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 12 YELP! INC.

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA

15 CATS AND DOGS ANIMAL
 16 HOSPITAL, INC., et al., on behalf of
 17 itself and all others similarly situated,

18 Plaintiffs,

19 v.

20 YELP! INC.,

21 Defendant.

Case No. CV 10-01340 VBF(SSx)

**DEFENDANT YELP! INC.'S NOTICE
 OF MOTION AND MOTION TO
 CONSOLIDATE RELATED CASES FOR
 ALL PURPOSES AND TO SET
 SCHEDULE FOR FILING
 CONSOLIDATED AMENDED
 COMPLAINT**

Date: Monday, May 10, 2010
 Time: 1:30 p.m.
 Judge: Hon. Valerie Baker Fairbank

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

25 Plaintiffs,

26 v.

27 YELP! INC.,

28 Defendant.

Case No. CV 10-01578 VBF (SSx)

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TABLE OF CONTENTS

Page

NOTICE OF MOTION AND MOTION TO CONSOLIDATE 1

I. INTRODUCTION.....2

II. PROCEDURAL HISTORY & RELEVANT FACTS4

 A. Plaintiffs File Substantially Similar Complaints, and the Cases
 Are Designated as Related4

 B. Yelp Meets and Confers With Plaintiffs Concerning
 Consolidation and Related Issues5

 C. Both Parties File Ex Parte Applications Regarding
 Consolidation7

 D. Timing of Yelp’s Responses to Complaints in Each Case in
 Relation to This Noticed Motion for Consolidation7

III. ARGUMENT8

 A. Legal Standard8

 B. The Cases Should Be Consolidated Because They Involve the
 Same Defendant and Present Common Questions of Law and
 Fact.....9

 C. The Cases Should Be Consolidated Because It Would Serve the
 Interests Of Justice, Judicial Economy, and Efficiency 10

 D. Plaintiffs Should File A Consolidated Amended and
 Superseding Complaint..... 11

IV. CONCLUSION 11

1
2
3
4
5
6
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8
9
10
11
12
13
14
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16
17
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TABLE OF AUTHORITIES

Page(s)

CASES

Backe v. Novatel Wireless, Inc.,
Nos. 08-CV-01689-H (RBB), *et al.*, 2008 WL 5214264, at *2
(S.D. Cal. Dec. 10, 2008)..... 10

Burnett v. Rowzee, Nos. SACV07-641 DOC (ANx), *et al.*,
2007 WL 4191991, at *2 (C.D. Cal. Nov. 26, 2007)..... 8, 9, 10

Huene v. U.S.,
743 F.2d 703 (9th Cir. 1984)..... 8

In re Equity Funding Co. of Am. Sec. Litig.,
416 F. Supp. 161 (C.D. Cal. 1976)..... 11

Investors Research Co. v. U.S. Dist. Ct. for Central Dist. Of Cal.,
877 F.2d 777 (9th Cir. 1989)..... 8

Levitte v. Google, Inc., Nos. C 08-03369 JW, *et al.*,
2009 WL 482252, at *1 (N.D. Cal. Feb. 25, 2009)..... 9

Osher v. JNI Corp.,
No. 01-CV-0557-J (NLS), 2001 WL 36176415 (S.D. Cal. July 10, 2001) 9

Team Enters., LLC v. W. Inv. Real Estate Trust,
Nos. 1:08-cv-00872 LJO-SMS, *et al.*, 2008 WL 4712759, at *1
(E.D. Cal. Oct. 23, 2008) 8

Yanek v. Staar Surgical Co., Nos. CV 04-8007 SJO (CWx), *et al.*,
2004 WL 5574358, at *3 (C.D. Cal. Dec. 15, 2004) 8

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TABLE OF AUTHORITIES
(Continued)

Page(s)

CASES

STATUTES

Cal. Bus. & Prof. Code
§ 17200..... 4, 9

Fed. R. Civ. P. 42(a)(2)..... 8, 9

Fed. R. Civ. P. 42(a)(3)..... 11

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8-42 Moore’s Federal Practice – Civil § 42.13(5)(a) (2010) 11

