Quinn Emanuel Urquhart
6 Oliver & Hedges, LLP in Los Angeles, California. In 2005, I moved to Miami, Florida, where I
7 worked as an associate at Morgan Lewis & Bockius until 2007. In July of that year, I started a
8 law firm, Beck & Lee Business Trial Lawyers (“Beck & Lee”), in Miami with my wife and law
9 partner, Elizabeth Lee Beck (“Ms. Beck”), which we have co-managed continuously until the
10 present.

11 3. I have known Gregory Weston (“Mr. Weston”) since 2001, when we met as first-
12 year law students. After graduation, we kept in touch and would periodically talk on the phone,
13 exchange e-mail correspondence, and meet each other in person.

14 4. My understanding is that Mr. Weston was employed as an associate attorney at
15 the law firm formerly known as Lerach Coughlin Stoia from sometime in 2005 until
16 approximately January 2008, when he formed his own solo practice, The Weston Firm.

17 5. After Mr. Weston started his firm, we worked together on two or three real estate
18 matters in Florida and California.

19 6. In approximately May or June 2009, Mr. Weston approached me regarding an
20 investigation he was conducting into the food-labeling practices of Unilever PLC. Mr. Weston
21 asked if Beck & Lee would be interested in assisting with the investigation and potentially
22 jointly prosecuting the matter with his firm.

23 7. I agreed to Mr. Weston’s proposal and proceeded, along with Ms. Beck, to assist
24 him with the investigation, which culminated on October 28, 2009, in the filing of a class action,
25 *Red et al. v. Unilever United States, Inc. et al.*, Case No. 2:09-cv-07855-MMM-AGR, in the
26 Central District of California. Eventually, the case was transferred to the Honorable James Ware
27 in the Northern District of California, San Jose Division and assigned the new case number 5:10-
28 cv-00387-JW. On June 21, 2010, the parties reached a preliminary settlement; the motion for

1 preliminary approval is presently due by September 3, 2010, and Judge Ware has set a hearing
2 on the motion for September 27, 2010.

3 8. Shortly after filing *Red v. Unilever*, The Weston Firm and Beck & Lee began
4 working together on other food-labeling investigations and cases.

5 9. In February 2010, The Weston Firm, Beck & Lee, and a third law firm, Reese
6 Richman LLP (“Reese Richman”), signed a Joint Prosecution Agreement (“February JPA”)
7 covering the three firms’ joint prosecution of the *Red v. Unilever* matter, along with two other
8 consumer class actions. A true copy of the February JPA is attached hereto as **Exhibit A**.

9 10. In March 2010, The Weston Firm and Beck & Lee signed a Joint Prosecution
10 Agreement (“March JPA”) formalizing their cooperation with respect to their joint prosecution
11 of eight consumer class actions. Mr. Weston extensively negotiated the terms of this agreement
12 with Ms. Beck. The Weston Firm and Beck & Lee subsequently signed addenda to the March
13 JPA in May, June, and July 2010. True copies of the March JPA and amendments are attached
14 hereto as **Exhibit B**.

15 11. Jack Fitzgerald (“Mr. Fitzgerald”) joined The Weston Firm as its second attorney
16 in February 2010.

17 12. From its inception, the relationship between The Weston Firm and Beck & Lee
18 appeared to be a highly cooperative and productive one. The attorneys communicated on a daily
19 or near-daily basis and participated in weekly conference calls, extensively cooperating with one
20 another on litigation strategy as well as in the drafting of pleadings, motions, and other papers.
21 Beck & Lee paid the bulk of costs associated with prosecuting the joint actions, all with The
22 Weston Firm’s knowledge and encouragement, and reimbursed The Weston Firm for costs
23 which it invoiced to Beck & Lee. Both firms were originally retained by clients to represent
24 them as named plaintiffs, and it was understood that such individuals – no matter which firm
25 signed the retainer agreement and interacted with the client – would have to consent to being
26 represented by both The Weston Firm and Beck & Lee in any class action subject to the March
27 JPA.

28 13. With respect to the *Red v. Unilever* action, Beck & Lee has expended substantial
hours and costs, including doing the vast majority of research and writing on Plaintiffs’

1 Opposition to Unilever United States Inc.'s Motion to Dismiss, as well as spearheading the
2 settlement negotiations, starting with the parties' mediation March 18, 2010, and culminating
3 with the settlement term sheet signed by the parties on June 21, 2010 in San Jose. This was all
4 done with The Weston Firm's knowledge, consent, encouragement, and cooperation. All of the
5 Plaintiffs in this action originally retained The Weston Firm, and Beck & Lee has never met or
6 had contact with any of them.

7 14. On July 29, 2010, I presented oral argument at the hearing on a motion to dismiss
8 in another of The Weston Firm and Beck & Lee's joint cases, *Peviani v. Hostess Brands Inc.*,
9 Case No. CV 10-2303-CBM (VBKx), before the Honorable Consuelo B. Marshall in the Central
10 District of California. After the hearing, which ended at approximately 10 a.m., The Weston
11 Firm's sole employee and office assistant, Roz Sutton ("Ms. Sutton"), met Ms. Beck and me at
12 the courthouse in downtown Los Angeles to give us a ride back to our hotel. Mr. Weston was
13 not present.

14 15. During the ride, Ms. Sutton and Ms. Beck conversed with one another in the front
15 of the car while I sat in the backseat. I heard Ms. Sutton describe her experiences working at
16 The Weston Firm to Ms. Beck. Ms. Sutton described the terms of her employment, and
17 mentioned that she had been promised a "bonus" by Mr. Weston, because she had convinced her
18 roommate, June Higginbotham ("Ms. Higginbotham"), to serve as a named plaintiff in class
19 action litigation. Ms. Sutton also mentioned that Ms. Higginbotham stood to gain a fee from The
20 Weston Firm in exchange for serving as a class representative; when questioned by Ms. Beck,
21 Ms. Sutton indicated that this fee was separate from any incentive award to be awarded by a
22 court, and that the fee was not mentioned in her attorney-client agreement but based on a
23 "handshake" with Mr. Weston. Ms. Sutton also mentioned that under the terms of her
24 employment agreement, she stood to gain a bonus from the proceeds of any case settlement,
25 provided she billed a certain number of hours. This was the first time I received any indication
26 that The Weston Firm had engaged in or was engaging in practices of such a nature.

27 16. Immediately after Ms. Sutton dropped us off at the hotel, I had a lengthy
28 discussion with Ms. Beck about how to handle the issue. We concluded that we were duty-
bound to investigate: (1) the truth of Ms. Sutton's comments; and (2) if they were true, the extent

1 to which the plaintiffs who originally retained The Weston Firm in the jointly prosecuted cases
2 were involved. We agreed to start the investigation by obtaining the contact information for the
3 named plaintiffs originally retaining The Weston Firm, and then speaking with them directly.

4 17. Upon our return to Miami, on Friday, July 30, 2010, Ms. Beck directed our
5 paralegal, Alejandro Gutierrez, to begin the process of obtaining the clients' contact information
6 from The Weston Firm.

7 18. On Sunday, August 1, 2010, Ms. Beck and I travelled to the Tampa area, where
8 we had three days of depositions to defend and take, on August 2, 3, and 5, in another matter,
9 *BCJJ, LLC v. LeFevre et al.*, Case No. 8:09-cv-00551-EAK-EAJ (M.D. Fla.). Both of us spent
10 the entire week in the Tampa area with the exception of August 5, when I travelled between
11 Tampa and Miami to attend a hearing that morning in another matter.

12 19. Without any prior explanation or notice, on August 12, 2010 at approximately
13 midnight, I received an e-mail from Mr. Weston attaching 12 separate letters in a single pdf file.
14 A true copy of the e-mail and attachment is attached hereto as **Exhibit C**. With one exception, I
15 have never met or had any contact with any of the individuals or businesses referenced in these
16 letters. The one exception is Dr. Gregory Perrault, who is referenced in the 10th letter in the pdf
17 file, and who is the proprietor of Cats & Dogs Animal Hospital, the lead plaintiff in an action
18 being jointly prosecuted by The Weston Firm and Beck & Lee, and styled *Cats & Dogs Animal*
19 *Hospital et al. v. Yelp!, Inc.*, Case No. 3:10-cv-02351-MHP (N.D. Cal.). Ms. Beck and I have
20 spoken and e-mailed with Dr. Perrault on a number of occasions, and we met him in person in
21 San Francisco on July 17, 2010, where he expressed a high degree of satisfaction with Beck &
22 Lee's representation. In all our interactions, Dr. Perrault has never expressed dissatisfaction or a
23 desire to terminate Beck & Lee as his counsel. I have never offered anything of value to Dr.
24 Perrault or any other class action plaintiff in exchange for their participation in a class action
25 lawsuit. The individuals and businesses referenced in Exhibit C are all plaintiffs who originally
26 retained The Weston Firm.

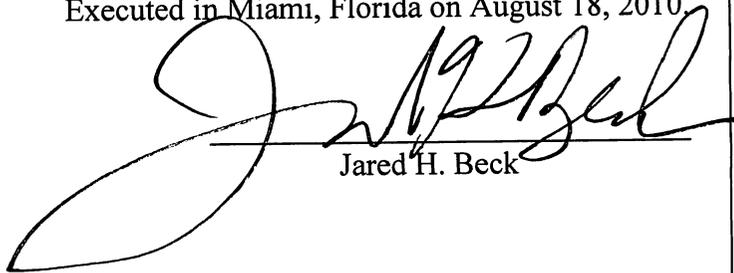
27 20. On August 13, 2010, Beck & Lee was served with a Complaint filed by The
28 Weston Firm in the Southern District of California naming both Beck & Lee and Reese Richman
as defendants. A true copy of the Complaint is attached hereto as **Exhibit D**.

