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 YELP! INC.

18 UNITED STATES DISTRICT COURT  
 19 CENTRAL DISTRICT OF CALIFORNIA  
 20 WESTERN DIVISION

21 CATS AND DOGS ANIMAL  
 HOSPITAL, INC. et al., on behalf of  
 22 itself and all others similarly  
 situated,

23 Plaintiffs,

24 v.

25 YELP! INC.,

26 Defendant.

Case No. CV 10-01340 VBF(SSx)

**JOINT RULE 26(f) CONFERENCE  
 REPORT**

Date: April 26, 2010  
 Time: 8:30 a.m.  
 Judge: Hon. Valerie Baker Fairbank

1 For the Scheduling Conference set for April 26, 2010, plaintiffs Cats and  
2 Dogs Animal Hospital, Inc., et al. (“Plaintiffs”) and defendant Yelp! Inc. (“Yelp”  
3 and collectively with Plaintiffs, the “Parties”) hereby submit this Joint Rule 26(f)  
4 Conference Report pursuant to Federal Rule of Civil Procedure 26(f), Local Rule  
5 26-1, and this Court’s Standing Order dated February 26, 2010.

6 Pursuant to Federal Rule of Civil Procedure 26(f), the Parties held a  
7 telephonic meeting of counsel on Thursday, April 8, 2010. Gregory S. Weston,  
8 Jared H. Beck, and Elizabeth Lee Beck participated for Plaintiffs. Michael G.  
9 Rhodes, Matthew D. Brown, and Benjamin H. Kleine participated for Yelp.

10 **I. CASE SUMMARY**

11 **A. Statement of Claims and Defenses**

12 **1. Plaintiffs’ Position**

13 Defendant operates an Internet small business review site that derives its  
14 revenue primarily from the sale of "business sponsorship" of its review pages.  
15 Plaintiffs assert that Defendant’s large sponsorship sales force extorts business  
16 owners by claiming to consumers looking for reviews of local businesses that its  
17 site is an impartial repository of consumer reviews, while actually manipulating or  
18 offering to manipulate its pages to favor those who purchase costly subscriptions  
19 from Yelp, and disfavoring businesses that refuse to purchase subscriptions.

20 **2. Defendant’s Position**

21 Yelp is the registered owner and provider of the popular website  
22 www.yelp.com (the “Yelp Website”), which allows consumers to find local  
23 businesses, read and write reviews about them, and rate them on a scale of one to  
24 five stars. By reading other people’s reviews, consumers find that they are able to  
25 make more informed decisions about local businesses and services. For example,  
26 users can read reviews of local doctors and dentists, shops and restaurants,  
27 plumbers and babysitters. The Yelp Website features information on and reviews  
28

1 of businesses throughout the United States and is visited by approximately 30  
2 million people per month. Yelp earns revenue by, *inter alia*, selling advertisements  
3 to local businesses, which appear as “Sponsored Results” on the Yelp Website.

4 Plaintiffs’ First Amended Complaint wrongly accuses Yelp of engaging in  
5 extortion, unfair business practices, and intentional interference with the businesses  
6 that are reviewed on the Yelp Website. Plaintiffs accuse Yelp of engaging in fraud,  
7 misrepresentation, and purposeful manipulation of businesses’ Yelp reviews and  
8 rankings—all in a purported attempt to coerce businesses into advertising on the  
9 Yelp Website. Yelp disagrees not only with the underlying factual assertions of the  
10 complaint, but also with the legal bases on which Plaintiffs bring their claims.

11 Yelp’s business dealings and its operation of the Yelp Website are and  
12 always have been completely legitimate. Because anyone can register with Yelp to  
13 write reviews of and rate businesses, Yelp has taken steps to guard against improper  
14 and disruptive reviews. For example, business owners are known to write the  
15 occasional fake review to either burnish their own image or tarnish that of their  
16 competitors, and disgruntled former employees sometimes write negative reviews  
17 about their former employers. This problem permeates most online review sites,  
18 artificially inflating or deflating a business’s rating and misleading consumers.  
19 Yelp internally and informally refers to such reviews as “spam,” in reference to the  
20 common term used to describe unwanted online communications, especially email.  
21 Yelp has developed a sophisticated and confidential review filter algorithm that  
22 attempts to identify and suppress spam reviews. The review filter runs on a nearly  
23 continual basis and, as circumstances change over time (e.g., the review filter  
24 gleans new information about a particular review or reviewer), a review may be  
25 designated and undesignated as spam. Business owners may not always understand  
26 the disappearance or reappearance of reviews and may leap to conclusions that such  
27 activity is connected to whether they purchase or decline to purchase advertising on  
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1 Yelp when, in reality, it is the result of the review filter’s automated screening  
2 process.