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NOTICE OF MOTION AND MOTION TO CONSOLIDATE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Monday, May 10, 2010 at 1:30 p.m., or as soon thereafter as this motion may be heard, Defendant Yelp! Inc. (“Yelp”) will and hereby does move for an order providing the following:

1. The following related cases shall be consolidated for all purposes: *Cats and Dogs Animal Hospital, Inc. et al. v. Yelp! Inc.*, No. CV 10-01340-VBF(SSx) (C.D. Cal. filed Feb. 23, 2010) (hereinafter *Cats & Dogs*); and *Christine LaPausky d/b/a D’ames Day Spa v. Yelp! Inc.*, No. CV 10-01578-VBF(SSx) (C.D. Cal. filed Mar. 3, 2010) (hereinafter *LaPausky*).

2. Plaintiffs shall file a consolidated and superseding amended complaint within 14 days after the Court enters its order granting consolidation.

3. Yelp shall be relieved of the obligation of filing an answer, motion to dismiss, or other response to the complaint in each separate case; instead, Yelp shall file a single answer, motion to dismiss, or other response to the consolidated amended complaint within 21 days after it is filed.

This motion is made under Federal Rule of Civil Procedure 42(a) and the Court’s inherent power to control and manage its docket. This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the accompanying Declaration of Matthew D. Brown and exhibits thereto, the pleadings on file, oral argument of counsel, and such other materials and argument as may be presented in connection with the hearing on the motion. This motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on Wednesday, March 10, 2010, and several subsequent discussions between counsel.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant Yelp! Inc. (“Yelp”) moves for an order consolidating the two
4 above-captioned putative class actions for all purposes, and requiring plaintiffs to
5 file a consolidated and superseding amended complaint. All parties in these two
6 cases—Plaintiffs in *Cats and Dogs*, Plaintiff in *LaPausky*, and Yelp (“the
7 Parties”)—agree that the cases should be consolidated. The cases have already
8 been designated as related by this Court’s Order dated March 12, 2010. After
9 meeting and conferring, the Parties have not been able to agree on how to proceed
10 once the cases are consolidated. Specifically, the Parties do not agree as to whether
11 a consolidated amended complaint should be filed.

12 Shortly after these actions were filed, Yelp reached out to plaintiffs in both
13 cases in an attempt to get the cases consolidated and to set a reasonable schedule for
14 the filing of a consolidated amended complaint and Yelp’s response thereto. Yelp
15 also asked for a stipulated extension of 30 days for its response deadline in each
16 case to provide time to sort out the consolidation issues and get the cases structured
17 and scheduled in an orderly and efficient manner. Plaintiff in one case readily
18 stipulated to consolidation and a 30-day extension, but Plaintiffs in the other case
19 refused to stipulate to consolidation and granted only a 14-day extension. Meet-
20 and-confer efforts did not result in a three-way stipulation, and therefore Yelp
21 decided it needed to move the Court to order consolidation and the filing of a
22 consolidated amended complaint. After providing advance notice of Yelp’s
23 intended motion, the Plaintiffs who had earlier opposed consolidation partially
24 changed their position, agreeing to consolidation but disagreeing with the filing of a
25 consolidated amended complaint.

26 On March 24, due to impending deadlines in both cases (including a deadline
27 of April 1 to move to dismiss, answer, or otherwise respond to the *Cats and Dogs*
28 complaint), and because of the Parties’ general agreement to consolidation, Yelp

1 filed an *ex parte* application seeking an order consolidating the cases, requiring the
2 filing of a consolidated amended complaint, and setting a schedule for Yelp’s
3 response and case management activities. Plaintiffs in *Cats and Dogs* also filed an
4 *ex parte* application seeking consolidation, requesting that their First Amended
5 Complaint be treated as the consolidated complaint, and seeking appointment of
6 their attorneys as interim lead counsel. The Court denied both *ex parte*
7 applications, ruling that neither side had demonstrated the urgency required to
8 support *ex parte* relief as opposed to relief pursuant to a noticed motion. Yelp now
9 brings this noticed motion.