1 21. The electronic docket for six of the class actions covered by the March JPA show
2 that The Weston Firm filed "Notices of Termination" of Beck & Lee in these cases on August 16
3 and 17, 2010. This was done without Beck & Lee's authorization. In two of those actions, The
4 Weston Firm filed an unauthorized pleading and an unauthorized memorandum on August 13,
5 2010, stripping Beck & Lee from the caption and signature pages.

6 22. Since receiving the e-mail from Mr. Weston on August 12, Ms. Beck and I have
7 tried to contact Mr. Weston and Mr. Fitzgerald by phone and e-mail multiple times. Our
8 attempts have gone unanswered.

9 I declare under penalty of perjury under the laws of the United States that the foregoing is
10 true and correct.

11
12 Executed in Miami, Florida on August 18, 2010.

13 
14 _____
15 Jared H. Beck
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DATED: August 18, 2010

2 Respectfully Submitted,

3 s/Elizabeth Lee Beck
4 Elizabeth Lee Beck

5 **BECK & LEE BUSINESS TRIAL**
6 **LAWYERS**

7 JARED H. BECK
8 ELIZABETH LEE BECK
9 28 West Flagler Street, Suite 555
10 Miami, FL 33130
11 Telephone: 305 789 0072
12 Facsimile: 786 664 3334

13 Counsel for Plaintiffs and the Proposed
14 Class

15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

JOINT PROSECUTION AGREEMENT

This Joint Prosecution Agreement ("Agreement") is made by and between the law firm of Reese Richman LLP ("Reese Richman") and the law firms of Weston Firm ("Weston") and Beck & Lee Business Trial Lawyers ("Beck & Lee") (collectively "Weston/Beck"). Reese Richman and Weston/Beck are referred to collectively in this Agreement as the "Parties" or individually as a "Party."

WHEREAS, currently pending are the following proposed class action lawsuits regarding partially hydrogenated oils and trans-fat filed by one or more of the Parties:

Rosen v. Unilever United States, Inc., No. 09-cv-2563 JW (N.D. Cal.) ("*Rosen*")

Red et al. v. Unilever United States, Inc. et al., 10-cv-387 CB (N.D. Cal.) (originally No. 09-cv-07855 MMM (C.D. Cal.)) ("*Red*")

Higginbotham et al. v. Kellogg Co et al., No. 10-cv-225 MMA (S.D. Cal.) ("*Higginbotham*")

Collectively, the *Rosen*, *Red* and *Higginbotham* cases and any other actions filed against Unilever, Kellogg, and their subsidiaries by the Parties related to the claims asserted in the *Rosen*, *Red*, and *Higginbotham* actions are referred to herein as the Partially Hydrogenated Oil ("PHO") Litigation.

These proposed class action lawsuits arise from defendants alleged unlawful acts and practices in connection with misrepresentations regarding the quality of certain of its food products, in that the defendants conveyed that the food is nutritious or otherwise healthy, when in fact it is not given that it contains partially hydrogenated oil and trans-fat.

WHEREAS, the Parties have engaged in extensive negotiations regarding an organizational structure to most efficiently prosecute the above-referenced actions. The Parties believe it is in the best interests of their clients, and the classes they seek to represent, to amicably resolve any organizational disputes among them in order to cooperate most efficiently and productively in prosecuting such actions.

The Parties AGREE AS FOLLOWS:

1. Organizational Structure. It is understood and agreed that Reese Richman and one of the two firms that comprise the Weston/Beck group will seek an order from the court appointing them to serve as co-lead counsel for the plaintiffs, and the proposed classes, in these actions, and in any related actions subsequently filed on the terms and conditions set forth herein. Additionally, within five (5) business days of execution of this Agreement, Weston and Beck & Lee shall file a Notice of Appearance in the *Rosen* matter and Reese Richman shall file a Notice of Appearance in the *Red* and *Higginbotham* matters.

2. Joint Efforts and Cooperation. The Parties jointly shall explore, develop and prosecute (in their joint discretion) the PHO Litigations. The Parties expressly acknowledge and agree that all major decisions concerning the filing, prosecution or resolution of PHO lawsuits, including, without limitation, discovery, case management, strategy, trial tactics, settlement, retention of experts, or any press communications, shall be made jointly between them. Any settlement of any of the PHO Litigations on a class wide basis requires approval of the Parties - *i.e.* both Reese Richman and Weston/Beck. Neither Party has promised, warranted or guaranteed any particular result from the PHO

Litigation. Each Party expressly acknowledges and agrees that the investigation and prosecution of PHO Litigation involves considerable risk and is speculative. Each Party will use its best efforts to effectuate the activities contemplated hereby, and achieve the optimum recovery for the clients, the classes they seek to represent and the law firms, and to fulfill the terms and conditions of this Agreement.

3. Fee Sharing. After reimbursement of all expenses and costs, as well as any payments to other counsel who may become involved in the PHO Litigation (and have compensable time and reimbursable expenses) but not including any referral fee obligations of Reese Richman or the firms that comprise Weston/Beck (as such referral fee obligations shall be paid out of the respective fees separately by Reese Richman or Weston/Beck), all fees awarded by the court shall be divided among the Parties, with fifty percent (50%) to Reese Richman and fifty percent (50%) to Weston/Beck. Any referral fee obligations by Reese Richman or the firms that comprise Weston/Beck shall be paid from their respective 50/50% split, and not be treated as an expense, cost or payment to other counsel as stated above. The Parties will each undertake substantive work sufficient to justify the respective allocation of attorneys' lodestar (*i.e.* hours multiplied by hourly rates) and costs referenced herein. In the event that any Party fails to do so, the Parties acknowledge that the percentage allocation is subject to an appropriate adjustment to accurately reflect the substantive work performed. The Parties agree to negotiate in good faith on the amount of any necessary adjustment. The Parties further acknowledge that, for any adjustment to occur, the firm subject to the proposed adjustment must be first put on notice that one may be requested (based on results of monthly lodestar and expense reporting referenced herein) and be given an opportunity to correct any discrepancy that may support an adjustment. Finally, the Parties agree that no Party will undertake significant work without the prior consent and approval of all Parties.

4. Cost Sharing. The Parties shall jointly approve the employment of experts and other major costs, (defined as any single expense over \$500). Reese Richman shall be responsible for the payment of fifty percent (50%) of the costs connected with the PHO lawsuits, and Weston/Beck shall together be responsible for the payment of fifty percent (50%) of the costs. However, each firm will be responsible for their own staff, meals, copies, faxes, research costs, telephone and various internal costs.

The Parties shall promptly pay their share of any cost, including by promptly reimbursing any other Party. Failure of any Party to pay their share of costs will result in the accrual of an annual interest rate on the unpaid costs at the rate of 15% per year, compounded yearly, and shall be deducted from any final recovery of the Party in such arrears. This interest rate penalty shall not apply to any major cost incurred by a Party without the joint approval of all other Parties. Weston/Beck will be responsible for recordkeeping of cost reimbursement.

5. Time-Keeping. Each Party shall maintain contemporaneous time records to keep track of their respective lodestar (attorney and paralegal hours x \$ hourly rates per each attorney/paralegal), as well as all out-of-pocket expenses ("Litigation Time and Expenses"). The Parties shall exchange their Litigation Time and Expenses on a monthly basis, on the 15th to the 25th of each month. If any of these days falls on a weekend or a holiday, the reports shall be exchanged on the next business day. Reese Richman shall be in charge of maintaining the Litigation Time and Expense reports, and making sure that each Party, and other counsel that may become involved in the PHO Litigation, provides its report on a timely basis. Reese Richman shall provide a copy of the Litigation Time Expense reports on the 1st of each month (or the next business day thereafter if the 1st of the month falls on a weekend or a holiday). The failure to timely submit Litigation Time and Expense reports may result in non-payment of time and reimbursement of expenses.

6. Arbitration. Any dispute or controversy to enforce or interpret any term or provision of this Agreement or to recover any sum due pursuant to this Agreement shall be subject to binding, non-appealable, arbitration to be conducted with Judicial Arbitration Mediation Services ("JAMS") with each Party to select an arbitrator from the panel supplied by the California JAMS office and JAMS to provide the third arbitrator from the same panel. Arbitration shall be brought and conducted in Los Angeles, California. Such arbitration shall be the sole remedy to resolve disputes regarding the interpretation or enforcement of any term or provision of this Agreement or to recover any sum due pursuant to this Agreement. Each Party expressly waives any right to seek or obtain punitive or any form of exemplary damages from the other Party.

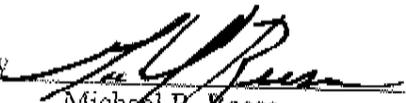
7. Contingent Applicability. This Agreement and its effectiveness is expressly contingent on the Parties' respective client's approval of this Agreement.

8. Integration. Each Party expressly acknowledges and agrees that it has not acted or relied upon any inducement, representation, warranty, statement, promise and/or agreement not expressly set forth in this Agreement, and that in any dispute or controversy between them connected with the subject matter of this Agreement, each Party expressly waives any right to look beyond the express language contained in this Agreement. Each Party acknowledges and agrees that this Agreement was negotiated voluntarily and freely between it and the other Party.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement, such may be signed in counterparts and delivered via facsimile.

