

1 COOLEY GODWARD KRONISH LLP
 2 MICHAEL G. RHODES (116127)
 3 (rhodesmg@cooley.com)
 4 MATTHEW D. BROWN (196972)
 5 (brownmd@cooley.com)
 6 BENJAMIN KLEINE (257225)
 7 (bkleine@cooley.com)
 8 101 California Street
 9 5th Floor
 10 San Francisco, CA 94111-5800
 11 Telephone: (415) 693-2000
 12 Facsimile: (415) 693-2222

13 COOLEY GODWARD KRONISH LLP
 14 SARAH R. BOOT (253658)
 15 (sboot@cooley.com)
 16 4401 Eastgate Mall
 17 San Diego, CA 92121-1909
 18 Telephone: (858) 550-6000
 19 Facsimile: (858) 550-6420

20 Attorneys for Defendant
 21 YELP! INC.

22 UNITED STATES DISTRICT COURT
 23 CENTRAL DISTRICT OF CALIFORNIA
 24 WESTERN DIVISION

25 CATS AND DOGS ANIMAL
 26 HOSPITAL, INC., et al., on behalf of
 27 itself and all others similarly situated,

28 Plaintiffs,

v.

YELP! INC.,

Defendant.

Case No. CV 10-01340 VBF(SSx)

**DEFENDANT YELP! INC.'S EX PARTE
 APPLICATION TO CONSOLIDATE
 RELATED CASES FOR ALL
 PURPOSES AND TO SET DATES FOR
 CONSOLIDATED AMENDED
 COMPLAINT, RESPONSIVE
 PLEADING, AND JOINT SCHEDULING
 CONFERENCE**

Judge: Hon. Valerie Baker Fairbank

CHRISTINE LaPAUSKY d/b/a
 D'AMES DAY SPA, on behalf of
 herself and all others similarly situated,

Plaintiffs,

v.

YELP! INC.,

Defendant.

Case No. CV 10-01578 VBF (SSx)

1 **OVERVIEW AND REQUEST FOR RELIEF**

2 Defendant Yelp! Inc. (“Yelp”) brings this ex parte application to consolidate
3 the two above-captioned putative class actions¹ for all purposes, and to set dates for
4 the filing of a consolidated amended complaint, responsive pleading, and joint
5 scheduling conference.

6 All parties in these two cases—Plaintiffs in *Cats and Dogs*, Plaintiff in
7 *LaPausky*, and Yelp (“the Parties”)—agree that the cases should be consolidated.
8 (*See* Declaration of Matthew D. Brown, (“Brown Decl.”) ¶¶ 3, 7, Exs. B, E.) The
9 cases have already been designated as related by this Court’s Order dated March
10 12, 2010.

11 After meeting and conferring, the Parties have not been able to agree on how
12 to proceed once the cases are consolidated. Specifically, the Parties do not agree as
13 to whether a consolidated amended complaint should be filed or to the timing of
14 Yelp’s responsive pleading. Plaintiffs also appear not to agree on who should be
15 designated as lead counsel.

16 Both Yelp and Plaintiff in *LaPausky* believe that the most appropriate course
17 after consolidation is for all Plaintiffs to file a single consolidated and superseding
18 amended complaint, and for Yelp to file a single, responsive pleading. Both Yelp
19 and Plaintiff in *LaPausky* also believe that the case schedule in the coming weeks
20 should be sequenced logically to allow sufficient time for consolidation, orderly
21 preparation of the post-consolidation complaint and responsive pleading, and
22 resolution of the lead counsel issue, before attempting to meet and confer on Rule
23 26 issues and begin discovery.

24
25
26 ¹ *Cats and Dogs Animal Hospital, Inc. et al. v. Yelp! Inc.*, No. CV 10-01340-VBF
27 (SSx) (C.D. Cal. filed Feb. 25, 2010) (“*Cats & Dogs*”) and *Christine LaPausky*
28 *d/b/a D’ames Day Spa v. Yelp! Inc.*, No. CV 10-01578-VBF (SSx) (C.D. Cal. filed
Mar. 3, 2010) (“*LaPausky*”).

1 Accordingly, Yelp now seeks an Order from this Court providing the
2 following relief:

- 3 1. Pending the resolution of this ex parte application, Yelp shall be
4 relieved of any obligation it would otherwise have to respond to the
5 complaints currently on file in each case.
- 6 2. The *Cats and Dogs* and *LaPausky* cases shall be consolidated for all
7 purposes.
- 8 3. Plaintiffs shall file a consolidated and superseding amended complaint
9 30 days after the Court enters its order granting consolidation.
- 10 4. Yelp shall be relieved of the obligation of filing separate responsive
11 pleadings to the complaint in each case and instead Yelp shall file a
12 single responsive pleading to the consolidated amended complaint 30
13 days after it is filed.²
- 14 5. The Scheduling Conference currently set for April 26, 2010 at 8:30
15 a.m. shall be taken off calendar and the Parties shall be relieved of
16 their obligations in connection with the April 26 Scheduling
17 Conference, including preparation of the Joint Rule 26(f) Report
18 currently due April 12.
- 19 6. The joint Scheduling Conference shall be scheduled for a new date, at
20 least 30 days after Yelp files its responsive pleading(s).