10 Consistent with the Parties’ unanimous agreement, there is good cause for
11 consolidating these two cases for all purposes. Founded in 2004, Yelp is the
12 registered owner and provider of a popular website, www.yelp.com (the “Yelp
13 Website”), which allows member of the community to find local businesses, read
14 and write reviews about them, and rate them on a scale of one to five stars. The
15 Yelp Website features information on and reviews of businesses throughout the
16 United States and is visited by approximately 30 million people per month. Yelp
17 makes money by, *inter alia*, selling ads to local businesses, which appear as
18 “Sponsored Results” on Yelp’s website. Both the *Cats and Dogs* and *LaPausky*
19 cases arise from the same core factual allegation that Yelp manipulates the reviews
20 for plaintiff businesses depending on whether or not they advertise with Yelp, both
21 cases have virtually identical class definitions, and they raise related and
22 overlapping legal issues. Consolidating these cases will promote the interests of
23 justice by precluding the possibility of inconsistent results, and will promote
24 efficiency and judicial economy by streamlining the discovery process and halving
25 the required motions and filings. Consolidation at this early stage in the litigation
26 will neither prejudice nor inconvenience the parties or the Court.

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1 **II. PROCEDURAL HISTORY & RELEVANT FACTS**

2 **A. Plaintiffs File Substantially Similar Complaints, and the Cases Are**
3 **Designated as Related.**

4 In *Cats and Dogs*, Plaintiff filed its initial complaint against Yelp on
5 February 23, 2010. Just over one week later, on March 3, Plaintiff in *LaPausky*
6 filed a nearly identical complaint against Yelp. (*See Cats and Dogs*, Initial
7 Complaint (“Compl.”), Docket No. 1; and *LaPausky*, Initial Complaint (“Compl.”),
8 Docket No. 1.) The gravamen of both complaints is that Yelp manipulates the
9 reviews for plaintiff businesses depending on whether or not they advertise with
10 Yelp. (*Cats and Dogs* Compl. ¶¶ 14-35; *LaPausky* Compl. ¶¶ 14-28.)

11 In the initial complaint in *Cats and Dogs*, Plaintiff alleged that Yelp
12 employees stated that if *Cats and Dogs* purchased Yelp’s advertising services, Yelp
13 would hide or remove negative reviews from the *Cats and Dogs* webpage on
14 www.yelp.com. According to the complaint, after declining to purchase Yelp’s
15 advertising services, negative reviews appeared on the webpage. (*Cats and Dogs*
16 Compl. ¶¶ 14-25.) Similarly, the *LaPausky* complaint alleges that after
17 encouraging her customers to leave positive reviews for her salon on
18 www.yelp.com, many of those reviews were removed because she declined to
19 purchase Yelp’s advertising services. (*LaPausky* Compl. ¶¶ 14-20.) Both
20 complaints contained the same quotations from a handful of newspaper articles.
21 (*Cats and Dogs* Compl. ¶¶ 29-35; *LaPausky* Compl. ¶¶ 22-28.) Both complaints
22 also pleaded a sole claim for violation of California’s Unfair Competition Law, Cal.
23 Bus. & Prof. Code § 17200, seeking to permanently enjoin Yelp from engaging in
24 the complained-of practices, and seeking disgorgement of profits, restitution, and
25 attorneys’ fees and costs, individually and on behalf of an identically defined
26 nationwide class. (*Cats and Dogs* Compl. ¶¶ 36, 43-45; *LaPausky* Compl. ¶¶ 29,
27 36-45.)