DATED: February 23, 2010

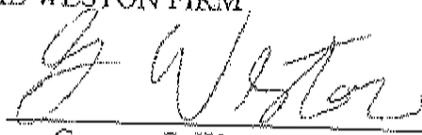
REESE RICHMAN LLP

By 
Michael R. Keese

Counsel in the *Rosen* Action

DATED: February 18, 2010

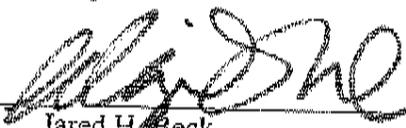
THE WESTON FIRM

By 
Gregory S. Weston

Counsel in the *Red* and *Higginbotham* Actions

DATED: February 19, 2010

BECK & LEE BUSINESS TRIAL
LAWYERS

By 
Jared H. Beck
Elizabeth Lee Beck

Counsel in the *Red* and *Higginbotham* Actions

Exhibit B

JOINT PROSECUTION AGREEMENT

This Joint Prosecution Agreement (“Agreement”) is made by and between the law firms and/or attorneys of:

- The Weston Firm (“Weston”); and
- Beck & Lee Business Trial Lawyers (“Beck”).

Weston and Beck are referred to collectively in this Agreement as the “Parties” or individually as a “Party.”

WHEREAS, Weston and Beck are law firms based in San Diego, CA and Miami, FL, respectively;

WHEREAS, the Parties seek to cooperate as a joint venture to prosecute civil lawsuits, including, but not limited to, proposed class actions, private attorney general actions, and mass actions, throughout the country and abroad, as is necessary;

WHEREAS, the Parties seek to clarify the duties, responsibilities and entitlements of each Party;

WHEREAS, currently pending are the following proposed class action lawsuits (“the Actions”) where the Parties have contributed or will contribute:

Rosen v. Unilever United States, Inc., No. 09-cv-2563 JW (N.D. Cal.) (“*Rosen*”)

Red et al. v. Unilever United States, Inc. et al., 10-cv-387 CB (N.D. Cal.) (originally No. 09-cv-07855 MMM (C.D. Cal.)) (“*Red*”)

Higginbotham et al. v. Kellogg Co et al., No. 10-cv-225 MMA (S.D. Cal.) (“*Higginbotham*”)

Cats and Dogs Animal Hospital, Inc. v. Yelp! Inc., No. CV10-1340 VBF (SSx)

Yamul v. Smart Balance Inc., CV10-01028 GW (AGR)

Chacanaca et al. v. The Quaker Oats Co. C10-00502 RS

Bahn et al. v. Nestle U.S.A. CV10-01022 AHM(VBKX)

Red et al. v. Kroger Co. 2:10-cv-1025 DMG (MANX)

Collectively, the above cases are referred to herein as the Joint Prosecution Litigation.

[continued on the next page]

WHEREAS, the Parties have engaged in extensive negotiations regarding an organizational structure to most efficiently prosecute the above-referenced actions. The Parties believe it is in the best interests of their clients, and the classes they seek to represent, to memorialize the duties, responsibilities and entitlements of each Party in order to cooperate most efficiently and productively in prosecuting such actions.

The Parties AGREE AS FOLLOWS:

1. Organizational Structure. It is understood and agreed that Weston and Beck will seek an order from the court appointing them to serve as co-lead counsel for the plaintiffs, and the proposed classes, in these actions. Each party has a duty to file appropriate Notices of Appearance in any case in the Joint Prosecution Agreement.
2. Joint Efforts and Cooperation. The Parties jointly shall explore, develop and prosecute (in their joint discretion) the Joint Prosecution Litigation. The Parties expressly acknowledge and agree that all major decisions concerning the filing, prosecution or resolution of Joint Prosecution Litigation lawsuits, including, without limitation, discovery, case management, strategy, trial tactics, settlement, retention of experts, or any press communications, shall be made jointly between them. No Party has promised, warranted or guaranteed any particular result from the Joint Prosecution Litigation. Each Party expressly acknowledges and agrees that the investigation and prosecution of Joint Prosecution Litigation involves considerable risk and is speculative. Each Party will use its best efforts to effectuate the activities contemplated hereby, and achieve the optimum recovery for the clients, the classes they seek to represent and the law firms, and to fulfill the terms and conditions of this Agreement.
3. Amendments. This Agreement may be amended to add additional cases to the Joint Prosecution Litigation upon the agreement and execution of an Addendum by all Parties ("Additional Cases"), in which case the terms of this Agreement shall apply to the Additional Cases.
4. Fee Sharing. After reimbursement of all expenses and costs, as well as any payments to other counsel who may become involved in a lawsuit in the Joint Prosecution Litigation (and have compensable time and reimbursable expenses), if any, all fees awarded by the court to the Parties shall be divided among the Parties according to the following:

Fees will be allocated according to a pro rata share of the work done by each Party as compared to the work done on a lawsuit in total.

The Parties anticipate that Weston will do roughly fifty percent (50%) of the work and that Beck will do roughly fifty percent (50%) of the work.

Any referral fee obligations by Beck or Weston shall be paid from their respective 50/50% split, and not be treated as an expense, cost or payment to other counsel as stated above.

The Parties will each undertake substantive work sufficient to justify the respective allocation of attorneys' lodestar (*i.e.* hours multiplied by hourly rates determined using the *Laffey* Matrix) and costs referenced herein. In the event that any Party fails to do so, the Parties acknowledge that the percentage allocation is subject to an appropriate adjustment to accurately reflect the substantive work performed. The Parties agree to negotiate in good faith on the amount of any necessary adjustment. The Parties further acknowledge that, for any adjustment to occur, the firm subject to the proposed adjustment must be first put on notice that one may be requested (based on results of monthly lodestar and expense reporting referenced herein) and be given an opportunity

to correct any discrepancy that may support an adjustment. Finally, the Parties agree that no Party will undertake significant work without the prior consent and approval of all Parties.

5. Withdrawal. In the event any Party withdraws as counsel from any case in the Joint Prosecution Litigation, the following shall apply to the fees allocation for that case only: the withdrawn Party shall be compensated for the work done on that case up until withdrawal at the rate of \$35/hour, from any recovery obtained at the end of the case, after reimbursement of all expenses and costs, as well as any payments to other counsel who may become involved in a lawsuit in the Joint Prosecution Litigation (and have compensable time and reimbursable expenses), if any. If there is no recovery, then the withdrawn Party shall be entitled to nothing for the work done, as the case has not generated any fees for Party.

Instances of withdrawal: if any Party takes on full-time salaried work, then that would constitute a withdrawal. Any such Party shall promptly file a Notice of Withdrawal as counsel.

6. Cost Sharing. The Parties shall jointly approve the employment of experts and other major costs, (defined as any single expense over \$500). Beck shall be responsible for the payment of fifty percent (50%) of the costs connected with the Joint Prosecution Litigation, and Weston shall be responsible for the payment of fifty percent (50%) of the costs. However, each firm will be responsible for their own staff, meals, travel, copies, faxes, research costs, telephone and various internal costs.

7. Time-Keeping. Each Party shall maintain contemporaneous time records to keep track of their respective lodestar (attorney and paralegal hours x \$ hourly rates per each attorney/paralegal under the *Laffey* Matrix adjusted for the venue of the action), as well as all out-of-pocket expenses ("Litigation Time and Expenses"). The Parties shall exchange their Litigation Time and Expenses on a monthly basis, on the 15th of every other month, starting March 15, 2010. If any of these days falls on a weekend or a holiday, the reports shall be exchanged on the next business day. Weston shall be in charge of maintaining the Litigation Time and Expense reports, and making sure that each Party, and other counsel that may become involved in the Joint Prosecution Litigation, provides its report on a timely basis. The failure to timely submit Litigation Time and Expense reports may result in non-payment of time and reimbursement of expenses.

8. Arbitration. Any dispute or controversy to enforce or interpret any term or provision of this Agreement or to recover any sum due pursuant to this Agreement shall be subject to binding, non-appealable, arbitration to be conducted with Judicial Arbitration Mediation Services ("JAMS") with each Party to select an arbitrator from the panel supplied by the Los Angeles JAMS office and JAMS to provide the third arbitrator from the same panel. Arbitration shall be brought and conducted in Los Angeles, CA. Such arbitration shall be the sole remedy to resolve disputes regarding the interpretation or enforcement of any term or provision of this Agreement or to recover any sum due pursuant to this Agreement. Each Party expressly waives any right to seek or obtain punitive or any form of exemplary damages from the other Party.

9. Integration. Each Party expressly acknowledges and agrees that it has not acted or relied upon any inducement, representation, warranty, statement, promise and/or agreement not expressly set forth in this Agreement, and that in any dispute or controversy between them connected with the subject matter of this Agreement, each Party expressly waives any right to look beyond the express language contained in this

Agreement. Each Party acknowledges and agrees that this Agreement was negotiated voluntarily and freely between it and the other Party.

10. Minimum Fee. Because The Weston Firm has at present in several of the Actions billed a large majority of the hours, notwithstanding the formula for allocation of fees described above, Beck shall nonetheless receive at minimum one third of the fees awarded to the Parties for any action where a preliminary and/or final agreement of settlement is signed by the Parties and the respective defendant(s), or a judgment is entered, within 1.5 years (eighteen months) of the date of the filing of the complaint. In consideration for the above, Beck agrees to pay Weston's half of the filing and service fees for the Actions, and to make all reasonable efforts to "catch up" to Weston until it has billed at least one third of the hours. As part of this effort, on all the food product cases other than the Unilever actions, Beck will do the first draft of the respective motion to dismiss opposition briefs.