3 As set forth in Yelp’s motion to dismiss, even taking the First Amended  
4 Complaint’s factual allegations as true, Plaintiffs have failed to state a claim. First,  
5 Plaintiffs improperly bring civil claims under the California Penal Code for  
6 extortion and attempted extortion. The Penal Code does not provide for a private  
7 right of action, and even if a claim for “civil extortion” (or “attempted civil  
8 extortion”) were cognizable, Plaintiffs have failed to state such a claim. Second,  
9 Plaintiffs have failed to state a claim for intentional interference with prospective  
10 business advantage because Plaintiffs fail to allege their damage to business  
11 goodwill with particularity and Plaintiffs have not alleged any “independent  
12 wrongfulness” other than the interference itself. Third, the Non-Sponsor Plaintiffs  
13 (those who did not purchase Yelp advertising) have no standing to bring claims  
14 under California Business and Professions Code § 17200 since they did not suffer  
15 any “injury in fact” under California law. Fourth, Plaintiffs’ claims should be  
16 dismissed because they are grounded in allegations of fraud and misrepresentation,  
17 which are not pleaded with sufficient particularity under Federal Rule of Civil  
18 Procedure 9(b).

19 Yelp has not yet filed an Answer to the First Amended Complaint. Yelp  
20 reserves the right to assert any and all applicable defenses, in addition to the  
21 arguments regarding Plaintiffs’ failure to state a claim included in Yelp’s motion to  
22 dismiss.

23  
24 **B. Complexity of the Case and Adoption of the Manual for Complex  
Litigation**

25 Yelp believes that the case is reasonably complex because (a) Yelp is  
26 currently facing three related litigations in two district courts, (b) all three purport  
27 to be class actions with nearly identically defined classes of thousands of Yelp’s  
28

1 customers, and (c) all three involve numerous, overlapping claims (and defenses).  
2 Yelp believes that the chapters in the MANUAL FOR COMPLEX LITIGATION on  
3 Multiple Jurisdiction Litigation (Ch. 20) and Class Actions (Ch. 21) will be useful  
4 references.

5 Plaintiffs agree that the MANUAL FOR COMPLEX LITIGATION may be a useful  
6 reference, but do not favor a formal order adopting its procedures.

7  
8 **II. DISCOVERY**

9 **A. Initial Disclosures**

10 The Parties agree that initial disclosures will be made on or before April 19,  
11 2010.

12 **B. Subjects on which Discovery May be Needed**

13 **1. Plaintiffs' Position**

14 Plaintiffs anticipate seeking discovery on preliminary issues such as Yelp's  
15 internal organization and document retention policies; Yelp's sales practices and  
16 policies; Yelp's training supervision of sales employees; Yelp's "review filter";  
17 financial information relating to the size of the class and incentives for  
18 manipulating its business listing page; complaints it has received regarding its sales  
19 practices and its policies on these issues; its policies relating to "Scouts" and the  
20 "Yelp Elite Squad;" payments to Yelp "Scouts"; and Yelp's communications to  
21 business owners.

22 **2. Defendant's Position**

23 Yelp's investigation and analysis of Plaintiffs' claims are ongoing.  
24 Presently, Yelp anticipates that it will seek discovery on subjects including but not  
25 limited to the following: Plaintiffs' communications with Yelp; Yelp's alleged  
26 manipulation or removal of reviews from Plaintiffs' Yelp.com listing pages;  
27 Plaintiffs' Yelp accounts; Plaintiffs' purchase of any online advertising services  
28 (Yelp or otherwise); Plaintiffs' account information and reviews from any other

1 online business review websites; complaints made by Plaintiffs' customers about  
2 Plaintiffs' businesses; decreased sales or revenue or patronage allegedly resulting  
3 from reviews appearing on the Yelp Website.

