

1 GIBSON, DUNN & CRUTCHER LLP  
 2 GAIL LEES, SBN 90363  
 3 gleees@gibsondunn.com  
 4 333 South Grand Avenue  
 5 Los Angeles, California 90071-3197  
 6 Telephone: (213) 229-7000  
 7 Facsimile: (213) 229-7520

8 S. ASHLIE BERINGER, SBN 263977  
 9 SUSANNAH WRIGHT, SBN 264473  
 10 aberinger@gibsondunn.com  
 11 swright2@gibsondunn.com  
 12 1881 Page Mill Road  
 13 Palo Alto, California 94304-1211  
 14 Telephone: (650) 849-5300  
 15 Facsimile: (650) 849-5333

16 YELP! INC.  
 17 AARON SCHUR, SBN 229566  
 18 aschur@yelp.com  
 19 706 Mission Street  
 20 San Francisco, California 94103  
 21 Telephone: (415) 908-3801  
 22 Facsimile: (415) 908-3833

23 Attorneys for Defendant  
 24 YELP! INC.

25 UNITED STATES DISTRICT COURT  
 26 NORTHERN DISTRICT OF CALIFORNIA  
 27 SAN FRANCISCO DIVISION

28 BORIS Y. LEVITT, CATS AND DOGS  
 ANIMAL HOSPITAL, INC., TRACY CHAN,  
 and BLEEDING HEART, LLC d/b/a  
 BLEEDING HEART BAKERY; on behalf of  
 themselves and all others similarly situated,

Plaintiff,

v.

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

Defendants.

Case No. CV 10-01321 MHP  
 Consolidated with CV 10-02351MHP

CLASS ACTION

**DEFENDANT YELP! INC.'S NOTICE OF  
 MOTION AND MOTION TO DISMISS  
 FIRST AMENDED CLASS ACTION  
 COMPLAINT AND TO STRIKE CLASS  
 ACTION ALLEGATIONS;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES**

Date: November 29, 2010  
 Time: 2:00 p.m.  
 Place: Courtroom 15, 18<sup>th</sup> Floor  
 450 Golden Gate Avenue  
 San Francisco, California  
 Judge: The Honorable Marilyn H. Patel

TABLE OF CONTENTS

Page
NOTICE OF MOTION AND MOTION ..... 1
MEMORANDUM OF POINTS AND AUTHORITIES ..... 1
I. ISSUES TO BE DECIDED ..... 1
II. INTRODUCTION AND SUMMARY OF ARGUMENT ..... 2
III. ALLEGATIONS IN THE COMPLAINT ..... 4
A. Yelp’s Online Review Service ..... 4
1. Yelp’s Automated Review Filter ..... 4
2. Yelp’s Advertising Program ..... 5
B. Named Plaintiffs’ Allegations ..... 5
1. Non-Sponsor Plaintiffs: ..... 5
2. Sponsor Plaintiffs ..... 6
3. Plaintiffs Do Not Allege the Core Elements of Their Claims ..... 7
C. Class Allegations ..... 8
D. Alleged Claims for Relief ..... 8
IV. ARGUMENT ..... 9
A. Applicable Legal Standard ..... 9
1. Motion to Dismiss for Lack of Standing Under Rule 12(b)(1) ..... 9
2. Motion to Dismiss Under Rule 12(b)(6) ..... 9
B. Plaintiffs Lack Standing To Pursue Their Claims ..... 9
1. Plaintiffs Lack Article III Standing ..... 10
2. Plaintiffs Also Lack Standing Under the UCL and FAL ..... 13
C. Plaintiffs’ FAL and UCL Claims Do Not Satisfy the Requirements of Rule 9(b) ..... 14
1. Rule 9(b) Applies to Plaintiffs’ FAL and UCL Claims ..... 14
2. Plaintiffs Do Not Allege Any Misrepresentation With Particularity ..... 15
3. Plaintiffs Fail to Allege Reliance on Any Statement to Their Detriment ..... 16
4. Plaintiffs Fail to Allege that Yelp Caused Their Purported Injuries ..... 17

TABLE OF CONTENTS [continued]

Page

1

2 D. Plaintiff Fails To State a Claim Under The UCL..... 17

3 1. Plaintiffs Have Not Alleged “Fraudulent” Conduct..... 18

4 2. Plaintiffs Have Not Alleged “Unlawful” Conduct..... 18

5 3. Plaintiffs Have Not Alleged “Unfair” Conduct ..... 20

6 E. Non-Sponsor Plaintiffs Fail to State a Claim for Intentional Interference

7 with Prospective Business Advantage ..... 21

8 1. Plaintiffs Have Not Alleged a Concrete Economic Relationship ..... 21

9 2. Plaintiffs Have Not Alleged That Yelp Knew Of or Deliberately

10 Interfered With Any Economic Relationship..... 22

11 F. Because Plaintiffs Do Not Have Standing and Fail to State a Sufficient

12 Claim, The Class Allegations Also Must Be Dismissed..... 23

13 G. Plaintiffs Have Not Pleaded Legally Sufficient Class Allegations ..... 23

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

V. CONCLUSION ..... 25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

Page(s)