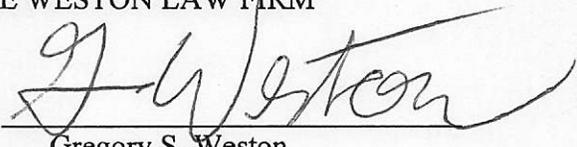
This "Minimum Fee" shall also apply to the benefit of Weston, in the event of a settlement or judgment within 1.5 years (eighteen months) of the date of the filing of the complaint, and Beck has billed hours that would result in Weston's fees being less than a third according to the allocation of fees described above.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement, such may be signed in counterparts and delivered via e-mail or facsimile.

DATED: March 7, 2010

THE WESTON LAW FIRM

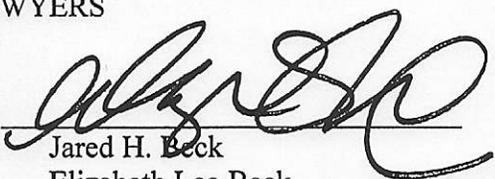
By


Gregory S. Weston

DATED: March 7, 2010

BECK & LEE BUSINESS TRIAL
LAWYERS

By


Jared H. Beck
Elizabeth Lee Beck

This Fee-Sharing Agreement ("Agreement") is made by and between the law firms and/or attorneys of:

- The Weston Firm ("WF");
- Beck and Lee Business Trial Lawyers ("BL")

WF and BL are referred to collectively in this Agreement as the "Parties" or individually as a "Party."

The Agreement incorporates all of the terms of the previous 3/7/10 agreement between the Parties, attached as Exhibit A, except as follows:

"The Actions" consist of actions brought for false marking of patents; the contemplated antitrust action against Adobe; and the contemplated actions against ConAgra, Kellogg, McNeil Nutrition/Johnson and Johnson, Hostess, Van De Kamps, and Smucker for false or misleading labels and advertising; and the contemplated action against Citysearch for unfair business practices.

Payments from the corporation that serves as a plaintiff in the patent false marking actions will be awarded in the same manner as legal fees rather than according to the ownership of the corporation, whose ownership shall be 25% each to Jared Beck, Elizabeth Lee Beck, Jack Fitzgerald, and Gregory Weston. The parties will seek to apportion legal fees and payments from the corporation plaintiff directly to its owner parties in a manner that minimizes taxes within the limits imposed by applicable laws.

DATED: May 25, 2010

THE WESTON FIRM

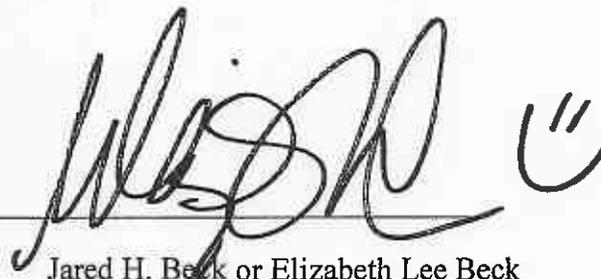
By



Gregory S. Weston

DATED: May 25, 2010

By



Jared H. Beck or Elizabeth Lee Beck

EXHIBIT A

JOINT PROSECUTION AGREEMENT

This Joint Prosecution Agreement (“Agreement”) is made by and between the law firms and/or attorneys of:

- The Weston Firm (“Weston”); and
- Beck & Lee Business Trial Lawyers (“Beck”).

Weston and Beck are referred to collectively in this Agreement as the “Parties” or individually as a “Party.”

WHEREAS, Weston and Beck are law firms based in San Diego, CA and Miami, FL, respectively;

WHEREAS, the Parties seek to cooperate as a joint venture to prosecute civil lawsuits, including, but not limited to, proposed class actions, private attorney general actions, and mass actions, throughout the country and abroad, as is necessary;

WHEREAS, the Parties seek to clarify the duties, responsibilities and entitlements of each Party;

WHEREAS, currently pending are the following proposed class action lawsuits (“the Actions”) where the Parties have contributed or will contribute:

Rosen v. Unilever United States, Inc., No. 09-cv-2563 JW (N.D. Cal.) (“*Rosen*”)

Red et al. v. Unilever United States, Inc. et al., 10-cv-387 CB (N.D. Cal.) (originally No. 09-cv-07855 MMM (C.D. Cal.)) (“*Red*”)

Higginbotham et al. v. Kellogg Co et al., No. 10-cv-225 MMA (S.D. Cal.) (“*Higginbotham*”)

Cats and Dogs Animal Hospital, Inc. v. Yelp! Inc., No. CV10-1340 VBF (SSx)

Yamul v. Smart Balance Inc., CV10-01028 GW (AGR)

Chacanaca et al. v. The Quaker Oats Co. C10-00502 RS

Bahn et al. v. Nestle U.S.A. CV10-01022 AHM(VBKX)

Red et al. v. Kroger Co. 2:10-cv-1025 DMG (MANX)

Collectively, the above cases are referred to herein as the Joint Prosecution Litigation.

[continued on the next page]

WHEREAS, the Parties have engaged in extensive negotiations regarding an organizational structure to most efficiently prosecute the above-referenced actions. The Parties believe it is in the best interests of their clients, and the classes they seek to represent, to memorialize the duties, responsibilities and entitlements of each Party in order to cooperate most efficiently and productively in prosecuting such actions.

The Parties AGREE AS FOLLOWS:

1. Organizational Structure. It is understood and agreed that Weston and Beck will seek an order from the court appointing them to serve as co-lead counsel for the plaintiffs, and the proposed classes, in these actions. Each party has a duty to file appropriate Notices of Appearance in any case in the Joint Prosecution Agreement.
2. Joint Efforts and Cooperation. The Parties jointly shall explore, develop and prosecute (in their joint discretion) the Joint Prosecution Litigation. The Parties expressly acknowledge and agree that all major decisions concerning the filing, prosecution or resolution of Joint Prosecution Litigation lawsuits, including, without limitation, discovery, case management, strategy, trial tactics, settlement, retention of experts, or any press communications, shall be made jointly between them. No Party has promised, warranted or guaranteed any particular result from the Joint Prosecution Litigation. Each Party expressly acknowledges and agrees that the investigation and prosecution of Joint Prosecution Litigation involves considerable risk and is speculative. Each Party will use its best efforts to effectuate the activities contemplated hereby, and achieve the optimum recovery for the clients, the classes they seek to represent and the law firms, and to fulfill the terms and conditions of this Agreement.
3. Amendments. This Agreement may be amended to add additional cases to the Joint Prosecution Litigation upon the agreement and execution of an Addendum by all Parties ("Additional Cases"), in which case the terms of this Agreement shall apply to the Additional Cases.
4. Fee Sharing. After reimbursement of all expenses and costs, as well as any payments to other counsel who may become involved in a lawsuit in the Joint Prosecution Litigation (and have compensable time and reimbursable expenses), if any, all fees awarded by the court to the Parties shall be divided among the Parties according to the following:

Fees will be allocated according to a pro rata share of the work done by each Party as compared to the work done on a lawsuit in total.

The Parties anticipate that Weston will do roughly fifty percent (50%) of the work and that Beck will do roughly fifty percent (50%) of the work.

Any referral fee obligations by Beck or Weston shall be paid from their respective 50/50% split, and not be treated as an expense, cost or payment to other counsel as stated above.

The Parties will each undertake substantive work sufficient to justify the respective allocation of attorneys' lodestar (*i.e.* hours multiplied by hourly rates determined using the *Laffey Matrix*) and costs referenced herein. In the event that any Party fails to do so, the Parties acknowledge that the percentage allocation is subject to an appropriate adjustment to accurately reflect the substantive work performed. The Parties agree to negotiate in good faith on the amount of any necessary adjustment. The Parties further acknowledge that, for any adjustment to occur, the firm subject to the proposed adjustment must be first put on notice that one may be requested (based on results of monthly lodestar and expense reporting referenced herein) and be given an opportunity

to correct any discrepancy that may support an adjustment. Finally, the Parties agree that no Party will undertake significant work without the prior consent and approval of all Parties.

5. Withdrawal. In the event any Party withdraws as counsel from any case in the Joint Prosecution Litigation, the following shall apply to the fees allocation for that case only: the withdrawn Party shall be compensated for the work done on that case up until withdrawal at the rate of \$35/hour, from any recovery obtained at the end of the case, after reimbursement of all expenses and costs, as well as any payments to other counsel who may become involved in a lawsuit in the Joint Prosecution Litigation (and have compensable time and reimbursable expenses), if any. If there is no recovery, then the withdrawn Party shall be entitled to nothing for the work done, as the case has not generated any fees for Party.

Instances of withdrawal: if any Party takes on full-time salaried work, then that would constitute a withdrawal. Any such Party shall promptly file a Notice of Withdrawal as counsel.

6. Cost Sharing. The Parties shall jointly approve the employment of experts and other major costs, (defined as any single expense over \$500). Beck shall be responsible for the payment of fifty percent (50%) of the costs connected with the Joint Prosecution Litigation, and Weston shall be responsible for the payment of fifty percent (50%) of the costs. However, each firm will be responsible for their own staff, meals, travel, copies, faxes, research costs, telephone and various internal costs.

7. Time-Keeping. Each Party shall maintain contemporaneous time records to keep track of their respective lodestar (attorney and paralegal hours x \$ hourly rates per each attorney/paralegal under the *Laffey* Matrix adjusted for the venue of the action), as well as all out-of-pocket expenses ("Litigation Time and Expenses"). The Parties shall exchange their Litigation Time and Expenses on a monthly basis, on the 15th of every other month, starting March 15, 2010. If any of these days falls on a weekend or a holiday, the reports shall be exchanged on the next business day. Weston shall be in charge of maintaining the Litigation Time and Expense reports, and making sure that each Party, and other counsel that may become involved in the Joint Prosecution Litigation, provides its report on a timely basis. The failure to timely submit Litigation Time and Expense reports may result in non-payment of time and reimbursement of expenses.