4 **C. Whether Discovery Should be Conducted in Phases**

5 **1. Plaintiffs' Position**

6 Plaintiffs' position is that discovery relating to the amount of Plaintiffs'  
7 damages should proceed only after a determination of liability, but disagree with  
8 Defendant that discovery before class certification should stayed except for "class  
9 certification issues." In this action, Plaintiffs allege ongoing harm to each of their  
10 businesses and thousands of others, and the delay that would accompany the  
11 bifurcation of discovery into "class certification" issues and "merits" issue would  
12 cause them substantial prejudice. Further, Plaintiffs anticipate that an order  
13 bifurcating discovery would burden the Court with needless task of resolving  
14 disputes over what requests pertain to "class certification issues" and what requests  
15 are related to "merits issues."

16 Plaintiffs agree with Defendant that the MANUAL FOR COMPLEX LITIGATION  
17 §21.14 is instructive on this point. It notes, first, that "Arbitrary insistence on the  
18 merits/class discovery distinction sometimes thwarts the informed judicial  
19 assessment that current class certification practice emphasizes." It also provides a  
20 useful test that, applied here, would counsel against a stay of merits discovery, that  
21 "merits discovery during the precertification period is generally more appropriate  
22 for cases that are large and likely to continue even if not certified" while "cases that  
23 are unlikely to continue if not certified" such discovery may later be to no end.

24 While Plaintiffs would obviously not have filed this action as a class action if  
25 they believed class certification would not be granted, in the event that it is not,  
26 they would still continue seeking their primary goal of an injunction barring the  
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28

1 sales practices described in the complaint, as well as damages and restitution for the  
2 named Plaintiffs.

3 **2. Defendant’s Position**

4 Yelp proposes that discovery should be bifurcated, or “phased,” with Phase I  
5 focusing on discovery related to class certification issues, and Phase II focusing on  
6 discovery targeting the merits of Plaintiffs’ claims and Yelp’s defenses. Phased  
7 discovery of this sort (precertification discovery first, followed later by merits  
8 discovery) is contemplated by the MANUAL FOR COMPLEX LITIGATION (*see, e.g.*,  
9 §§ 21.11, 21.14), which states that allowing merits discovery before the decision on  
10 certification “can create unnecessary and extraordinary expense and burden” (*id.*  
11 § 21.14). Yelp submits that organizing discovery into two phases is the most  
12 judicious and efficient approach here.

13 **D. Protective Order / Privilege Issues**

14 The Parties agree that a protective order should be entered, governing the  
15 production of confidential documents and information, and that such protective  
16 order should include a “clawback” agreement for privileged materials. The Parties  
17 will meet and confer to submit a protective order for the Court’s consideration.

18 **E. Changes to the F.R.C.P. and Local Rule Limits on Discovery**

19 Particularly in light of the number of named plaintiffs in this case (10), Yelp  
20 proposes that the limit of 10 depositions set forth in Federal Rule of Civil Procedure  
21 30 be modified for this case. Yelp submits that the Parties should be permitted to  
22 take 20 depositions per side (excluding experts, which would be in addition to this  
23 limit of 20), without prejudice to the Parties mutually agreeing to further modify the  
24 number of depositions, and without prejudice to either party seeking leave of the  
25 Court to take additional depositions if they believe it is necessary to do so.

26 Plaintiffs respectfully disagree with Defendant and submit to the court that  
27 any modification of the 10-depositions rule is premature at this juncture; the Parties  
28

1 may enter into a stipulation, or move for an appropriate court order at a later time,  
2 upon good cause and as the facts in the case develop.

3 **F. Case Management Schedule**

4 Yelp believes that the case management schedule should allow for orderly  
5 and efficient development of the case, taking into account several aspects of the  
6 case's current posture: (1) the pendency of Yelp's motion to dismiss the First  
7 Amended Complaint for failure to state a claim (currently set for hearing on May 3,  
8 2010); (2) the pendency of Yelp's motion for transfer of venue to the Northern  
9 District of California, where a related class action is pending (set for hearing on  
10 May 10, 2010); (3) Plaintiffs' forthcoming motion for class certification (unless  
11 modified by the Court in its case management order (see this section, below), the  
12 current deadline is May 26, 2010); and (4) the Parties' intentions to conduct  
13 discovery on class certification issues.