**CASES**

*Arista Records v. Sanchez*,  
No. CV 05-07046, 2006 WL 5908359 (C.D. Cal. Mar. 1, 2006) ..... 19

*Ashcroft v. Iqbal*,  
129 S.Ct. 1937 (2009) ..... 9, 23

*Augustine v. United States*,  
704 F.2d 1074 (9th Cir. 1983)..... 9

*Baba v. Hewlett-Packard Co.*,  
No. C 09-05946, 2010 WL 2486353 (N.D. Cal. June 16, 2010). ..... 21

*Bell Atl. Corp. v. Twombly*,  
550 U.S. 544 (2007) ..... 9

*Brazil v. Dell Inc.*,  
585 F. Supp. 2d 1158 (N.D. Cal. 2008) ..... 23

*Browne v. Avvo*,  
525 F. Supp. 2d 1249 (W.D. Wash. 2007)..... 13

*Buena Vista, LLC v. New Res. Bank*,  
No. 10-1502 CW, 2010 WL 3448561 (N.D. Cal. Aug. 31, 2010)..... 20

*Buxton v. Eagle Test Sys., Inc.*,  
No. C-08-04404, 2010 WL 1240749 (N.D. Cal. Mar. 26, 2010)..... 22

*Californians for Disability Rights v. Mervyn’s, LLC*,  
39 Cal. 4th 223 (2006) ..... 9

*Carafano v. Metroplash*,  
339 F.3d 1119 (9th Cir. 2003)..... 12, 13

*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*,  
20 Cal. 4th 163 (1999) ..... 21

*Daugherty v. Am. Honda Motor Co.*,  
144 Cal. App. 4th 824 (2006) ..... 17

*Dodd-Owens v. Kyphon*,  
No. C06-3988, 2008 WL 410241 (N.D. Cal. Feb. 12, 2008)..... 24

*Durell v. Sharp Healthcare*,  
183 Cal. App. 4th 1350 (2010) ..... 19

*Gardner v. Martino*,  
563 F.3d 981 (9th Cir. 2009)..... 13

*Goddard v. Google, Inc.*,  
640 F. Supp. 2d 1193 (N.D. Cal. 2009) ..... 13

**TABLE OF AUTHORITIES** [continued]

Page(s)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Gutierrez v. Wells Fargo & Co.*,  
No. C 07-05923, 2009 WL 1246689 (N.D. Cal. May 5, 2009) ..... 14, 25

*Halton Co. v. Streivor, Inc.*,  
No. 10-cv-00655, 2010 WL 2077203 (N.D. Cal. May 21, 2010)..... 15, 17

*Hovsepian v. Apple, Inc.*,  
No. 08-5788, 2009 WL 5069144 (N.D. Cal. Dec. 17, 2009)..... 24

*In re Actimmune Mktg. Litig.*,  
No. C 08-02376 MHP, 2009 WL 3740648 (N.D. Cal. Nov. 6, 2009)..... 14, 17, 18, 19, 20

*In re Actimmune Mktg. Litig.*,  
614 F. Supp. 2d 1037 (N.D. Cal. 2009) ..... 16

*In re Calpine Corp. ERISA Litig.*,  
No. C 03-1685 SBA, 2005 WL 3288469 (N.D. Cal. Dec. 5, 2008) ..... 14

*In re GlenFed, Inc. Sec. Litig.*,  
42 F.3d 1541 (9th Cir. 1994)..... 15

*In re Stac Elecs. Sec. Litig.*,  
89 F.3d 1399 (9th Cir. 1996)..... 9, 23

*In re Tobacco II Cases*,  
46 Cal. 4th 298 (2009) ..... 13, 16

*In re Wright*,  
65 Cal. 2d 650 (1967) ..... 19

*Johnson v. Weinberger*,  
851 F.2d 233 (9th Cir. 1988)..... 10

*Kearns v. Ford Motor Co.*,  
567 F.3d 1120 (9th Cir. 2009)..... 14, 18

*Laster v. T-Mobile USA, Inc.*,  
407 F. Supp. 2d 1181 (S.D. Cal. 2005)..... 14, 17

*Lee v. Capital One Bank*,  
No. C 07-4599, 2008 WL 648177 (N.D. Cal. Mar. 5, 2008)..... 11

