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9 **Attorneys for Plaintiffs and the Proposed Classes**

10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 CATS AND DOGS ANIMAL  
 13 HOSPITAL, INC.; ASTRO APPLIANCE  
 14 SERVICE; BLEEDING HEART, LLC  
 15 d/b/a BLEEDING HEART BAKERY;  
 16 CALIFORNIA FURNISHINGS, INC.  
 17 d/b/a SOFA OUTLET; CELIBRÉ, INC.;  
 18 J.L. FERRI ENTERTAINMENT, INC.  
 19 d/b/a ADULT SOCIALS; LE PETITE  
 20 RETREAT DAY SPA, LLC; SAN  
 21 FRANCISCO BAY BOAT CRUISES,  
 22 LLC d/b/a MERMAIDS CRUISE; WAG  
 23 MY TAIL, INC.; and ZODIAC  
 24 RESTAURANT GROUP, INC. d/b/a  
 25 SCION RESTAURANT, on behalf of  
 26 themselves and all others similarly  
 27 situated,

Plaintiffs,

v.

YELP! INC.,

Defendant.

Case No: 2:10-cv-01340-VBF-SS  
 Pleading Type: Class Action

**EX PARTE MOTION FOR  
 REASSIGNMENT,  
 CONSOLIDATION,  
 DESIGNATION OF LEAD  
 CASE, AND APPOINTMENT OF  
 INTERIM CLASS COUNSEL**

Judge: Hon. Valerie Baker Fairbank  
 Action Filed: February 23, 2010

1           **TO ALL PARTIES OF RECORD:**

2           **PLEASE TAKE NOTICE THAT** pursuant to C.D. Cal. L.R. 7-19,  
3 Plaintiffs will and hereby do apply ex parte to the Court for an order:

4           (1) Consolidating the later-filed action styled *LaPausky v. Yelp! Inc.*,  
5 No. 2:10cv01578 (C.D. Cal, filed March 3, 2010), and any subsequent action to  
6 their first-filed action, and reassigning any such actions to this Court;

7           (2) Designating their First Amended Complaint as the Consolidated  
8 Class Complaint; and

9           (3) Appointing their counsel interim class counsel.

10           Pursuant to the Court's Standing Order, any opposition by Yelp! Inc.  
11 must be filed no later than twenty-four hours (1 court day) following service,  
12 and any opposition by Christine LaPausky must be filed no later than forty-  
13 eight hours (2 court days) following service.

14           The Contact information for the attorneys representing the Defendant and  
15 the action Plaintiffs propose be reassigned and consolidated are:

16  
17 Michael G. Rhodes  
18 101 California Street, 5th Floor  
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22 *Counsel for Yelp! Inc.*

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*Counsel for Christine LaPausky*

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1 **I. INTRODUCTION**

2 Pursuant to Fed. R. Civ. P. 23(g)(2)(A), and the Court’s inherent authority to  
3 manage this litigation, counsel for Plaintiffs, The Weston Firm and Beck & Lee  
4 Business Trial Lawyers (collectively, the "Proposed Interim Class Counsel")  
5 respectfully move the Court for an Order (1) consolidating this action with the  
6 related *LaPausky* action, and (2) appointing them interim class counsel for the  
7 consolidated action and any future related actions alleging similar claims against  
8 Defendant Yelp! Inc. (“Yelp”).

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10 **II. BACKGROUND OF THE PRESENT AND THE RELATED CLASS**  
11 **ACTION AGAINST YELP**

12 On January 12, 2010 Dr. Gregory Perrault, the owner of Plaintiff Cats and  
13 Dogs Animal Hospital, contacted his current counsel in this action, Gregory  
14 Weston, and informed him that Yelp’s sales employees were trying to extort him  
15 into purchasing an advertising package that would require a payment of \$3,600 a  
16 year. (*See* Declaration of Gregory S. Weston ("Weston Decl.") ¶5.) Dr. Perrault  
17 knew Mr. Weston because he was a member of the class of Los Angeles-area  
18 condominium buyers that obtained, as a result of Mr. Weston's effort, a \$1.35  
19 million all-cash settlement in late 2009. (Weston Decl. ¶6.)