21
22
23
24
25
26 _____
27 ² If the Court were to deny consolidation despite the agreement of the Parties, Yelp
28 requests an Order providing that responses to the complaint in each case shall be
filed within 30 days after entry of the Court's Order.

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

PLAINTIFFS’ POSITIONS ON THIS APPLICATION

Plaintiff in *LaPausky* stipulates to consolidation as well as to all other relief requested above. (Brown Decl. ¶ 3, Ex. B.) Plaintiffs in *Cats and Dogs* agree to consolidation but will likely oppose the other relief requested in this application. (*Id.* at ¶ 7, Ex. E.) No party has requested a hearing.

SUMMARY OF MEET-AND-CONFER EFFORTS AND NOTICE

In accordance with Local Rule 7-3, Yelp first discussed consolidation and requested a stipulation from the *Cats and Dogs* Plaintiffs on March 10, but Plaintiffs refused to stipulate and said they opposed consolidation. Yelp asked for a 30-day extension for its response to the *Cats and Dogs* complaint while the consolidation issues were sorted out; the *Cats and Dogs* Plaintiffs refused, and instead granted a 14-day extension. (Brown Decl. ¶ 2, Ex. A.)

On March 11, Yelp conferred with Plaintiff in *LaPausky*, who agreed that the cases should be consolidated and that a consolidated amended complaint should be filed thereafter. (*Id.* at ¶ 3.) Yelp and Plaintiff in *LaPausky* subsequently entered a stipulation to this effect and also agreed on the other relief requested in this application. (*Id.*, Ex. B.) Plaintiff in *LaPausky* granted Yelp’s request for a 30-day extension for its response to the *LaPausky* complaint in light of the as-yet-unresolved consolidation issues. (*Id.* at ¶ 4, Ex. C.)

Pursuant to Local Rule 7-19,³ on March 18, counsel for Yelp met with counsel for *Cats and Dogs* Plaintiffs and informed them that Yelp intended to file both a motion to consolidate and an ex parte application seeking the above-requested relief on March 22 or 23, and that Plaintiff in *LaPausky* would be stipulating to the relief requested in both. (*Id.* at ¶ 5.) In light of the agreement of the Plaintiff in *LaPausky*, Yelp asked whether *Cats and Dogs* Plaintiffs would reconsider their refusal to stipulate to consolidation and the filing of a consolidated

³ In accordance with L. R. 7-19, **Exhibit 1** to this Ex Parte Application contains the names, addresses, telephone numbers, and email addresses of opposing counsel.

1 amended complaint. *Cats and Dogs* Plaintiffs stated they would consider this
2 request. (Brown Decl. ¶ 5.)

3 On March 22, counsel for Yelp emailed counsel for *Cats and Dogs* Plaintiffs,
4 reiterated this request, and included in the text of the email the specific relief Yelp
5 intended to seek in both the motion and the ex parte application. (*Id.* at ¶ 6, Ex. D.)
6 In accordance with Local Rule 7-19.1 and this Court’s Standing Order, Yelp
7 informed Plaintiffs that they will have 24 hours to oppose its ex parte application
8 and that Yelp did not intend to request a hearing. (*Id.*)

9 Counsel for *Cats and Dogs* Plaintiffs responded via email stating his clients’
10 agreement that the two cases should be consolidated. (*Id.* at ¶ 7, Ex. E.) He also
11 stated that, rather than filing a consolidated amended complaint, both counsel in
12 *Cats and Dogs* and counsel in *LaPausky* favored deeming the First Amended
13 Complaint (“FAC”) in *Cats and Dogs* as the consolidated complaint. Counsel for
14 Plaintiff in *LaPausky*, however, was not included on this email. (*Id.*) Counsel for
15 Yelp contacted counsel for Plaintiff in *LaPausky* and discovered that he had not
16 agreed to deem the *Cats and Dogs* First Amended Complaint as the consolidated
17 complaint. (*Id.* at ¶ 8.)

