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 6 YELP! INC.

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

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

13 Plaintiff,

14 v.

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

17 Defendants.

No. CV 10-01321 MHP

**DEFENDANT YELP! INC.'S STATEMENT ON
 PROPOSED DISCOVERY PLAN**

Courtroom: 15
 Judge: Honorable Marilyn Hall Patel
 Trial Date: None Set

19 CATS AND DOGS ANIMAL
 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 Defendant Yelp! Inc. (“Yelp”) respectfully submits this Statement on Proposed Discovery
2 Plan pursuant to the Court’s July 20, 2010 Order asking the parties in these now-consolidated
3 cases “to submit their respective discovery plans for the next six months.” (July 20, 2010 Order
4 at 1.)

5 **I. SCOPE OF ANTICIPATED DISCOVERY**

6 Yelp’s investigation and analysis of Plaintiffs’ claims are ongoing. Presently, Yelp
7 anticipates that it will seek discovery on subjects including, but not limited to, the following:
8 Plaintiffs’ communications with Yelp; present and historical reviews on Plaintiffs’ Yelp page;
9 Plaintiffs’ Yelp account(s); Plaintiffs’ purchase of any online advertising services (from Yelp or
10 others); Plaintiffs’ account information and reviews from any other online business review
11 websites; complaints made by Plaintiffs’ customers about Plaintiffs’ business; Plaintiffs’ sales
12 and/or revenue and/or patronage statistics; whether Plaintiffs’ alleged experiences with Yelp are
13 common with one another; and whether members of the putative class can be ascertained.

14 Yelp anticipates that it will serve discovery on and take depositions of each of the
15 individuals and businesses that have sued it in the related actions. In addition to the current
16 named plaintiffs in the pending actions, Yelp also intends to serve a subpoena on Christine
17 LaPausky, the plaintiff in the former lawsuit entitled *LaPausky d/b/a D’Ames Day Spa v. Yelp!*
18 *Inc.*, Case No. CV10-1578 (C.D. Cal.) that was voluntarily dismissed (by the same counsel who
19 represent plaintiffs in the *Cats and Dogs* case) after Yelp made a motion to dismiss for failure to
20 state a claim.

21 Yelp anticipates a need to have limits placed on discovery of Yelp’s business records
22 pertaining to putative class members that have not been named as Plaintiffs, assuming they could
23 even be identified. Yelp’s business records contain information about hundreds of thousands of
24 businesses nationwide, and it would be unduly burdensome and expensive for Yelp to search for,
25 review, and produce documents relating to any putative class members, without limitation.

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1 **II. MODIFICATIONS TO THE DISCOVERY RULES**

2 **A. Discovery to Begin After Pleadings Are Settled**

3 Yelp and Plaintiffs in the pre-consolidated case entitled *Cats and Dogs Animal Hospital,*
4 *Inc. v. Yelp!, Inc.*, Case No. CV 10-02351 MHP (“*Cats and Dogs*”) have engaged in limited
5 discovery to date. Written discovery was served while the case was venued in the Central District
6 of California, where a different set of local rules governed the case. No documents have been
7 produced. There has been no discovery in the pre-consolidated case entitled *Levitt v. Yelp!, Inc.*,
8 Case No. CV 10-01321 MHP (“*Levitt*”).

9 Consistent with the Court’s comments at the hearing on July 19, Yelp believes that
10 discovery should not commence until after any motion to dismiss the forthcoming consolidated
11 complaint has been decided. Plaintiff’s counsel in *Levitt* agrees. (See Joint Case Management
12 Statement in *Levitt* case (“*Levitt* CMC Statement”) at 8.) Plaintiffs’ counsel in *Cats and Dogs*
13 originally opposed such a pause of discovery (see Joint Case Management Statement in *Cats and*
14 *Dogs* case (“*Cats and Dogs* CMC Statement”) at 10-11), but recent communications with counsel
15 suggest that they may now agree.

16 Thus, Yelp requests that, except for initial disclosures under Federal Rule of Civil
17 Procedure 26(a), discovery be deferred until the pleadings have closed (*i.e.*, until after any motion
18 to dismiss is decided and, if necessary, Yelp has filed an Answer in this action).