20 In response to Dr. Perrault’s inquiry, Mr. Weston, together with his co-  
21 counsel Beck & Lee Business Trial Lawyers (“Beck & Lee”), spent the next six  
22 weeks investigating Dr. Perrault's claims and preparing and preparing the initial  
23 complaint filed on February 23, and served on Yelp the following day (the "First  
24 Complaint"). (Weston Decl. ¶6.)

25 Since then, more than 150 additional small business owners have contacted  
26 The Weston Firm and Beck & Lee with stories similar Dr. Perrault’s, and the firms  
27 continue to receive numerous inquires each day. (Weston Decl. ¶7; Declaration of

1 Jared H. Beck ("J. Beck Decl.") ¶6.) Proposed Interim Class Counsel have  
2 expended substantial time interviewing these small business owners, and preparing  
3 the First Amended Class Action Complaint ("Amended Complaint"), which was  
4 filed on March 16. The Amended Complaint added a great amount of detail  
5 concerning Yelp's unlawful business practices, included several more claims for  
6 relief, and named nine additional small business representative plaintiffs. (*See*  
7 Amended Complaint, attached to the Weston Decl. as Exhibit A; Weston Decl. ¶8;  
8 J. Beck Decl. ¶7.)

9 Since February, when the Proposed Interim Class Counsel filed the First  
10 Complaint, counsel have, among other things:

- 11 • Filed a detailed 39-page Amended Complaint;
- 12 • Conferred with Yelp and stipulated to extend Yelp's time to respond;
- 13 • Further conferred with Yelp's counsel, including in person in San Francisco  
14 on March 18, on case management issues;
- 15 • Scheduled a Rule 26(f) discovery conference with Yelp for April 8;
- 16 • Conferred with Yelp's counsel on issues of class certification, proposed  
17 injunctive relief, and electronic discovery; and
- 18 • Begun preparing Rule 26 disclosures.

18 (Weston Decl. ¶9; J. Beck Decl. ¶8.)

19 On March 3, a mostly verbatim copycat<sup>1</sup> of the older First Complaint was  
20 filed in this District and assigned to the Hon. Manuel L. Real. On March 11, Yelp  
21 filed a Notice of Related Case (Dkt. No. 7), proposing that because "the cases call  
22 for determination of the same or substantially related or similar questions of law  
23 and fact and would entail substantial duplication of labor if heard by different  
24 judges . . . they are related and should be heard by the same judge." Plaintiffs agree

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26 <sup>1</sup> Compare the First Complaint to the *LaPausky* complaint, attached to the Weston  
27 Decl. as Exhibit B and Exhibit C, respectively.

1 with consolidation and have provided for the same in the Proposed Order filed  
2 concurrently with this motion.

3 Before filing this motion, Plaintiffs conferred with and gave notice to  
4 counsel for both Yelp and LaPausky on March 22, and again on March 23, but  
5 despite these efforts were unable to obtain a stipulation to the relief proposed  
6 herein. (Weston Decl. ¶10 & Exhibit D; Declaration of Elizabeth Lee Beck ("E.  
7 Beck Decl.") ¶9.)

### 9 **III. ARGUMENT**

#### 10 **A. Reassignment and Consolidation of the *LaPausky* and Any** 11 **Subsequent Actions is Appropriate.**

12 Fed. R. Civ. P. 42(a) authorizes the Court to grant consolidation where  
13 "actions before the court involve a common question of law or fact." In  
14 determining whether to consolidate cases, the Court should "weigh the interest of  
15 judicial convenience against the potential for delay, confusion and prejudice."  
16 *Southwest Marine, Inc. v. Triple A Machine Shop, Inc.*, 720 F.Supp. 805, 807  
17 (N.D. Cal. 1989).

18 The two actions here "cover the same class period, are brought against the  
19 same defendant[], allege the same violation of law, and allege similar predicate  
20 facts." *Curry v. Hansen Med. Inc.*, Nos. 5:09-cv-05094, 5:09-05212, 3:09-cv-  
21 05367, 2010 U.S. Dist. LEXIS, at \*3 (N.D. Cal. Feb. 25, 2010) (granting motion to  
22 consolidate three related cases and appointing movant lead counsel). In fact, the  
23 later-filed *LaPaulsky* action copies the *Cats and Dogs* action verbatim except in  
24 the small number of allegations specific to the respective plaintiffs—the former is  
25 completely subsumed in the latter.