8. Arbitration. Any dispute or controversy to enforce or interpret any term or provision of this Agreement or to recover any sum due pursuant to this Agreement shall be subject to binding, non-appealable, arbitration to be conducted with Judicial Arbitration Mediation Services ("JAMS") with each Party to select an arbitrator from the panel supplied by the Los Angeles JAMS office and JAMS to provide the third arbitrator from the same panel. Arbitration shall be brought and conducted in Los Angeles, CA. Such arbitration shall be the sole remedy to resolve disputes regarding the interpretation or enforcement of any term or provision of this Agreement or to recover any sum due pursuant to this Agreement. Each Party expressly waives any right to seek or obtain punitive or any form of exemplary damages from the other Party.

9. Integration. Each Party expressly acknowledges and agrees that it has not acted or relied upon any inducement, representation, warranty, statement, promise and/or agreement not expressly set forth in this Agreement, and that in any dispute or controversy between them connected with the subject matter of this Agreement, each Party expressly waives any right to look beyond the express language contained in this

Agreement. Each Party acknowledges and agrees that this Agreement was negotiated voluntarily and freely between it and the other Party.

10. Minimum Fee. Because The Weston Firm has at present in several of the Actions billed a large majority of the hours, notwithstanding the formula for allocation of fees described above, Beck shall nonetheless receive at minimum one third of the fees awarded to the Parties for any action where a preliminary and/or final agreement of settlement is signed by the Parties and the respective defendant(s), or a judgment is entered, within 1.5 years (eighteen months) of the date of the filing of the complaint. In consideration for the above, Beck agrees to pay Weston's half of the filing and service fees for the Actions, and to make all reasonable efforts to "catch up" to Weston until it has billed at least one third of the hours. As part of this effort, on all the food product cases other than the Unilever actions, Beck will do the first draft of the respective motion to dismiss opposition briefs.

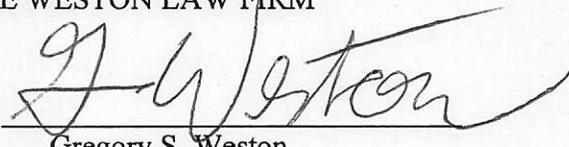
This "Minimum Fee" shall also apply to the benefit of Weston, in the event of a settlement or judgment within 1.5 years (eighteen months) of the date of the filing of the complaint, and Beck has billed hours that would result in Weston's fees being less than a third according to the allocation of fees described above.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement, such may be signed in counterparts and delivered via e-mail or facsimile.

DATED: March 7, 2010

THE WESTON LAW FIRM

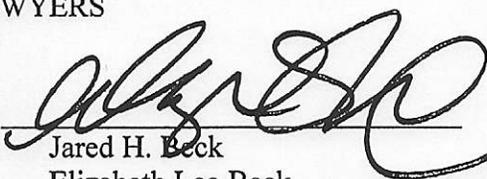
By


Gregory S. Weston

DATED: March 7, 2010

BECK & LEE BUSINESS TRIAL
LAWYERS

By


Jared H. Beck
Elizabeth Lee Beck

This Fee-Sharing Agreement (“Agreement”) is made by and between the law firms and/or attorneys of:

The Weston Firm (“WF”);
Beck & Lee Business Trial Lawyers (“BL”)

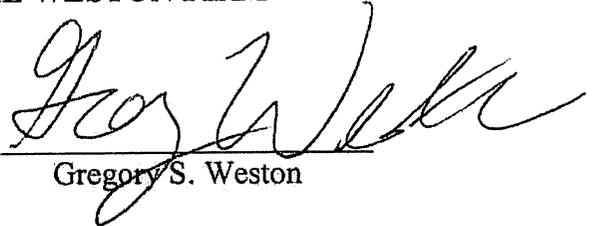
WF and BL are referred to collectively in this Agreement as the “Parties” or individually as a “Party.”

The Agreement incorporates all of the terms of the previous March 7, 2010 agreement between the parties, attached as Exhibit A, except as follows:

“The Actions” shall now also include the currently pending action brought against Gruma for false or misleading labels and advertising and the contemplated action against Apple Inc. and AT&T Inc. for false advertising of its iPad 3G + Wifi and related wireless services.

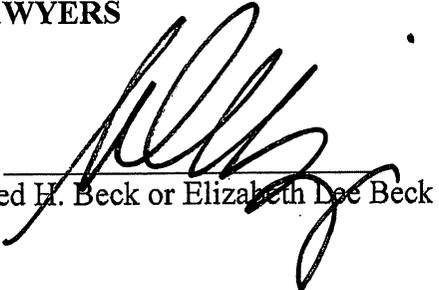
DATED: June 11, 2010

THE WESTON FIRM

By 
Gregory S. Weston

DATED: June 17, 2010

**BECK & LEE BUSINESS TRIAL
LAWYERS**

By 
Jared H. Beck or Elizabeth Lee Beck

JOINT PROSECUTION AGREEMENT ADDENDUM

This Joint Prosecution Agreement (“Agreement”) is made by and between the law firms and/or attorneys of:

- The Weston Firm (“Weston”); and
- Beck & Lee Business Trial Lawyers (“Beck”).

Weston and Beck are referred to collectively in this Agreement as the “Parties” or individually as a “Party.”

This Agreement incorporates all of the terms of the previous 3/7/10 agreement between the Parties, and amends a certain Addendum agreement of 5/25/10, attached hereto, as follows:

- The “contemplated antitrust action against Adobe” is hereby deleted from the 5/25/10 agreement, and is hereby not an action to be jointly prosecuted by the Parties. Responsibilities for the prosecution thereof, if any, shall fall upon Beck and not Weston, who hereby withdraws from any representation of the action.

This Agreement further incorporates all of the terms of the previous 3/7/10 agreement between the Parties, except as follows:

“The Actions” include all actions listed in the 3/7/10 Agreement, and *includes* the actions listed in the 5/25/10 Agreement.

“The Actions” shall now also include *Red et al. v. Kraft Foods, Inc. et al.* (case no. 10-1028-GW);

Nothing in this Agreement alters any other Agreement entered into by the Parties except as expressly noted herein.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement, such may be signed in counterparts and delivered via e-mail or facsimile.

DATED: July 1, 2010

THE WESTON LAW FIRM

By



Gregory S. Weston

DATED: July _____, 2010

BECK & LEE BUSINESS TRIAL
LAWYERS

By

Jared H. Beck
Elizabeth Lee Beck

JOINT PROSECUTION AGREEMENT ADDENDUM

This Joint Prosecution Agreement (“Agreement”) is made by and between the law firms and/or attorneys of:

- The Weston Firm (“Weston”); and
- Beck & Lee Business Trial Lawyers (“Beck”).

Weston and Beck are referred to collectively in this Agreement as the “Parties” or individually as a “Party.”

This Agreement incorporates all of the terms of the previous 3/7/10 agreement between the Parties, and amends a certain Addendum agreement of 5/25/10, attached hereto, as follows:

- The “contemplated antitrust action against Adobe” is hereby deleted from the 5/25/10 agreement, and is hereby not an action to be jointly prosecuted by the Parties. Responsibilities for the prosecution thereof, if any, shall fall upon Beck and not Weston, who hereby withdraws from any representation of the action.

This Agreement further incorporates all of the terms of the previous 3/7/10 agreement between the Parties, except as follows:

“The Actions” include all actions listed in the 3/7/10 Agreement, and *includes* the actions listed in the 5/25/10 Agreement.

“The Actions” shall now also include *Red et al. v. Kraft Foods, Inc. et al.* (case no. 10-1028-GW);

Nothing in this Agreement alters any other Agreement entered into by the Parties except as expressly noted herein.

IN WITNESS WHEREOF, the Parties hereto hereby execute this Agreement, such may be signed in counterparts and delivered via e-mail or facsimile.

DATED: July _____, 2010

THE WESTON LAW FIRM

By _____
Gregory S. Weston

DATED: July 11, 2010

BECK & LEE BUSINESS TRIAL
LAWYERS

By  _____
Jared H. Beck
Elizabeth Lee Beck

Exhibit C

Elizabeth Lee Beck

From: Gregory S. Weston [greg@westonfirm.com]
Sent: Thursday, August 12, 2010 11:37 PM
To: jared@beckandlee.com; elizabeth@beckandlee.com
Subject: please see the attached letters
Attachments: Image0003.PDF

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

Re: Termination of Beck & Lee by Stuart Logan, Matter of Logan v. Apple Inc. et al

Dear Mr. Beck and Ms. Beck,

I write to inform you that my client, Stuart Logan, does not consent to you representing him in the matter of *Stuart Logan v. Apple Inc. et al*, No. 3:10-cv-02588 (N.D. Cal.), or any other matter. Any communication you may have with him should be directed to me, and in writing, and no direct communication with him in any form should take place. On his behalf, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Mr. Logan, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Mr. Kenneally.

Sincerely,



Gregory S. Weston
Counsel for Stuart Logan

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

Re: Termination of Beck & Lee by Rebecca Yumul, Matter of Yumul v. Smart Balance, Inc.

Dear Mr. Beck and Ms. Beck,

I write to inform you that my client, Rebecca Yumul, does not consent to you representing her in the matter *Yumul v. Smart Balance, Inc.*, No. 2:10-cv-00927 MMM (C.D. Cal.), or any other matter. Any communication you may have with her should be directed to me, and in writing, and no direct communication with her in any form should take place. On her behalf, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Ms. Yumul, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Ms. Yumul.