28 ///

1 Plaintiff in *LaPausky* marked her case as related to *Cats and Dogs* on the
2 civil cover sheet attached to her complaint. On March 11, 2010, Yelp filed a Notice
3 of Related Cases, and, on March 12, this Court issued an order transferring
4 *LaPausky* to Judge Valerie Baker Fairbank, to whom the *Cats and Dogs* case had
5 been assigned. (See *Cats and Dogs* Docket No. 7; and *LaPausky* Docket Nos. 4, 6.)

6 On March 16, 2010, *Cats and Dogs* Plaintiffs filed their First Amended
7 Complaint (“*Cats and Dogs* FAC”). (See *Cats and Dogs* FAC, Docket No. 10.)
8 Although the *Cats and Dogs* FAC adds a number of named plaintiffs (now divided
9 into two putative classes, businesses that purchased advertising and those that did
10 not) and three additional causes of action, the core factual allegation of *Cats and*
11 *Dogs* is still the same as before. (See *Cats and Dogs* FAC ¶¶ 20-21.)

12 **B. Yelp Meets and Confers With Plaintiffs Concerning Consolidation**
13 **and Related Issues.**

14 In accordance with Local Rule 7-3, Yelp first discussed consolidation and
15 requested a stipulation from the *Cats and Dogs* Plaintiffs on March 10, but
16 Plaintiffs refused to stipulate and said they opposed consolidation. Yelp asked for a
17 30-day extension for its response to the *Cats and Dogs* complaint while the
18 consolidation issues were sorted out; the *Cats and Dogs* Plaintiffs refused, and
19 instead granted a 14-day extension. (See Declaration of Matthew D. Brown
20 (“Brown Decl.”), ¶ 2, Ex. A.)

21 On March 11, Yelp conferred with Plaintiff in *LaPausky*, who agreed that the
22 cases should be consolidated and that a consolidated amended complaint should be
23 filed thereafter. (*Id.* ¶ 3.) Yelp and Plaintiff in *LaPausky* subsequently entered a
24 stipulation to this effect (and also agreed on other relief, which is now moot, such
25 as setting a date for a joint case management conference to occur after the
26 resolution of the consolidation issues). (*Id.* Ex. B.) Plaintiff in *LaPausky* also
27 granted Yelp’s request for a 30-day extension for its response to the *LaPausky*
28 complaint in light of the as-yet-unresolved consolidation issues. (*Id.* ¶ 4, Ex. C.)

1 On March 18, counsel for Yelp met with counsel for *Cats and Dogs* Plaintiffs
2 and informed them that on March 22 or 23, Yelp intended to file both the motion to
3 consolidate and an *ex parte* application seeking a consolidated amended complaint
4 and requesting that Yelp only be required to file a single response to the
5 consolidated amended complaint, among other things. Yelp also stated that
6 Plaintiff in *LaPausky* would be stipulating to the relief requested in both the motion
7 to consolidate and the *ex parte* application. (Brown Decl. ¶ 5.) In light of the
8 agreement of the Plaintiff in *LaPausky*, Yelp asked whether *Cats and Dogs*
9 Plaintiffs would reconsider their refusal to stipulate to consolidation and the filing
10 of a consolidated amended complaint. *Cats and Dogs* Plaintiffs stated they would
11 consider this request. (*Id.*)

12 On March 22, counsel for Yelp emailed counsel for *Cats and Dogs* Plaintiffs,
13 reiterated this request, and included in the text of the email the specific relief Yelp
14 intended to seek in both the motion and the *ex parte* application. (*Id.* ¶ 6, Ex. D.)
15 Counsel for *Cats and Dogs* Plaintiffs responded via email stating his clients’
16 agreement that the two cases should be consolidated. (*Id.* ¶ 7, Ex. E.) He also
17 stated that, rather than filing a consolidated amended complaint, both counsel in
18 *Cats and Dogs* and counsel in *LaPausky* favored deeming the First Amended
19 Complaint (“FAC”) in *Cats and Dogs* as the consolidated complaint. Counsel for
20 Plaintiff in *LaPausky*, however, was not included on this email. (*Id.*) Yelp
21 contacted counsel for Plaintiff in *LaPausky* and discovered that he had not agreed to
22 deem the *Cats and Dogs* FAC as the consolidated complaint. (*Id.* ¶ 8.)