18 Yelp confronted *Cats and Dogs* counsel about this disparity, and *Cats and*
19 *Dogs* represented its intention to file its own ex parte application seeking the relief
20 to which *LaPausky* counsel would not stipulate (designation of the *Cats and Dogs*
21 FAC as the consolidated complaint) and seeking appointment as interim lead
22 counsel. (*Id.* at ¶¶ 9-10, Exs. F, G.) Yelp’s counsel made clear that it could not
23 agree to treat the *Cats and Dogs* FAC as the consolidated complaint in the absence
24 of an express stipulation by the plaintiffs in both cases. (*Id.* at ¶ 11, Ex. H.)
25 Because all plaintiffs do not agree to that approach, Yelp’s position is that a
26 consolidated amended complaint should be filed. (*Id.*) In fact, counsel in
27 *LaPausky* agrees with Yelp that a consolidated amended complaint should be filed,
28 as memorialized in a Stipulation filed herewith. (*Id.* at ¶ 3, Ex. B.)

1 **POINTS AND AUTHORITIES**

2 Consistent with the Parties' unanimous agreement, it is appropriate for the
3 Court to consolidate the *Cats and Dogs* and *LaPausky* cases for all purposes. The
4 cases present common issues of law and fact, and consolidation will promote the
5 interests of justice, judicial economy, and efficiency. *See* Fed. R. Civ. P. 42(a)(2);
6 *Burnett v. Rowzee*, Nos. SACV07-641 DOC (ANx), *et al.*, 2007 WL 4191991, at *2
7 (C.D. Cal. Nov. 26, 2007) ("The threshold issue [in determining consolidation] is
8 whether the two proceedings involve a common party and common issues of fact or
9 law."); *Huene v. U.S.*, 743 F.2d 703, 704 (9th Cir. 1984) (While "exercising its
10 broad discretion to order consolidation," a district court "weighs the saving of time
11 and effort of consolidation would produce against any inconvenience, delay, or
12 expense that it would cause."). Among other considerations, if these cases were not
13 consolidated and instead proceeded separately, duplicative discovery and motion
14 practice would force Yelp to expend significant extra efforts and costs, and this
15 Court would expend unnecessary time and effort presiding over duplicative motions
16 to dismiss, class certification proceedings, discovery matters, and other motions and
17 proceedings.

18 Upon consolidating these two cases, the Court has the power to order
19 Plaintiffs to file a consolidated amended complaint. *See* Fed. R. Civ. P. 42(a)(3); *In*
20 *re Equity Funding Co. of Am. Sec. Litig.*, 416 F. Supp. 161, 176 (C.D. Cal. 1976)
21 (court has power to order consolidated pleadings where it would tend to avoid
22 unnecessary cost or delay and would not cause serious prejudice to a party's rights).
23 Both Yelp and Plaintiff in *LaPausky* agree that the most appropriate course after
24 consolidation in this case is for all Plaintiffs to file a single consolidated and
25 superseding amended complaint, and for Yelp to file a single, responsive pleading.
26 It is a common procedure in consolidated class actions because having one coherent
27 pleading provides clarity and reduces burdens on both the Court and the parties.
28 "As a management tool for complex litigation, the consolidated complaint has been

1 found to have significant advantages.” 8-42 Moore’s Federal Practice – Civil §
2 42.13(5)(a) (2010) (identifying certain advantages). *See also In re Equity Funding*,
3 416 F. Supp. at 176 (finding that a consolidated complaint avoided unnecessary
4 costs and delay, allowed the court to receive briefing and hear argument directed to
5 one coherent pleading, made consideration of class action issues considerably
6 easier, lessened the burdens of discovery management, and made clerical and
7 administrative matters much less burdensome).

8 Yelp and Plaintiff in *LaPausky* also have stipulated to the remainder of the
9 above-requested ex parte relief, which is well within the Court’s inherent case
10 management authority. Both parties believe that the case schedule in the coming
11 weeks should be sequenced logically to allow sufficient time for consolidation,
12 orderly preparation of the post-consolidation complaint and responsive pleading,
13 and resolution of the lead counsel issue (which Yelp understands is likely to be
14 contested), before attempting to meet and confer on Rule 26 issues, prepare a joint
15 Rule 26(f) report, and begin discovery. This request is made in the interest of
16 orderly case management, not for unwarranted delay, and it would cause no
17 prejudice to any party. On the contrary, there is substantial risk of confusion and
18 prejudice if the parties must attempt to carry out their Rule 26 obligations and
19 engage in discovery before the operative pleadings have been prepared and filed
20 and before lead counsel has been designated.

21
22
23
24
25
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

CONCLUSION

Yelp respectfully requests that this Court grant its ex parte application in its entirety.

Dated: March 24, 2010

COOLEY GODWARD KRONISH LLP
MICHAEL G. RHODES (116127)
MATTHEW D. BROWN (196972)
BENJAMIN KLEINE (257225)
SARAH R. BOOT (253658)

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