Sincerely,



Gregory S. Weston
Counsel for Rebecca Yumul

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

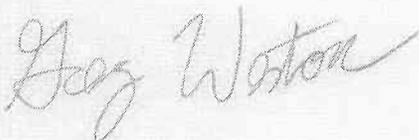
To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

Re: Termination of Beck & Lee by June Higginbotham

Dear Mr. Beck and Ms. Beck,

I write to inform you that my client, June Higginbotham, does not consent to you representing her in any matters. Any communication you may have with her should be directed to me, and in writing, and no direct communication with her in any form should take place. On her behalf, I kindly request that you refrain from holding yourselves or Beck & Lee out as representing Ms. Higginbotham. Finally, kindly return to our attention any and all documents relating to and/or belonging to Ms. Higginbotham.

Sincerely,



Gregory S. Weston
Attorney for June Higginbotham

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

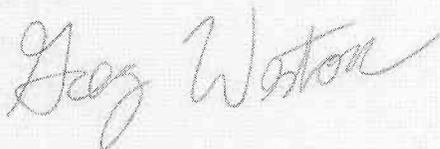
To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

**Re: Termination of Beck & Lee by Mary Henderson and Eileen Peviani, Matter of
Henderson et al v. Gruma Corporation et al**

Dear Mr. Beck and Ms. Beck,

I write to inform you that my clients, Mary Henderson and Eileen Peviani, do not consent to you representing them in the matter of *Henderson et al. v. Gruma Corporation et al.*, No. 2:10-cv-04173 AHM (C.D. Cal.), or any other matter. Any communication you may have with them should be directed to me, and in writing, and no direct communication with them in any form should take place. On their behalves, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Ms. Henderson and Ms. Peviani, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Ms. Henderson or Ms. Peviani.

Sincerely,



Gregory S. Weston
Counsel for Mary Henderson and Eileen Peviani

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

Re: Termination of Beck & Lee by John Kenneally, Matter of *Kenneally v. Bank of Nova Scotia, et al.*

Dear Mr. Beck and Ms. Beck,

I write to inform you that my client, John Kenneally, does not consent to you representing him in the matter of *Kenneally v. Bank of Nova Scotia, et al.*, No. 3:09-cv-02039 WQH (S.D. Cal.), or any other matter. Any communication you may have with him should be directed to me, and in writing, and no direct communication with him in any form should take place. On his behalf, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Mr. Kenneally, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Mr. Kenneally.

Sincerely,



Gregory S. Weston
Counsel for John Kenneally

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

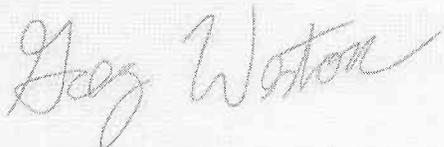
To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

**Re: Termination of Beck & Lee by Evangeline Red and Rachel Whitt, Matter of
Evangeline Red et al v. Kraft Foods Inc. et al**

Dear Mr. Beck and Ms. Beck,

I write to inform you that my clients, Evangeline Red and Rachel Whitt, do not consent to you representing them in the matter of *Evangeline Red et al. v. Kraft Foods Inc. et al*, No. 2:10-cv-01028 GW (C.D. Cal.), or any other matter. Any communication you may have with them should be directed to me, and in writing, and no direct communication with them in any form should take place. On their behalves, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Ms. Red and Ms. Whitt, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Ms. Red or Ms. Whitt.

Sincerely,



Gregory S. Weston
Counsel for *Evangeline Red and Rachel Whitt*

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

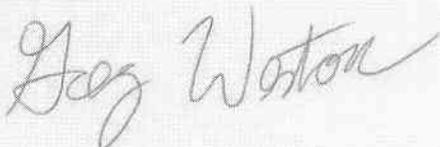
To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

**Re: Termination of Beck & Lee by Evangeline Red, Jennifer Red, and Rachel Whitt,
Matter of Red et al. v. Unilever United States, Inc., et al.**

Dear Mr. Beck and Ms. Beck,

I write to inform you that my clients, Evangeline Red, Jennifer Red and Rachel Whitt, do not consent to you representing them in the matter *Red et al v. Unilever United States, Inc. et al.*, No. 5:10-cv-00387 (N.D. Cal.), or any other matter. Any communication you may have with them should be directed to me, and in writing, and no direct communication with them in any form should take place. On their behalves, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Ms. Evangeline Red, Ms. Jennifer Red, or Ms. Whitt, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Ms. Evangeline Red, Ms. Jennifer Red, or Ms. Whitt.

Sincerely,



Gregory S. Weston
Counsel for Evangeline Red, Jennifer Red and Rachel Whitt

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

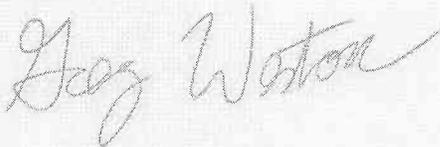
To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

Re: Termination of Beck & Lee by Victor Guttman, Matter of *Chacanca et al v. The Quaker Oats Company*

Dear Mr. Beck and Ms. Beck,

I write to inform you that my client, Victor Guttman, does not consent to you representing him in the matter *Chacanca et al v. The Quaker Oats Company*, No. 5:10-cv-00502 RS (N.D. Cal.), or any other matter. Any communication you may have with him should be directed to me, and in writing, and no direct communication with him in any form should take place. On his behalf, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Mr. Guttman, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Mr. Guttman.

Sincerely,



Gregory S. Weston
Counsel for Victor Guttman

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

Re: Termination of Beck & Lee by Mary Henderson, Matter of *Mary Henderson v. The J.M. Smucker Company*

Dear Mr. Beck and Ms. Beck,

I write to inform you that my client, Mary Henderson, does not consent to you representing her in the matter of *Mary Henderson v. The J.M. Smucker Company*, No. 2:10-cv-04524 GHK (C.D. Cal.), or any other matter. Any communication you may have with her should be directed to me, and in writing, and no direct communication with her in any form should take place. On her behalf, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Ms. Henderson, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Ms. Henderson.

Sincerely,



Gregory S. Weston
Counsel for Mary Henderson

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

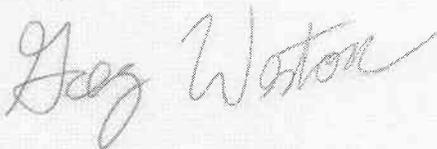
To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

**Re: Termination of Beck & Lee by Cats and Dogs Animal Hospital, Inc., California
Furnishings, Inc., and Wag My Tail, Inc., Matter of *Cats and Dogs Animal Hospital
et al v. Yelp! Inc.***

Dear Mr. Beck and Ms. Beck,

I write to inform you that my clients, Cats and Dogs Animal Hospital, Inc., California Furnishings, Inc., and Wag My Tail, Inc., do not consent to you representing them in the matter of *Cats and Dogs Animal Hospital et al v. Yelp! Inc.*, No. 3:10-cv-02351 MHP (N.D. Cal.), or any other matter. Any communication you may have with them, including their principals (Dr. Gregory Perrault, Mary Seaton, and Yvonne Tannous, respectively) and anyone else associated with them, should be directed to me, and in writing, and no direct communication with them in any form should take place. On their behalves, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing them, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Cats and Dogs Animal Hospital, Inc., California Furnishings, Inc., and Wag My Tail, Inc.

Sincerely,



Gregory S. Weston
Counsel for Cats and Dogs Animal Hospital, Inc.; California Furnishings, Inc.; and Wag My Tail, Inc.

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

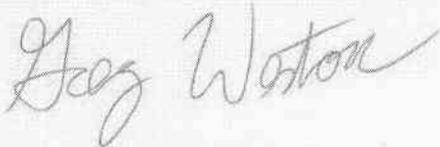
To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

Re: Termination of Beck & Lee by Eileen Peviani and Victor Guttman, Matter of
Eileen Peviani et al v. Hostess Brands, Inc.

Dear Mr. Beck and Ms. Beck,

I write to inform you that my clients, Eileen Peviani and Victor Guttman, do not consent to you representing them in the matter of *Eileen Peviani et al v. Hostess Brands, Inc.*, No. 2:10-cv-02303 CBM (C.D. Cal.), or any other matter. Any communication you may have with them should be directed to me, and in writing, and no direct communication with them in any form should take place. On their behalves, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Ms. Peviani and Mr. Guttman, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Ms. Peviani or Mr. Guttman.

Sincerely,



Gregory S. Weston
Counsel for Eileen Peviani and Victor Guttman

T H E W E S T O N F I R M

888 Turquoise Street | San Diego, CA 92109

TEL: 858-488-1672

FAX: 480-247-4553

www.westonfirm.com

August 12, 2010

BY E-MAIL AND FEDEX

To: Mr. Jared H. Beck
Ms. Elizabeth Lee Beck
Beck & Lee, P.A.
Courthouse Plaza Building
28 West Flagler Street, Suite 555
Miami, Florida 33130
Telephone: (305) 789-0072
jared@beckandlee.com
elizabeth@beckandlee.com

Re: Termination of Beck & Lee by Jennifer Red and Rebecca Yumul, Matter of Jennifer Red et al v. The Kroger Company

Dear Mr. Beck and Ms. Beck,

I write to inform you that my clients, Jennifer Red and Rebecca Yumul, do not consent to you representing them in the matter *Jennifer Red et al v. The Kroger Co.*, No. 2:10-01025 DMG (C.D. Cal.), or any other matter. Any communication you may have with them should be directed to me, and in writing, and no direct communication with them in any form should take place. On their behalves, I kindly request you promptly file a notice of withdrawal with the clerk via the ECF system in this matter, and that you refrain from holding yourselves or Beck & Lee out as representing Ms. Red and Ms. Yumul, including in communications with opposing and co-counsel. Finally, kindly return to our attention any and all documents relating to this action and/or belonging to Ms. Red or Ms. Yumul.