23 Yelp confronted the *Cats and Dogs* counsel with this disparity, and he
24 represented the *Cats and Dogs* Plaintiffs’ intention to file their own *ex parte*
25 application seeking the relief to which *LaPausky* counsel would not stipulate
26 (designation of the *Cats and Dogs* FAC as the consolidated complaint) and seeking
27 appointment as interim lead counsel. (*Id.* ¶¶ 9-10, Exs. F, G.) Yelp’s counsel made
28 clear that it could not agree to treat the *Cats and Dogs* FAC as the consolidated

1 complaint in the absence of an express stipulation by the plaintiffs in both cases.
2 (Brown Decl. ¶ 11, Ex. H.)

3 **C. Both Parties File *Ex Parte* Applications Regarding Consolidation.**

4 On March 24, due to impending deadlines in both cases (including a deadline
5 of April 1 to move to dismiss, answer, or otherwise respond to the *Cats and Dogs*
6 complaint), and because of the Parties' general agreement to consolidation, Yelp
7 filed an *ex parte* application seeking an order consolidating the cases, requiring the
8 filing of a consolidated amended complaint, and setting a schedule for Yelp's
9 response and case management activities. (See *Cats and Dogs* Docket No. 15;
10 *LaPausky* Docket No. 12.) Plaintiffs in *Cats and Dogs* opposed Yelp's application
11 (*Cats and Dogs* Docket No. 20) and also filed their own *ex parte* application
12 seeking consolidation, requesting that their First Amended Complaint be treated as
13 the consolidated complaint, and seeking appointment of their attorneys as interim
14 lead counsel (*Cats and Dogs* Docket No. 16). The Court denied both *ex parte*
15 applications, ruling that neither side had demonstrated the urgency required to
16 support *ex parte* relief as opposed to relief pursuant to a noticed motion. (See *Cats*
17 *and Dogs* Docket No. 21; *LaPausky* Docket No. 14.)

18 **D. Timing of Yelp's Responses to Complaints in Each Case in**
19 **Relation to This Noticed Motion for Consolidation.**

20 The *Cats and Dogs* Plaintiffs would only extend Yelp's deadline for
21 responding to the First Amended Complaint to April 1. Therefore, Yelp has
22 already filed a motion to dismiss the *Cats and Dogs* First Amended Complaint,
23 which is currently set for hearing on May 3. (See *Cats and Dogs* Docket No. 23.)
24 Yelp's deadline for filing an answer, motion to dismiss, or other response to the
25 *LaPausky* complaint is April 26, before the hearing on this noticed motion, which is
26 set for May 10. (See Ex. C.) The hearing on Yelp's motion to transfer venue is
27 also set for hearing on May 10. (See *Cats and Dogs* Docket No. 25; and *LaPausky*
28 Docket No. 16.) The initial case management conferences for both cases are

1 scheduled for April 26. (*See Cats and Dogs* Docket No. 6; and *LaPausky* Docket
2 No. 8.)

3 **III. ARGUMENT**

4 Consistent with the Parties’ unanimous agreement, these actions should be
5 consolidated for all purposes because the cases present common questions of law
6 and fact, and consolidation will promote the interests of justice, judicial economy,
7 and efficiency. And consolidation at this early stage in the litigation will neither
8 prejudice nor inconvenience the parties or the Court.