14 Before filing their motion for class certification, Plaintiffs anticipate serving  
15 written discovery and taking depositions of Yelp management and sales employees  
16 directed to class certification issues. Before filing its opposition to the motion for  
17 class certification, Yelp also anticipates serving written discovery on Plaintiffs  
18 directed toward class certification issues, as well as taking the depositions of the  
19 named Plaintiffs (there are 10 named Plaintiffs in this *Cats and Dogs* action and  
20 one additional named Plaintiff in the related *LaPausky* action also pending before  
21 this Court). Plaintiffs do not anticipate but reserve their right to designate an expert  
22 on class certification issues. If such an expert were designated, Yelp anticipates  
23 taking the expert's deposition. Yelp also reserves the right to designate an expert;  
24 Plaintiffs anticipate taking Yelp's expert's deposition as well.

25 As noted above, Plaintiffs believe that a uniform discovery schedule is most  
26 appropriate for this case, as opposed to a bifurcated, or "phased" discovery plan.  
27  
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1 Yelp, however, believes that phased discovery (first precertification discovery, then  
2 followed later by merits discovery) is most appropriate.

3  
4 Yelp also suggests that in order for the parties to have reasonable discovery  
5 on class certification issues, and for the parties and the Court to have the benefit of  
6 a full and fair hearing on class certification, the current schedule should be  
7 modified. Absent modification in the Court's case management order, currently  
8 Plaintiffs' motion for class certification is due by May 26, and the default rules for  
9 the briefing schedule would apply, meaning Yelp could have very little time to  
10 prepare its opposition. Yelp respectfully proposes the following briefing schedule:

- 11 • Plaintiffs' motion for class certification: June 23, 2010
- 12 • Yelp's opposition: July 28, 2010
- 13 • Plaintiffs' reply: August 11, 2010
- 14 • Hearing on class certification: August 23, 2010

15 Yelp also believes this schedule has the benefit of allowing the Court to hear and  
16 decide Yelp's motion to dismiss for failure to state a claim, or Yelp's motion for  
17 transfer of venue, or both, before receiving briefing and oral argument on class  
18 certification. (See Sections V(D) and V(E) below.)

19 Plaintiffs agree with Defendant that a modification of the default rules for  
20 class certification briefing would appropriate here to provide the parties with  
21 reasonable discovery on class certification issues, and respectfully request that the  
22 Court should relieve them of the deadline imposed by L.R. 23-3, which requires the  
23 motion for class certification be filed within 90 days of the service of the complaint,  
24 but see no reason why the hearing on the motion should be scheduled so far in  
25 advance as Defendant submits, or why modification of the default rules for noticed  
26 motions is necessary.

1 If the Court wishes to set a schedule for the remainder of the case at this  
 2 time, the Parties propose the following schedule (aside from the class certification  
 3 schedule, which is discussed immediately above):  
 4

<b>Hearings &amp; Deadlines Already on Calendar</b>	<b>Date</b>
Initial disclosures	April 19, 2010
Initial CMC	April 26, 2010
Hearing on Yelp's motion to dismiss	May 3, 2010
Hearing on Yelp's motion for transfer of venue	May 10, 2010
Hearing on Yelp's motion for consolidation	May 10, 2010
<b>Proposed Case Management Schedule &amp; Discovery Plan</b>	<b>Date</b>
<b>Discovery and Various Procedural Matters</b>	
Deadline to join additional parties	July 19, 2010
Deadline for motion for leave to amend pleadings	July 19, 2010
Fact document discovery deadline	February 28, 2011
Fact deposition deadline	March 21, 2011
Disclosure and report of Plaintiffs' and Yelp's expert(s)	April 4, 2011
Disclosure and report of Plaintiffs' and Yelp's rebuttal expert(s)	April 25, 2011
Expert deposition deadline	May 16, 2011
<b>Summary Judgment</b>	
Motions for summary judgment	June 20, 2011
Oppositions to motions for summary judgment	July 18, 2011
Hearing on motions for summary judgment	August 8, 2011
<b>Trial</b>	
Pre-trial conference	October 24, 2011
Trial	November 7, 2011 or as soon thereafter as Court's schedule permits

1 **III. SETTLEMENT ISSUES**

2 Under Local Rule 16-16, the Parties agree to Settlement Procedure No. 3,  
3 which will consist of non-judicial private mediation. The Parties believe that the  
4 best time for mediation would be within 45 days after the Court rules on Plaintiffs'  
5 motion for class certification.