Sincerely,



Gregory S. Weston
Counsel for Jennifer Red and Rebecca Yumul

Exhibit D

Summons in a Civil Action (Rev. 11/97)

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

The Weston Firm P.C.
Plaintiff
vs
Beck & Lee P.A. d/b/a Beck & Lee Business Trial Lawyers
and
Reese Richman LLP
Defendants

SUMMONS IN A CIVIL ACTION

Case No. **10 CV 1694 W**

CAB

TO: (Name and Address of Defendant)

Beck & Lee P.A. d/b/a Beck & Lee Business Trial Lawyers
28 West Flagler Street, Suite 555
Miami, FL 33130

8-15-10
5:30
WAS

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY

Gregory S. Weston
The Weston Firm
888 Turquoise Street
San Diego, CA 92109

An answer to the complaint which is herewith served upon you, within 21 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK

12 AUG 2010

DATE

By **M. BROWN**, Deputy Clerk

Summons in a Civil Action



RETURN OF SERVICE			
Service of the Summons and Complaint was made by me		DATE	
NAME OF SERVER		TITLE	
Check one box below to indicate appropriate method of service			
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____			
<input type="checkbox"/> Left copies thereof at the defendant's dwelling, house or usual place of abode with a person of suitable age and discretion then residing therein: Name of person with whom the summons and complaint were left: _____			
<input type="checkbox"/> Return unexecuted:			
<input type="checkbox"/> Other (specify): _____			
STATEMENT OF SERVICE FEES			
TRAVEL		SERVICES	TOTAL \$0.00
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service is true and correct.			
Executed on:			
	Date	Signature of Server	
Address of Server			
<u>NOTICE OF RIGHT TO CONSENT TO TRIAL BY A UNITED STATES MAGISTRATE</u>			
IN ACCORDANCE WITH THE PROVISION OF 28 USC 636(C) YOU ARE HEREBY NOTIFIED THAT A U.S. MAGISTRATE OF THIS DISTRICT MAY, UPON CONSENT OF ALL PARTIES, CONDUCT ANY OR ALL PROCEEDINGS, INCLUDING A JURY OR NON-JURY TRIAL, AND ORDER THE ENTRY OF A FINAL JUDGMENT. COUNSEL FOR THE PLAINTIFF HAS RECEIVED A CONSENT FORM.			
YOU SHOULD BE AWARE THAT YOUR DECISION TO CONSENT OR NOT CONSENT IS ENTIRELY VOLUNTARY AND SHOULD BE COMMUNICATED SOLELY TO THE CLERK OF COURT. ONLY IF ALL PARTIES CONSENT WILL THE JUDGE OR MAGISTRATE TO WHOM THE CASE HAS BEEN ASSIGNED BE INFORMED OF YOUR DECISION.			
JUDGEMENTS OF THE U.S. MAGISTRATES ARE APPEALABLE TO THE U.S. COURT OF APPEALS IN ACCORDANCE WITH THIS STATUTE AND THE FEDERAL RULES OF APPELLATE PROCEDURE.			

1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure



FILED

10 AUG 12 PM 1:17

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CLERK DEPUTY

1 **THE WESTON FIRM**
2 **GREGORY S. WESTON (239944)**
3 **JACK FITZGERALD (257370)**
4 888 Turquoise Street
5 San Diego, CA 92109
6 Telephone: (858) 488-1672
7 Facsimile: (480) 247-4553
8 greg@westonfirm.com
9 jack@westonfirm.com

10 *Counsel for Plaintiff*

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13
14
15 **THE WESTON FIRM, P.C.**

16
17 **Plaintiff,**

18 **v.**

19 **BECK & LEE, P.A., d/b/a BECK &**
20 **LEE BUSINESS TRIAL LAWYERS**
21 **and REESE RICHMAN LLP**

22 **Defendants.**
23
24
25
26
27
28

Case No:

'10 CV 1694 W CAB

**COMPLAINT FOR
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff The Weston Firm, P.C. ("The Weston Firm"), by and through
2 undersigned counsel, hereby sues Defendants Beck & Lee, P.A. ("Beck & Lee")
3 and Reese Richman LLP ("Reese Richman") to determine a question of actual
4 controversy and the rights and obligations between the parties and, upon
5 information and belief and investigation of counsel alleges as follows:

6 **NATURE OF THIS ACTION**

7 1. This is an action brought for declaratory relief that (1) a March 2010
8 purported contract between The Weston Firm and Beck & Lee, together with
9 several addenda (the "March Agreement"); and (2) and a February, 2010 purported
10 contract between The Weston Firm, Beck & Lee, and Reese Richman (the
11 "February Agreement," together with the March Agreement, the "Agreements")
12 are void and unenforceable.

13 2. The Agreements concern the sharing and division of fees from several
14 enumerated and contemplated actions on behalf of, *inter alia*, California
15 individuals and businesses who retained and are clients *only* of The Weston Firm.
16 There is substantial overlap in the subject matter of each Agreement.

17 3. California Rules of Professional Conduct Rule 2-200 renders void any
18 such fee-sharing agreement unless and until the client has consented in writing
19 thereto after a full disclosure has been made in writing that a division of fees will
20 be made and the terms of such division.

21 4. Each of The Weston Firm clients in the actions covered by the
22 Agreements has fired Reese Richman and/or Beck & Lee. Moreover, none of the
23 clients consented in writing, much less after a full written disclosure, to either
24 Agreement or their fee-sharing provisions. Plaintiff thus seeks a declaratory
25 judgment that each of the Agreements is null and void and unenforceable.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARTIES

5. The Weston Firm, P.C. is a California professional corporation, with its principal place of business at 888 Turquoise Street, San Diego, California 92109.

6. Beck & Lee, P.A. is a Florida professional association, with its only office and principal place of business at 28 West Flagler Street, Suite 555, Miami, Florida 33130. It does business as Beck & Lee Business Trial Lawyers. It is a two-person firm, and both its attorneys are members of the California bar.

7. Reese Richman, LLP is a New York limited liability partnership with its principal place of business at 875 Avenue of the Americas, 18th Floor, New York, New York 10001. Reese Richman's principal and signatory to the February Agreement, Michael Reese, is a member of the California bar.

JURISDICTION & VENUE

8. This Court has jurisdiction over this act under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. This Court also has subject matter jurisdiction over this action pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

9. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District, Plaintiff resides in this District, and Defendants conduct substantial business in this District.

FACTUAL ALLEGATIONS

10. The Weston Firm, together with Beck & Lee, is party to a fee-sharing agreement with Reese Richman, which purportedly provides for the joint.

1 prosecution and sharing of fees for three actions brought by The Weston Firm on
2 behalf of several of its clients. The Weston Firm is also party to a fee-sharing
3 agreement with Beck & Lee, which purportedly provides for the joint prosecution
4 and sharing of fees for several actions brought by The Weston firm on behalf of
5 several of its clients.

6 11. After irreconcilable differences arose among The Weston Firm and
7 Defendants, The Weston Firm's clients fired Defendants and provided notice that
8 they were (a) not to contact the clients directly, (b) not to hold themselves out as
9 representing the clients, and (c) to file a notice of withdrawal of counsel in each
10 action.

11 12. None of The Weston Firm clients in the actions purportedly covered
12 by the Agreements were provided a full disclosure in writing that a division of fees
13 would be made under the Agreements, or provided with the terms of such division.

14 13. None of The Weston Firm clients in the actions purportedly covered
15 in the Agreements consented in writing to the fee division provided therein.

16 14. Under California Rule of Professional Conduct 2-200, the clients'
17 failure to consent to the fee-sharing agreements renders the Agreements void and
18 unenforceable.

19 15. Moreover, the February Agreement expressly provides that, "This
20 Agreement and its effectiveness is expressly contingent on the Parties' respective
21 client's approval of this Agreement." The Weston Firm's clients have never so
22 approved the February Agreement.

23
24 **COUNT I**

25 **Declaratory Relief of Void and Unenforceable Contract: February Agreement**

26 16. Plaintiff repeats and incorporates the allegations contained in
27 paragraphs 1 through 15 as if fully set forth herein.

28

1 17. There is a real and actual controversy between Plaintiff and
2 Defendants relating to whether the February Agreement is valid and enforceable,
3 and to the parties' rights and duties under the February Agreement. The
4 controversy is of sufficient immediacy and reality to warrant the issuance of a
5 declaratory judgment.

6 18. A declaration of the validity and enforceability of the February
7 Agreement is necessary to protect Plaintiff from uncertainty and insecurity, which
8 is causing Plaintiff injury by, among other things, damaging its goodwill and
9 disrupting its business. Moreover, Defendants seek to force Plaintiff, pursuant to
10 the February Agreement, to share fees and disclose attorney work product without
11 the consent of its clients. Without the requested declaration of rights, Defendants
12 will continue to jeopardize Plaintiff's interests.

13

14

COUNT II

15

Declaratory Relief of Void and Unenforceable Contract: March Agreement

16

19. Plaintiff repeats and incorporates the allegations contained in
17 paragraphs 1 through 18 as if fully set forth herein.