19 **B. Discovery to Be Bifurcated into Class and Merits Discovery**

20 Consistent with the Court’s comments at the hearing on July 19, all parties have agreed
21 that discovery prior to a decision on class certification should be limited to discovery that pertains
22 to class certification issues. (See *Levitt* CMC Statement at 8; *Cats and Dogs* CMC Statement at
23 12.) Phased discovery of this sort (precertification discovery first, followed later by merits-only
24 discovery) is contemplated by the Manual for Complex Litigation (*see, e.g.*, §§ 21.11, 21.14),
25 which states that allowing full merits discovery before a decision on certification “can create
26 unnecessary and extraordinary expense and burden” (*id.* § 21.14). Yelp recognizes that the line
27 between class discovery and merits-only discovery is not always easy to delineate and agrees to
28 meet and confer in good faith on disagreements to determine appropriate limits to class discovery.

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C. Number of Depositions

In light of the number of named plaintiffs in the consolidated cases (11), Yelp believes that the number of depositions allowed per side should be increased to 20 (excluding expert depositions, which would be in addition to the 20). This is without prejudice to the Parties mutually agreeing to further modify the number of depositions, and without prejudice to either party seeking leave of the Court to take additional depositions if they believe it is necessary to do so (for example, if more named plaintiffs are added). Both sets of Plaintiffs have already agreed to this modification. (See *Levitt* CMC Statement at 8; *Cats and Dogs* CMC Statement at 12.)

D. Withdrawal or Amendment of Previously Propounded Interrogatories

Due to the procedural history of these cases, Yelp and Plaintiffs in the *Cats and Dogs* action have already served interrogatories. Because a consolidated complaint has now been ordered, certain of those interrogatories (especially those interrogatories relating to particular allegations in the now inoperative *Cats and Dogs* First Amended Complaint¹) may be rendered moot or inapplicable. Yelp thus respectfully requests that the parties be allowed to amend or withdraw interrogatories that are rendered moot or inapplicable by the forthcoming consolidated complaint, without such amendment or withdrawal counting against the party’s limit on the number of interrogatories.

¹ As an example, Yelp’s Interrogatory number 8 asked each *Cats and Dogs* Plaintiff to “IDENTIFY any YELP ‘Sponsored Event’ that YOU have held, as alleged in Paragraphs 63 and 64 of the COMPLAINT.”

1 **III. PROPOSED DISCOVERY AND CASE MANAGEMENT SCHEDULE**

2 Yelp and Plaintiff’s counsel in *Levitt* have agreed to the following schedule:

Event	Date / Deadline
<p>4 Opening of Initial Phase of Fact Discovery</p> <p>5</p> <p>6</p>	<p>Discovery will be bifurcated into class certification and merits discovery.</p> <p>Class certification discovery would commence after the pleadings have closed (<i>i.e.</i>, after any motions to dismiss have been decided and, if necessary, Yelp has filed an Answer).</p>
<p>7 Completion of Class Certification Fact Discovery</p> <p>8</p>	<p>Six months from close of pleadings</p>
<p>9 Completion of Class Certification Expert Discovery (if Any)</p> <p>10</p>	<p>Two months after completion of class certification fact discovery.</p> <p>During this period, the following will occur on a schedule to be worked out by the parties: disclosure of experts, service of initial expert reports, rebuttal reports, and depositions.</p>
<p>11 Deadline to File Any Motion for or to Deny Class Certification</p> <p>12</p> <p>13</p>	<p>If class certification expert discovery takes place, then two weeks after completion of class certification expert discovery.</p> <p>If there is no expert discovery, then two weeks after the completion of class certification fact discovery or two weeks after the Parties have confirmed that there will be no expert discovery, whichever is later.</p>
<p>14 Deadline to File Any Opposition to Motion for or to Deny Class Certification</p> <p>15</p> <p>16</p>	<p>If class certification expert discovery takes place, eight weeks after the end of expert discovery.</p> <p>If there is no expert discovery, then eight weeks after completion of class certification fact discovery or two weeks after the Parties have confirmed that there will be no expert discovery, whichever is later.</p>
<p>17 Deadline to file Any Reply on Motion for or to Deny Class Certification</p> <p>18</p>	<p>Three weeks days after filing of opposition to motion for or to deny class certification.</p>
<p>19 Class Certification Hearing</p>	<p>At the Court’s convenience</p>
<p>20 Completion of Fact Discovery</p>	<p>Six months after order on motion for class certification</p>
<p>21 Completion of Expert Discovery</p> <p>22</p>	<p>Three months after completion of fact discovery. Includes disclosure of experts, service of initial expert reports and rebuttal reports, and depositions on dates to be agreed upon by the Parties.</p>
<p>23 Deadline for Dispositive Motions (Including <i>Daubert</i> Motions)</p> <p>24</p>	<p>Two months from completion of expert discovery</p>
<p>25 Hearing on Dispositive Motions</p>	<p>At the Court’s convenience</p>
<p>26 Pre-Trial Conference</p> <p>27</p>	<p>One month after Court’s ruling on dispositive motions, or as soon as possible based on the Court’s schedule</p>
<p>28 Trial</p>	<p>Two weeks after Pre-Trial Conference</p>