9 **A. Legal Standard.**

10 “If actions before the court involve a common question of law or fact, the
11 court may . . . consolidate the actions” Fed. R. Civ. P. 42(a)(2). “The district
12 court has broad discretion under Rule 42 to consolidate cases pending in the same
13 district.” *Yanek v. Staar Surgical Co.*, Nos. CV 04-8007 SJO (CWx), *et al.*, 2004
14 WL 5574358, at *3 (C.D. Cal. Dec. 15, 2004) (citing *Investors Research Co. v. U.S.*
15 *Dist. Ct. for Central Dist. Of Cal.*, 877 F.2d 777 (9th Cir. 1989)). “The purpose of
16 consolidation is not only to enhance efficiency of the trial court by avoiding
17 unnecessary duplication of evidence and procedures, but also to avoid inconsistent
18 adjudications.” *Team Enters., LLC v. W. Inv. Real Estate Trust*, Nos. 1:08-cv-
19 00872 LJO-SMS, *et al.*, 2008 WL 4712759, at *1 (E.D. Cal. Oct. 23, 2008). “The
20 threshold issue is whether the two proceedings involve a common party and
21 common issues of fact or law.” *Burnett v. Rowzee*, Nos. SACV07-641 DOC
22 (ANx), *et al.*, 2007 WL 4191991, at *2 (C.D. Cal. Nov. 26, 2007) (citations
23 omitted). While “exercising its broad discretion to order consolidation of actions,”
24 a district court also “weighs the saving of time and effort consolidation would
25 produce against any inconvenience, delay, or expense that it would cause.” *Huene*
26 *v. U.S.*, 743 F.2d 703, 704 (9th Cir. 1984).

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1 **B. The Cases Should Be Consolidated Because They Involve the Same**
2 **Defendant and Present Common Questions of Law and Fact.**

3 *Cats & Dogs* and *LaPausky* share common questions of law and fact, making
4 consolidation for all matters appropriate. *See* Fed. R. Civ. P. 42(a)(2). The core
5 factual allegations in these two cases are the same: that Yelp manipulates the
6 reviews for plaintiff businesses depending on whether or not they advertise with
7 Yelp. Although the *Cats and Dogs* Plaintiff amended its complaint to add named
8 plaintiffs and to divide its original class definition into two putative classes of
9 plaintiffs (businesses that purchased advertising services and those that did not),
10 these classes are subsumed by *LaPausky* Plaintiff’s current class definition
11 (businesses whose reviews Yelp “offered or threatened to manipulate” in exchange
12 for “purchasing or declining to purchase” advertising services). (*See Cats and*
13 *Dogs* FAC ¶ 171; *LaPausky* Compl. ¶ 29.) Further, plaintiffs in both cases allege
14 that Yelp violated California’s Unfair Competition Law, Cal. Bus. & Prof. Code
15 §17200. (The *Cats and Dogs* FAC added three causes of action to the §17200 cause
16 of action.) Thus, both cases are putative class actions seeking certification of the
17 same class of businesses for overlapping claims involving the same core issue
18 against the same defendant. These circumstances strongly support consolidation.
19 *See Levitte v. Google, Inc.*, Nos. C 08-03369 JW, *et al.*, 2009 WL 482252, at *1
20 (N.D. Cal. Feb. 25, 2009) (finding consolidation of related cases with the same
21 defendant appropriate where the related cases shared the same “core issue”);
22 *Burnett*, 2007 WL 4191991, at *2 (finding defendant’s “scheme to defraud is a
23 common factual issue among all of the cases,” even though “the complaints differ
24 in specifics, [because] as a general matter each rests on the same series of
25 transactions – [defendant’s] sale of non-existent securities by herself and through
26 others”); *Osher v. JNI Corp.*, No. 01-CV-0557-J (NLS), 2001 WL 36176415, at *2
27 (S.D. Cal. July 10, 2001) (finding that Rule 42 does not “require[] that the actions
28 be identical before they may be consolidated”).