26 Moreover, some factors that might weigh against consolidation—such as  
27 differing trial dates or stages of discovery, *see Lewis v. City of Fresno*, Nos. CV-F-

1 08-1062, CV-F-09-304, 2009 U.S. Dist. LEXIS 57083, at \*3 (E.D. Cal. July 6,  
2 2009)—are not present here, as not even an initial case management conference  
3 has been held in either action.

4 In sum, because granting the Motion would mean “only one case will remain  
5 open and all further litigation will proceed under only one case number, [and  
6 therefore] any potential for delay, confusion and prejudice will be greatly  
7 reduced,” the Court should, respectfully, consolidate the actions. *Sisneroz v.*  
8 *Whitman*, Nos. 05-cv-00519, 08-cv-01971, 2009 U.S. Dist. LEXIS 48430, at \*7-8  
9 (E.D. Cal. June 1, 2009).

10 Finally, if the Court grants the Motion, it should, respectfully, order that  
11 Plaintiffs’ Amended Complaint be designated the Consolidated Class Complaint,  
12 since the Amended Complaint entirely subsumes the *LaPausky* Complaint and  
13 better represents the interests of the proposed classes through additional factual  
14 allegations and counts.

15 **B. The Court Should Appoint The Weston Firm and Beck & Lee**  
16 **Business Trial Lawyers as Interim Lead Counsel.**

17 The Court “may designate interim counsel to act on behalf of a putative class  
18 before determining whether to certify the action as a class action.” Fed. R. Civ. P.  
19 23(g)(3). The appointment of interim counsel during the pre-certification period is  
20 appropriate because “it will usually be important for an attorney to take action to  
21 prepare for the certification decision.” Advisory Committee Note to Rule  
22 23(g)(2)(A)<sup>2</sup> (2003 amendments). Appointment of interim class counsel is  
23 especially appropriate where “there are a number of overlapping, duplicative, or  
24 competing suits pending in other courts, and some or all of those suits may be  
25 consolidated, [and] a number of lawyers may compete for class counsel

26 \_\_\_\_\_  
27 <sup>2</sup> The equivalent of what is now Rule 23(g)(3).

1 appointment. In such cases, designation of interim counsel clarifies responsibility  
2 for protecting the interests of the class during precertification activities . . . .”  
3 Manual of Complex Litigation Fourth § 21.11 (2004).

4 Factors the Court should consider when appointing class counsel include: (1)  
5 the work the counsel have done in identifying or investigating potential claims in  
6 the action; (2) counsels’ experience in handling class actions, other complex  
7 litigation, and the types of claims asserted in the action; (3) counsel’s knowledge  
8 of the applicable law; and (4) the resources that counsel will commit to  
9 representing the class. Fed. R. Civ. P. 23(g)(1)(A); *see Levitte v. Google, Inc.*, Nos.  
10 C 08-03369, C 08-03452, C 08-03888, C 08-04701, 2009 U.S. Dist. LEXIS 18198,  
11 at \*5 (N.D. Cal. Feb. 25, 2009) (court may consider Rule 23(g)(1)(A) factors in  
12 appointing interim class counsel).

13 The Proposed Interim Class Counsel is composed of four experienced trial  
14 lawyers familiar with class actions and other complex civil litigation, who have  
15 previously been appointed counsel in federal class actions. (*See* Weston Decl. ¶¶1-  
16 4; J. Beck Decl. ¶¶1-5; E. Beck Decl., ¶¶1-5; Declaration of Jack Fitzgerald ¶¶1-  
17 3.). The attorneys of the Proposed Interim Class Counsel have a history of  
18 working together on public interest class action lawsuits. For example, the  
19 attorneys communicate daily and hold weekly telephonic conference calls to divide  
20 work efficiently and avoid duplication of efforts, in the best interests of the Class,  
21 thus meeting the Rule 23(g)(1)(B) criterion. Proposed Interim Class Counsel have  
22 already demonstrated their ability to manage the Yelp class action, for example by  
23 retaining small business clients from across the country to represent two proposed  
24 classes, already conferring several times with opposing counsel including once in  
25 person, setting dates for the Rule 26(f) conference, stipulating to extend Yelp’s  
26 time to answer, and beginning discussions on class certification and other case  
27 management issues. (Weston Decl. ¶9; J. Beck Decl. ¶8.)