6 **IV. OTHER PROCEDURAL ISSUES**

7 **A. Jurisdiction**

8 Plaintiffs have alleged, and Yelp has not disputed, that this Court has subject  
9 matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

10 **B. Trial Estimate**

11 Yelp anticipates that, if a class is not certified, trial is likely to last 10-14  
12 court days (5-7 days for each side's case-in-chief), and that if a class is certified,  
13 trial is likely to last 15-20 court days.

14 Plaintiffs estimate that a trial would require approximately 5-7 days, and this  
15 estimate would not be affected by the Court's decision on class certification.

16 **C. Jury Trial**

17 Both Parties anticipate asking for a jury trial.

18 **D. Additional Parties**

19 Counsel for Plaintiffs have retained numerous other small business clients  
20 complaining of the same behavior described in the complaint, and have been  
21 contacted by over 200 other business owners and would seek to join many of them  
22 if the action cannot be maintained as a class action, but does not otherwise foresee  
23 the addition of other parties.

24 **V. ANTICIPATED PROCEDURAL OR EVIDENTIARY PROBLEMS**

25 In addition to the issues raised above (*i.e.*, class certification, phased  
26 discovery), there are several procedural issues facing the Parties and the Court:  
27  
28

1           **A.    Whether this Action Should be Consolidated with *LaPausky***

2                   **1.    Defendant’s Statement of the Issue**

3           The action entitled *LaPausky v. Yelp!, Inc.*, Case No. 2:10-cv-01578-VBF  
4 (SSx) (“*LaPausky*”) has been deemed related to this action, and both actions are  
5 now pending before this Court. Plaintiff in *LaPausky*, Plaintiffs here, and Yelp all  
6 agree in principle that the two cases should be consolidated. However, the three  
7 parties have not yet been able to reach a collective stipulation as to certain issues  
8 related to consolidation. Plaintiffs in this action and Yelp each filed an *ex parte*  
9 application addressing these consolidation issues but the Court ruled that the  
10 matters were not appropriate for *ex parte* applications, in contrast to noticed  
11 motions. On April 12, 2010, Yelp filed a noticed motion for consolidation, which  
12 is set for hearing on May 10, 2010. The MANUAL FOR COMPLEX LITIGATION  
13 § 21.11 suggests that this is an appropriate topic for the initial conference.

14                   **2.    Plaintiffs’ Response**

15           Plaintiffs have continuously been in contact with counsel of *LaPausky* and  
16 have tentatively agreed to retain and substitute in as counsel for Ms. LaPausky. In  
17 the event that such agreement cannot be reached, Plaintiffs believe the *LaPausky*  
18 action and any other subsequently filed tag-along actions should be consolidated. If  
19 Plaintiffs do reach such agreement, they will either agree to consolidation or  
20 dismissal of the later-filed related action.

21           **B.    Whether this Action Should be Transferred to the Northern**  
22 **District of California**

23                   **1.    Defendant’s Statement of the Issue**

24           On April 9, 2010, Yelp filed a motion to transfer this action (and *LaPausky*)  
25 to the Northern District of California. Among other reasons favoring a transfer are  
26 that (a) Plaintiffs have agreed to forum selection clauses whereby they have  
27 consented to jurisdiction and venue in the Northern District, which is determinative  
28

1 of the issue of convenience to the parties, (b) a related action entitled *Levitt v. Yelp!*  
2 *Inc.*, No. CV 10-1321 MHP (“*Levitt*”) is pending in the Northern District before the  
3 Honorable Marilyn Hall Patel, (c) most of the relevant conduct occurred in or from  
4 the Northern District, and (d) the vast majority of Yelp witnesses are located in the  
5 Northern District. Additionally, Plaintiff’s choice of forum is entitled to minimal or  
6 no weight in the circumstances here, as described in Yelp’s motion. The motion  
7 hearing date is set for May 10, 2010.

8 **2. Plaintiffs’ Response**

9 Plaintiffs oppose Defendant's motion to transfer.

10  
11 **C. Whether Yelp’s Motion to Dismiss Should be Heard on the Same**  
12 **Date as Yelp’s Motion to Transfer and Motion to Consolidate**

13 **1. Defendant’s Statement of the Issue**

14 On April 1, 2010, Yelp filed a motion to dismiss the First Amended  
15 Complaint. Yelp noticed the motion for the first available hearing date, May 3,  
16 2010. On April 9, 2010, Yelp filed its motion to transfer. That hearing date was set  
17 for the earliest hearing date then available, May 10, 2010. On April 12, 2010, Yelp  
18 filed its motion to consolidate, and again set the hearing date for the earliest date  
19 then available, May 10, 2010.