*Leeper v. Beltrami*,  
53 Cal. 2d 195 (1959) ..... 18

*Leong v. Square Enix of Am. Holdings, Inc.*,  
CV 09-4484, 2010 WL 1641364 (C.D. Cal. Apr. 20, 2010)..... 20

*Lierboe v. State Farm Mut. Auto. Ins. Co.*,  
350 F.3d 1018 (9th Cir. 2003)..... 23

*Lujan v. Defenders of Wildlife*,  
504 U.S. 555 (1992)..... 9, 10, 11

*Marcelos v. Dominguez*,  
No. C 08-00056, 2008 WL 1820683 (N.D. Cal. Apr. 21, 2008) ..... 19

**TABLE OF AUTHORITIES** [continued]

Page(s)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Mazur v. eBay Inc.*,  
No. C 07-03967, 2008 WL 618988 (N.D. Cal. Mar. 4, 2008)..... 12

*McDonald v. Coldwell Banker*,  
543 F.3d 498 (9th Cir. 2008)..... 20

*Mitchell v. Sharon*,  
59 F. 980 (9th Cir. 1894)..... 18

*Moss v. U.S. Secret Serv.*,  
572 F.3d 962 (9th Cir. 2009)..... 23

*Nagel v. Twin Labs., Inc.*,  
134 Cal. Rptr. 2d 420 (Ct. App. 2003)..... 15

*New.Net, Inc. v. Lavasoft*,  
356 F. Supp. 2d 1090 (C.D. Cal. 2004) ..... 23

*O’Shea v. Littleton*,  
414 U.S. 488 (1974)..... 23

*Pac. Gas & Elec. Co. v. Bear Stearns & Co.*,  
50 Cal. 3d 1118 (1990) ..... 22

*People v. Anderson*,  
75 Cal. App. 365 (1925), *disapproved of on other grounds* ..... 19

*People v. Goodman*,  
159 Cal. App. 2d 54 (1958)..... 18, 19

*Robertson v. Dean Witter Reynolds, Inc.*,  
749 F.2d 530 (9th Cir. 1984)..... 9

*Sanders v. Apple, Inc.*,  
672 F. Supp. 2d 978 (N.D. Cal. 2009) ..... 9, 11, 12

*Sigmond v. Brown*,  
645 F. Supp. 243 (C.D. Cal. 1986)..... 19

*Silicon Knights, Inc. v. Crystal Dynamics, Inc.*,  
983 F. Supp. 1303 (N.D. Cal. 1997) ..... 22

*Smith & Hawken, Ltd. v. Gardendance, Inc.*,  
No. C04-1664, 2004 WL 2496163 (N.D. Cal. Nov. 5, 2004)..... 21

*Smith v. Nat’l City Bank of Ind.*,  
No. C 09-5715, 2010 WL 1729392 (N.D. Cal. Apr. 27, 2010) ..... 16

*Sound Appraisal v. Wells Fargo Bank, N.A.*,  
No. C 09-01630, 2009 WL 3353057 (N.D. Cal. Oct. 15, 2009)..... 22

*Stearns v. Select Comfort Retail Corp.*,  
No. 08-cv-02746, 2009 WL 4723366 (N.D. Cal. Dec. 4, 2009)..... 23, 25

*Two Jinn, Inc. v. Government Payment Service, Inc.*,  
No. 09CV2701, 2010 WL 1329077 (S.D. Cal. Apr. 1, 2010) ..... 10, 11, 12

TABLE OF AUTHORITIES [continued]

Page(s)

1

2 *United States v. Ritchie,*

3 342 F.3d 903 (9th Cir. 2003)..... 4

4 *Vess v. Ciba-Geigy Corp. USA,*

5 317 F.3d 1097 (9th Cir. 2003)..... 14, 15

6 *Vinole v. Countrywide Home Loans, Inc.,*

7 246 F.R.D. 637 (S.D. Cal. 2007)..... 25

STATUTES

8 47 U.S.C. § 230(c) ..... 3, 12

9 Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL") ..... passim

10 Cal. Bus. & Prof. Code § 17500 *et seq.* ("FAL") ..... passim

11 Cal. Penal Code § 518..... 18

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



1                                   **II.           INTRODUCTION AND SUMMARY OF ARGUMENT**

2           Plaintiffs seek to suppress legitimate – and protected – online consumer commentary about  
3 their businesses. Yelp is a leading Internet review service that allows members of the public to read  
4 and write online about their experiences with local businesses. The integrity of these consumer  
5 reviews has fueled the success of Yelp’s service, and Yelp goes to great lengths to combat efforts by  
6 some businesses (including some of the Plaintiffs here) to post fake reviews. As Plaintiffs  
7 acknowledge, Yelp employs a proprietary automated algorithm to filter less reliable reviews from its  
8 website, regardless of whether those reviews are written about businesses that advertise with Yelp.