1           Where there is no dispute that attorneys competing for lead class counsel  
2 have adequate experience, skill and knowledge, “the first factor favors  
3 appointment of [counsel who have] done a majority of the preparation work  
4 leading to the filing of these actions, including investigation into the alleged  
5 misconduct and identification of the legal theory of the case.” *Carlin v. Dairy Am.,*  
6 *Inc.*, Nos. 1:09cv0430, 1:09cv0556, 1:09cv0558, 1:09cv0607, 2009 U.S. Dist.  
7 LEXIS 50493, at \*7 (E.D. Cal. May 29, 2009) (appointing first firm to file suit as  
8 lead counsel where “a simple comparison of the original complaint in this action  
9 with the [later filed complaints] reveals that they are almost identical.”)

10           Moreover, appointing the Proposed Interim Class Counsel as interim class  
11 counsel will avoid “the risk of overstaffing or an ungainly counsel structure.”  
12 Advisory Committee Note to Rule 23(g)(2) (2003 amendments). By appointing the  
13 Proposed Class Counsel as interim lead counsel, the Court “will greatly reduce the  
14 inevitable duplication of effort” and the “danger of duplication of fees,” that would  
15 arise from assigning as interim lead counsel anyone other than the Proposed Class  
16 Counsel. *See Castaneda v. Burger King Corp.*, No. C 08-04262, 2009 U.S. Dist.  
17 LEXIS 99084, at \*50 (N.D. Cal. Sept. 25, 2009) (stating that the “overall number  
18 of timekeepers should be kept to a small, efficient core group of lawyers . . .”).

19           Finally, the attorneys appointed to serve as class counsel must “fairly and  
20 adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). Here,  
21 the approaches of the Proposed Interim Class Counsel and counsel for Ms.  
22 LaPausky have varied dramatically and weigh in favor of appointing the Proposed  
23 Interim Class Counsel as interim class counsel. Mr. Marron’s involvement in this  
24 matter smacks of collusion and has been entirely limited to:

- 25           • Filing a verbatim copycat action, in which the class allegations that are  
26           alleged to be “like Plaintiff” do not actually correspond to the plaintiff-  
27           specific facts alleged;



- Serving a Notice of Unavailability of Counsel (annexed to the Weston Decl. as Exhibit E), in which Mr. Marron says he will be “unavailable for any purposes whatsoever . . . including but not limited to receiving notices of any kind, responding to ex-parte applications, appearing in court or appearing at depositions” for over six weeks; and
- Giving Yelp 60 days to answer the *LaPausky* Complaint even though, as a verbatim copycat, Yelp had already been served with the same pleading (in the form of *Cats and Dogs*’ Complaint) almost three weeks before being served with the *LaPausky* Complaint (*see* Case No. CV 10-1578-VBF, Dkt. No. 11).

**IV. THE OTHER PARTIES’ POSITIONS**

**A. POSITION OF RON MARRON, COUNSEL FOR LAPAUSKY**

Mr. Marron agrees that the *Cats and Dogs* and *LaPausky* actions should be consolidated, but opposes the other relief requested herein, including the appointment of Proposed Interim Class Counsel as interim class counsel, and the designation of the Amended Complaint as the Consolidated Class Complaint.

**B. YELP’S POSITION**

Yelp’s position is described in its own *ex parte* application, filed today.

**V. CONCLUSION**

For the reasons described herein, Plaintiffs respectfully request the Motion be granted and that the Court (1) order that the *Cats and Dogs* and *LaPausky* cases, and any further related cases, be consolidated; (2) that the Amended Complaint be designated the Consolidated Class Complaint; and (3) that the Proposed Interim Class Counsel be appointed interim class counsel.

DATED: March 24, 2010

Respectfully Submitted,

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/s/ Gregory S. Weston  
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