18

20. There is a real and actual controversy between Plaintiff and Defendant
19 Beck & Lee relating to whether the March Agreement is valid and enforceable, and
20 to the parties' rights and duties under the March Agreement. The controversy is of
21 sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

22

23 21. A declaration of the validity and enforceability of the March
24 Agreement is necessary to protect Plaintiff from uncertainty and insecurity, which
25 is causing Plaintiff injury by, among other things, damaging its goodwill and
26 disrupting its business. Moreover, Defendant Beck & Lee seeks to force Plaintiff,
27 pursuant to the March Agreement, to share fees and disclose attorney work product

28

28

1 without the consent of its clients. Without the requested declaration of rights,
2 Defendant Beck & Lee will continue to jeopardize Plaintiff's interests.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, based on the foregoing, Plaintiff respectfully requests that
6 the Court grant the following relief:

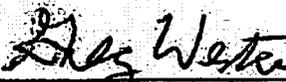
- 7 1. A judgment declaring that the February Agreement is void and
8 unenforceable;
9 2. A judgment declaring that the March Agreement is void and
10 unenforceable; and
11 3. Such other relief as this Court deems just and equitable.

12
13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a jury trial as provided by Rule 38 of the Federal
15 Rules of Civil Procedure.

16
17 DATED: August 12, 2010

Respectfully Submitted,

18 

19 Gregory S. Weston

20
21 **THE WESTON FIRM**
22 Gregory S. Weston
23 Jack Fitzgerald
24 888 Turquoise Street
25 San Diego, California 92109
26 Telephone: (858) 488-1672
27 Facsimile: (480) 247-4553
28 greg@westonfirm.com
jack@westonfirm.com

Counsel for Plaintiff

Chamber Rules

The Honorable Thomas J. Whelan
United States District Court, Southern District of California

These rules will help civil litigants appearing before Judge Whelan. They answer many commonly-received questions and explain procedures that are specific to Judge Whelan's chambers. In most cases, these rules are designed to help litigants clarify the issues and limit the scope of disputes before seeking the Court's assistance. The latest copy of these rules is available on the court's web site (<http://www.casd.uscourts.gov>).

Counsel for plaintiff, or plaintiff, if appearing on his or her own behalf, is responsible for promptly serving notice of the requirements contained herein upon defendant or defendant's counsel. If the action came to the Court via noticed removal, this burden falls on the removing defendant.

Local Rules

Except as otherwise provided herein or as specifically order by the Court, all parties are expected to strictly comply with this District's Local Rules.

Discovery

Pursuant to Civil Local Rules 26.1(e) and 72.1(b), discovery matters are handled by the assigned Magistrate Judge. All documents relating to discovery shall contain the words "DISCOVERY MATTER" in their caption to ensure proper routing. Hearings for discovery motions shall be scheduled by the assigned Magistrate Judge's law clerks.

Modified September, 2005

Motions

Hearing Dates

Counsel shall obtain all hearing dates from the Court's law clerks before filing moving papers. Any hearing dates for motions to be heard before Judge Whelan scheduled by the Magistrate Judge assigned to the case shall be cleared with Judge Whelan's law clerks before the parties file their moving papers.

Oral Argument

The Court generally decides motions based on the papers submitted by the parties. In the caption of its notice of motion and motion, the moving party shall include the following: **NO ORAL ARGUMENT PURSUANT TO LOCAL RULE.** If the Court decides that oral argument will assist it in deciding a given motion, counsel will be notified telephonically three court days before the scheduled hearing date.

Points and Authorities

In their memoranda of points and authorities, the parties shall state all legal and factual bases for their respective positions. Moving parties shall raise all factual and legal bases for the motion in the opening brief. Factual matters or legal arguments raised by a party for the first time in their reply brief, unless directly in response to the opposition, may not be considered.

Statement of Non-Opposition, Failure to Oppose

A party that determines that it will not oppose a given motion shall file a statement of non-opposition no later than 14 days before the hearing date. An opposing party's failure to file a memorandum of points and authorities in opposition to any motion will be construed as consent to the granting of the motion.

Modified September, 2005

Reconsideration Motions

Motions for reconsideration are disfavored unless a party shows that there is new evidence, a change in controlling law, or establishes that the Court committed clear error in its earlier ruling. **No motion for reconsideration shall be filed without leave of the court.** No later than the time provided in Civil Local Rule 7.1(I)(2), the party seeking to move for reconsideration shall file an ex parte application for leave to file a motion to reconsider. The ex parte application shall be accompanied by a declaration as required by Civil Local Rule 7.1(I)(1). The application shall contain a brief summary of the argument the party intends to present in an motion for reconsideration, and shall not exceed **four pages in length**. Upon review of the application, the court will either issue an order granting leave to file a motion for reconsideration, including a briefing schedule, or an order denying leave. Ex parte applications made under this section shall be exempt from these rule's and the Local Rule's notice requirements.

Motions to Amend the Pleadings

Before filing any motions to amend the pleadings, counsel are required to meet and confer in good faith regarding the proposed amendment. To facilitate this process, the party seeking to amend their pleading shall provide opposing counsel with a copy of the proposed amended pleading along with an explanation of the reasons for the amendment. If counsel are unable to reach agreement regarding the proposed amendment, counsel filing the motion to amend shall attach a declaration to the motion to amend documenting counsels' meet and confer efforts.

All requests to amend the pleadings are handled by the Magistrate Judge assigned to the case. Please call the Magistrate Judge's law clerks to obtain a hearing date and submit all papers to the Magistrate Judge.

Temporary Restraining Orders

All motions for temporary restraining orders shall be briefed. While temporary restraining orders may be heard ex parte, the Court will do so only in extraordinary circumstances. The Court's strong preference is for the opposing party to be served and afforded a reasonable opportunity to file an opposition. In appropriate cases, the Court may issue a limited restraining order to preserve evidence pending further briefing. The Court will generally give notice of hearing by telephone.

Administrative Requests, Ex Parte Applications

Before filing any ex parte application, counsel shall make every attempt to contact the opposing party to meet and confer regarding the subject of the ex parte application. All ex parte applications shall be accompanied by a declaration from counsel documenting (1) efforts to contact opposing counsel, (2) counsel's meet and confer efforts and (3) opposing counsel's position regarding the ex parte application. Any ex parte application filed with the Court shall be served on the opposing counsel via facsimile, electronic mail with return receipt requested or overnight mail. Ex parte applications that are not opposed within two Court days will be considered unopposed and may be granted on that ground.

Continuances

Parties requesting a continuance of any conference, hearing, deadline, briefing schedule, or other procedural changes, shall meet and confer prior to contacting the Court. If the parties reach an agreement, they shall submit a stipulation and proposed order with a detailed declaration of the reason for the requested continuance or extension of time. Except in extraordinary circumstances, stipulations to amend a briefing schedule or a motion hearing date must be filed no later than three court days before the affected date. If the parties are unable to reach an agreement, the party requesting the continuance shall file an ex parte application satisfying the applicable legal standard, with a particular focus on the diligence of the party seeking delay and any prejudice that may result therefrom. In addition, the ex parte

Modified September, 2005

application shall state (1) the original date, (2) the number of previous continuance requests and (3) whether previous requests were granted or denied.

Format for Proposed Orders and Stipulations

Notice that order is "Proposed"

Please place the word "proposed" in brackets (e.g. "[PROPOSED] ORDER GRANTING EX PARTE APPLICATION TO..." "STIPULATION EXTENDING THE TIME IN WHICH TO FILE A RESPONSIVE PLEADING AND [PROPOSED] ORDER THEREON").

Extraneous Information Omitted

Remove any attorney or firm information from the headers, footers, or margins of the document. This includes attorney captions at the top left of the page, any firm logos in the left margin, document names in the bottom margin, etc.

Motions in Limine

Before filing any motions in limine, parties are required to meet and confer in an attempt to resolve their dispute. If the parties are unable to resolve their differences, counsel filing the motion in limine shall attach a declaration documenting the parties meet and confer efforts and the reason for their failure. Parties are encouraged to be selective with their motions in limine and not to file mundane or unnecessary motions.

Motions in Limine must be filed and served no later than **four weeks** before trial and any opposition must be filed no later than **two weeks** before trial. Reply papers should not be filed.

Jury Instructions

The parties are required to meet and discuss proposed jury instructions. If the parties are unable to reach an agreement, they may submit those instructions upon which they cannot agree to the Court.

Communication with the Court

Consistent with Local Rule 83.9, counsel and parties shall refrain from writing letters or placing telephone calls to the Court or sending the Court copies of letters addressed to others, or otherwise causing or encouraging ex parte communications with the Court. Any party or attorney who causes or encourages such unauthorized ex parte communications or provides the Court's contact information with the knowledge that it shall be used for unauthorized ex parte communications, may be sanctioned. **Absent extraordinary circumstances, counsel shall personally initiate any authorized communications with the Court or chambers staff, rather than rely on a representative (e.g., a secretary or paralegal).**

Pre-Trial Conferences/Letter Briefs

In addition to submitting the Proposed Pretrial Order as required by the Civil Local Rules, the parties are further to separately submit informal letter briefs, not exceeding two single spaced pages, served on opposing counsel and received in Judge Whelan's chambers (and not filed in the Clerk's Office) no later than the Wednesday before the pretrial conference at 2:30 p.m.

The letter brief should be a relatively informal and straight forward document. The letter brief should outline a short, concise and objective factual summary of the party's case in chief, the number of hours/days each party intends to expend at trial, the approximate number of witnesses, whether certain witnesses will be coming in from out of town, the number of testifying expert witnesses, whether any unique demonstrative exhibits may be presented, the number of proposed motions in limine that may be filed, precisely when the parties would be prepared to submit their in limine papers (and whether the parties have met and conferred with respect to the in limine issues), the issue of proposed jury instructions and when the parties intend to submit them before trial, any voir

Modified September, 2005

dire issues, either party's preference as to what date(s) the trial should begin and any other pertinent information that either party may deem useful to assist the Court in the execution of the Pretrial Conference and in setting the matter for trial.

Modified September, 2005