1 Plaintiffs' counsel in *Cats and Dogs* have not agreed to this schedule and we understand
2 that they will include their proposed schedule in their separate submission to the Court. *Cats and*
3 *Dogs* Plaintiffs have informed Yelp that they propose a schedule in which (a) documents would
4 be produced within 1 month after a decision on any motion to dismiss, (b) all of the depositions of
5 Yelp's Rule 30(b)(6) deponents and 4 depositions of named Plaintiffs would be completed within
6 4 months of a decision on any motion to dismiss, and (c) all class discovery (including expert
7 discovery) would close within 6 months of the decision on the motion to dismiss.

8 *Cats and Dogs* Plaintiffs' proposed schedule would be unworkable. *First*, under such a
9 schedule, document discovery would have to be completed within days of Yelp's deadline to file
10 an Answer and any counterclaims. *See* Fed. R. Civ. P. 12(a)(4) (answer within 14 days after
11 notice of denial of Rule 12 motion). *Second*, under such a schedule, completion of document
12 discovery would occur prior to the deadline for objections and responses to discovery (and prior
13 to any meeting and conferring on such objections), because discovery would not commence until
14 after the pleadings are closed, and the Federal Rules call for responses and objections to be served
15 within 30 days after service of the discovery. Thus, allowing for only one month for the
16 *completion* of document discovery is unworkable and would result in disorderly document
17 production. Instead, the schedule should include an appropriate period for orderly document
18 discovery, which would include service of discovery requests, objections and responses, meeting
19 and conferring, production, and time to take up any discovery disputes with the Court. Yelp
20 respectfully suggests, and Plaintiff in *Levitt* agrees, that six months is an appropriate time period
21 for fact discovery. *Third*, completion of depositions within 4 months of a decision on any motion
22 to dismiss is likely to be unachievable given the number of Plaintiffs involved and the potential
23 complexity of the document production on Yelp's end. *Fourth*, limiting Yelp to 4 depositions of
24 the named Plaintiffs is unwarranted given that there are currently 11 named Plaintiffs and it is
25 currently unclear how many principals or employees at each named Plaintiff have information
26 relevant to class certification issues.

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1 **IV. PROTECTIVE ORDER SHOULD BE ENTERED**

2 Because of the highly confidential and proprietary nature of Yelp’s documents and
3 information, Yelp will seek entry of a protective order prior to the production of confidential
4 documents. Plaintiffs have agreed that such a protective order, including a “clawback” agreement
5 for privileged material, is appropriate. (See *Cats and Dogs* CMC Statement at 19.) Yelp will
6 work with Plaintiffs to submit a stipulated protective order to the Court for approval.

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8 Respectfully submitted.

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10 Dated: July 26, 2010

COOLEY LLP

11 /s/Matthew D. Brown
12 Matthew D. Brown (196972)

13 Attorneys for Defendant Yelp! Inc.

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