20 Yelp believes it would be more efficient for the Court and the parties to hold  
21 the hearings on all three motions on the same date. On May 8, 2010, Yelp  
22 suggested to Plaintiffs that the parties stipulate to moving the hearing on the motion  
23 to dismiss from May 3 to May 10. Plaintiffs did not agree to do so. Yelp  
24 respectfully requests that the Court consider continuing the hearing on the motion  
25 to dismiss from May 3 to May 10.

26 **2. Plaintiffs’ Response**

27 Plaintiffs see no efficiency in moving the hearing on the motion to dismiss to  
28 May 10. Plaintiffs also view it as unfair that a later-filed copycat action filed in

1 state court and removed by Defendant be used as a pretext to delay the resolution of  
2 their pleading, even if by a week.

3  
4 **D. Whether the Court Should Decide Yelp’s Motion to Dismiss  
Before Entertaining any Motion for Class Certification**

5  
6 **1. Defendant’s Statement of the Issue**

7 As discussed above, on April 1, 2010, Yelp moved to dismiss the First  
8 Amended Complaint for failure to state a claim. The MANUAL FOR COMPLEX  
9 LITIGATION § 21.11 states that an issue for the Initial Case Management Conference  
10 is “[w]hether to hear and determine threshold dispositive motions, particularly  
11 motions that do not require extensive discovery, before hearing and determining  
12 class certification motions.”

13 Yelp’s view is that the motion to dismiss should be decided by the Court  
14 prior to any motion for class certification (see above, Section II(F), for Yelp’s  
15 proposed schedule on class certification). The ruling on the motion to dismiss may  
16 either dispose of the case or seriously affect the scope of claims going forward.  
17 Furthermore, since a number of Yelp’s arguments for dismissal are that Plaintiffs  
18 have failed to plead with the required particularity, Yelp believes that having a  
19 ruling on the motion to dismiss and any allowed Second Amended Complaint will  
20 inform the Parties’ depositions and briefing on class certification.

21 **2. Plaintiffs’ Response**

22 Defendants' position appears to be calculated to delay class certification in  
23 the event the Court requires more than the usual time to issue an order on the  
24 pending motion to dismiss. Plaintiffs see no need for the Court to address this issue  
25 in its case management order.

1           **E. Whether the Court Should Decide Yelp’s Motion to Transfer**  
2           **Before Any Class Certification Motion**

3                   **1. Defendant’s Statement of the Issue**

4           Yelp’s position is that the motion for transfer should be decided prior to the  
5 Court entertaining any motion for class certification (see above, Section II(F), for  
6 Yelp’s proposed schedule on class certification). A strong factor favoring transfer  
7 of the case to the Northern District of California is so that the case can be  
8 consolidated with the *Levitt* action and, thus, avoid duplicative litigation. If a  
9 motion for class certification were made in this case prior to a decision on the  
10 motion for transfer, Yelp could be faced with two separate motions for class  
11 certification where otherwise it may only be faced with one such motion.

12                   **2. Plaintiffs’ Response**

13           Similar to Plaintiffs’ positions above, Plaintiffs do not believe class  
14 certification should be delayed should the Court require more than the usual time to  
15 issue its order on Defendant's motion to transfer, and further that it would be unfair  
16 for a later-filed copycat be used as pretext to delay the resolution of the first-filed  
17 action. Defendant's appropriate remedy to avoid duplicative costs involved in the  
18 *Levitt* action is to file in the *Levitt* action a motion to stay or dismiss the action  
19 pursuant to the first-to-file rule.<sup>1</sup>

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25           <sup>1</sup> See *Peak v. Green Tree Fin. Svc. Corp.*, 2000 WL 973685 (N.D. Cal. July 7,  
26 2000) (dismissing copycat class action under first-to-file rule); *Meints v. Regis*  
27 *Corp*, 2010 U.S. Dist. LEXIS 14120 (S.D. Cal. Feb. 16, 2010) (staying copycat  
28 action under first-to file rule); see also *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678  
F.2d 93, 94-5 (9th Cir. 1982) (describing the first-to-file rule generally outside of  
the class action context).

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Dated: April 12, 2010

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