1 **C. The Cases Should Be Consolidated Because It Would Serve the**
2 **Interests Of Justice, Judicial Economy, and Efficiency.**

3 Consolidation is also warranted because any discovery concerning Yelp’s
4 conduct or policies relating to Yelp’s advertising sales practices will be
5 substantially identical in both actions. *See Backe v. Novatel Wireless, Inc.*, Nos. 08-
6 CV-01689-H (RBB), *et al.*, 2008 WL 5214264, at *2 (S.D. Cal. Dec. 10, 2008)
7 (finding consolidation of related cases naming the same defendants appropriate
8 “[b]ecause [where] the related actions are based on the same facts and involve the
9 same subject matter, the same discovery will be relevant to both lawsuits”). If these
10 cases proceed separately, duplicative discovery will force Yelp to expend
11 significant extra efforts and costs in its defense of substantially identical claims.

12 Consolidation would also allow the Court to avoid unnecessary time and
13 effort presiding over duplicative motions to dismiss, class certification proceedings,
14 discovery matters, and other motions and proceedings if these matters are not
15 consolidated. Furthermore, in these related cases arising from the same facts and
16 affecting the same substantive rights of overlapping class members, divided
17 proceedings create a risk of potentially inconsistent results. *See Burnett*, 2007 WL
18 4191991, at *3 (after finding a common factual issue, the court also held that “[t]he
19 real risk of inconsistent judgments arises if the parties are allowed to proceed with
20 dispositive motions or trial in an uncoordinated manner”).

21 Finally, there will be no prejudice or inconvenience to the plaintiffs or the
22 court, particularly given that all plaintiffs are in the same, early stage of the
23 proceedings. *See id.* (finding no prejudice where “no case is close to trial” and all
24 of the cases to be consolidated arose within a four-month period so that “the risk of
25 prejudice due to cases being at different stages of preparation is minimal”).

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1 **D. Plaintiffs Should File A Consolidated Amended and Superseding**
2 **Complaint.**

3 Upon consolidating these two cases, the Court has the power to order
4 Plaintiffs to file a consolidated amended complaint. *See* Fed. R. Civ. P. 42(a)(3); *In*
5 *re Equity Funding Co. of Am. Sec. Litig.*, 416 F. Supp. 161, 176-77 (C.D. Cal.
6 1976) (court has power to order consolidated pleadings where it would tend to
7 avoid unnecessary cost or delay and would not cause serious prejudice to a party’s
8 rights). Yelp suggests that having plaintiffs file a consolidated amended complaint
9 would be the most sensible course after consolidation. It is a common procedure in
10 consolidated class actions because having one coherent pleading provides clarity
11 and reduces burdens on both the Court and the parties. “As a management tool for
12 complex litigation, the consolidated complaint has been found to have significant
13 advantages.” 8-42 Moore’s Federal Practice – Civil § 42.13(5)(a) (2010)
14 (identifying certain advantages). *See also In re Equity Funding*, 416 F. Supp. at
15 176 (finding that a consolidated complaint avoided unnecessary costs and delay,
16 allowed the court “to receive memoranda and hear argument directed to one
17 coherent pleading,” made “consideration of class action issues . . . considerably
18 easier,” “lessened” the “burdens of discovery management,” and made “clerical and
19 administrative matters . . . much less burdensome”).

20 **IV. CONCLUSION**

21 For these reasons, Yelp respectfully requests that this Court grant this Motion
22 and enter an order providing the following:

23 1. The following related cases shall be consolidated for all purposes: *Cats*
24 *and Dogs Animal Hospital, Inc. et al. v. Yelp! Inc.*, No. CV 10-01340-VBF(SSx)
25 (C.D. Cal. filed Feb. 23, 2010); and *Christine LaPausky d/b/a D’ames Day Spa v.*
26 *Yelp! Inc.*, No. CV 10-01578-VBF(SSx) (C.D. Cal. filed Mar. 3, 2010).

27 2. Plaintiffs shall file a consolidated and superseding amended complaint
28 within 14 days after the Court enters its order granting consolidation.

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3. Yelp shall be relieved of the obligation of filing an answer, motion to dismiss, or other response to the complaint in each separate case; instead, Yelp shall file a single answer, motion to dismiss, or other response to the consolidated amended complaint within 21 days after it is filed.

Dated: April 12, 2010

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