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 7 YELP! INC.

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

11 BORIS Y. LEVITT, on behalf of himself  
 12 and all others similarly situated,

13 Plaintiff,

14 v.

15 YELP! INC.; and DOES 1 through 100,  
 inclusive,

16 Defendants.

No. CV 10-01321 MHP

**DEFENDANT YELP! INC.'S REPLY IN SUPPORT  
 OF MOTION TO CONSOLIDATE RELATED CASES  
 FOR ALL PURPOSES AND TO SET DATES FOR  
 CONSOLIDATED AMENDED COMPLAINT AND  
 RESPONSE THERETO**

Date: Monday, July 19, 2010  
 Time: 2:00 p.m. \_  
 Judge: Hon. Marilyn Hall Patel

18 CATS AND DOGS ANIMAL  
 19 HOSPITAL, INC., et al., on behalf of  
 20 itself and all others similarly situated,

21 Plaintiffs,

22 v.

23 YELP! INC.,

24 Defendant.

No. CV 10-02351 MHP

1 In deciding whether to consolidate cases, “the main question” for a court “is whether  
2 there is a common question of law *or* fact.” *Ind. State Dist. Council of Laborers and HOD*  
3 *Carriers Pension Fund v. Gecht*, No. C-06-7274 EMC, 2007 WL 902554, at \*1 (N.D. Cal. Mar.  
4 22, 2007) (emphasis added). Plaintiffs in *Cats and Dogs Animal Hospital, Inc. v. Yelp! Inc.*, No.  
5 CV 10-02351 MHP (“*Cats and Dogs*”), concede, as they must, that their action and *Boris Y.*  
6 *Levitt v. Yelp! Inc.*, No. CV 10-01321 (“*Levitt*”), “involve common questions of law *and* fact,”  
7 and that the Court may, in its discretion, grant Yelp! Inc.’s (“Yelp”) motion to consolidate. (Opp.  
8 at 3:22-25 (emphasis added).)

9 This concession notwithstanding, the *Cats and Dogs* Plaintiffs argue that granting Yelp’s  
10 motion would cause “delay” and that “[t]he harm from delay . . . far outweighs the benefit of  
11 consolidation.” (Opp. at 4:12-13.) The “delay” to which Plaintiffs point is Yelp’s request that  
12 the Court order Plaintiffs to file a consolidated, amended complaint, which Plaintiffs argue will  
13 cause putative class members to “suffer tremendously.” (Opp. at 2:5-13.)

14 Plaintiffs’ argument that they will be prejudiced by this “delay” is without merit. *First*,  
15 granting Yelp’s request would not result in “delay” given that the initial case management  
16 conference for *both* of these related cases will not be held until August 23. (Docket No. 63.)  
17 *Second*, Plaintiffs have not explained *how* they would be prejudiced by what they characterize as  
18 “delay,” nor can they. These cases, filed just weeks apart, are in a similar procedural posture,  
19 which weighs in favor of consolidation and undermines Plaintiffs’ claims of prejudice from  
20 “delay.” *Burnett v. Rowzee*, No. SACV07-641 DOC (ANx), 2007 WL 4191991, at \*3 (C.D. Cal.  
21 Nov. 26, 2007) (finding no prejudice where “no case is close to trial” and all of the cases to be  
22 consolidated arose within a four-month period, so that “the risk of prejudice due to cases being at  
23 different stages of preparation is minimal”). Moreover, Plaintiffs have failed to point to any  
24 authority supporting the notion that this purported prejudice would be sufficient to outweigh the  
25 benefits of consolidating two related cases sharing not only “common questions of fact and law”  
26 but “identical” alleged “factual scenarios.” (Opp. at 3:23, 4:15-16.)

27 Instead, as Yelp argued in its moving brief (Yelp Mot. at 10), filing a consolidated  
28 complaint will streamline these proceedings by incorporating all named plaintiffs, and their

1 claims and allegations, into a single pleading.<sup>1</sup> See *In re Equity Funding Co. of Am. Sec. Litig.*,  
2 416 F. Supp. 161, 176 (C.D. Cal. 1976) (finding that a consolidated complaint avoided  
3 unnecessary costs and delay, allowed the court “to receive memoranda and hear argument  
4 directed to one coherent pleading,” made “consideration of class action issues . . . considerably  
5 easier,” “lessened” the “burdens of discovery management,” and made “clerical and  
6 administrative details, [and] matters . . . much less burdensome”).

7 *Cats and Dogs* Plaintiffs also object to consolidation because “counsel for *Cats and Dogs*  
8 do not wish to work with counsel for Mr. Levitt.” (Opp. at 5:12.) Yet Plaintiffs have cited no  
9 authority holding that an attorney’s wish to be the sole Plaintiffs’ counsel has any bearing on  
10 whether cases should be consolidated. It does not. Similarly, *Cats and Dogs* Plaintiffs assert  
11 that *Levitt’s* complaint is not well-drafted and argue that this, too, weighs against consolidation.  
12 (Opp. at 4:14-5:11.) They disapprove of some of *Levitt’s* claims for relief and of *Levitt’s*  
13 approach to defining the proposed class. (*Id.*) But, again, Plaintiffs fail to point to any authority  
14 supporting the argument that their disapproval of *Levitt* counsel’s approach somehow weighs  
15 against consolidation in these circumstances. Cf. *Osher v. JNI Corp.*, No. 01-CV-0557-J (NLS),  
16 2001 WL 36176415, at \*2 (S.D. Cal. July 10, 2001) (finding that Rule 42 does not “require[] that  
17 the actions be identical before they may be consolidated”).

18 In sum, Plaintiffs fail to present any delay, inconvenience, or expense that outweighs the  
19 benefits of consolidation. See *Huene v. U.S.*, 743 F.2d 703, 704 (9th Cir. 1984) (while  
20 “exercising its broad discretion to order consolidation of actions,” a district court also “weighs  
21 the saving of time and effort consolidation would produce against any inconvenience, delay, or  
22 expense that it would cause”). Rather, as Yelp explained in its opening brief, consolidating these  
23 cases will preclude the possibility of inconsistent results, streamline the discovery process, and  
24

25  
26 <sup>1</sup> Plaintiffs’ request to have their First Amended Complaint be deemed the “operative” complaint  
27 should be denied. Their complaint, obviously, does not include *Levitt* as a named Plaintiff nor  
28 does it include all of *Levitt’s* claims for relief. If Plaintiffs’ request is granted, Yelp would be  
forced to litigate the remaining *Levitt* claims after the conclusion of the litigation over the *Cats*  
*and Dogs* complaint. This incontrovertible delay would subject *Yelp* to great prejudice.

1 cut the number of required motions in half. These benefits are not outweighed by Plaintiffs'  
2 meritless claims of “delay” or by their jockeying to be lead counsel for the putative class.

3 **CONCLUSION**

4 For these reasons, Yelp respectfully requests that this Court grant Yelp’s Motion in its  
5 entirety.

6 Dated: July 6, 2010

COOLEY LLP

7  
8 /s/ Matthew D. Brown  
Matthew D. Brown (196972)

9 Attorneys for Defendant Yelp! Inc.

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