9           Although Yelp strives to provide a fair and neutral service for consumers, Plaintiffs complain  
10 that they were harmed by negative user reviews posted on Yelp.com, or that positive reviews were  
11 removed as unreliable by Yelp’s automated filter. But Plaintiffs conspicuously fail to allege a  
12 coherent – or actionable – theory that Yelp is in any way responsible for their speculative injuries.  
13 Indeed, Plaintiffs contend that they were injured by reviews *whether or not they advertised* on Yelp,  
14 defeating their suggestion that Yelp somehow manipulates reviews in favor of advertisers. Plaintiffs  
15 also fail to link any alleged harm to any purported deception or other misconduct by Yelp.

16           Unable to suppress public discussion about their businesses online or succeed in their efforts  
17 to post fake reviews on Yelp’s service, Plaintiffs filed this lawsuit, asserting contrived and deficient  
18 claims for violation of California’s Unfair Competition and False Advertising Laws and claims for  
19 intentional interference with prospective business advantage, on behalf of a putative class of business  
20 owners. For numerous independent reasons, Plaintiffs do not state a legally sufficient cause of  
21 action.

22           As a threshold matter, Plaintiffs fail to meet the most basic requirements to establish standing  
23 under Article III of the United States Constitution, California’s Unfair Competition Law (“UCL”), or  
24 California’s False Advertising Law (“FAL”). Plaintiffs do not allege any particularized “injury-in-  
25 fact,” but instead rely on vague and unsupported claims of “lost business” that are insufficient to  
26 satisfy standing requirements under Article III. Likewise, Plaintiffs fail to allege that this unspecified  
27 “harm” was in any way caused by any deceptive or wrongful conduct by Yelp, as required. Nor can  
28 they, since three Plaintiffs concede that they *declined to advertise* in response to offers from Yelp,

1 while the fourth admits that any harm was due solely to negative reviews posted by consumers *after* it  
2 purchased advertising.

3 Plaintiffs' claims under the FAL and UCL also fail because Plaintiffs do not point to a single  
4 statement that Yelp made to them that they allege is false, much less with the specificity required  
5 under Federal Rule of Civil Procedure 9(b). Likewise, Plaintiffs do not (and cannot) allege that they  
6 relied on any statement to their detriment, particularly given that three of the four Plaintiffs *declined*  
7 *to purchase advertising* in response to offers from Yelp.

8 Plaintiffs' claim under the UCL, which arises from the same deficient allegations, fails for the  
9 additional reason that Plaintiffs do not allege any conduct that is "unlawful" or "unfair." Although  
10 Plaintiffs make conclusory claims that Yelp engaged in extortion, they do not plead a single instance  
11 where Yelp threatened or coerced any business to advertise, elements required for any claim of  
12 extortion. To the contrary, Plaintiffs concede that in response to calls from Yelp, they either declined  
13 to advertise at all or were motivated to advertise "based on promises" – not threats.

14 Finally, the Non-Sponsor Plaintiffs do not state a claim for intentional interference with  
15 prospective business advantage because they do not identify a single relationship that Yelp allegedly  
16 disrupted (much less intentionally), and they likewise do not allege that Yelp knew of a third party  
17 relationship involving the Non-Sponsor Plaintiffs.

18 At bottom, Plaintiffs' claims are nothing more than vague complaints about the content of  
19 negative reviews posted by consumers on Yelp.com, and Yelp's use of an automated filter to ensure  
20 that reviews published on its website are reliable. It is well-settled that Yelp is immune from such  
21 claims under Section 230 of the Communications Decency Act, 47 U.S.C. § 230(c), which protects  
22 online service providers like Yelp from claims arising from publishing or editing user content online.

23 Even at the pleading stage, it also is apparent that Plaintiffs cannot possibly or adequately  
24 pursue their claims on behalf of a putative class of businesses that were contacted by Yelp about  
25 advertising. The proposed class definition is hopelessly overbroad and would encompass hundreds of  
26 thousands of businesses, whether or not Yelp engaged in any fraud, extortion or other misconduct in  
27 communications with those businesses. And, any attempt to assess what occurred in hundreds of  
28 thousands of individual discussions with such businesses – much less to assess reliance and harm –

1 would be nothing short of impossible. Because the alleged class definition is fatally deficient – and  
2 because Plaintiffs cannot plausibly represent or certify a class on such fact-intensive claims as  
3 asserted here under any class definition – this Court also should strike the class allegations at the  
4 pleading stage.

### 5 III. ALLEGATIONS IN THE COMPLAINT<sup>1</sup>

#### 6 A. Yelp’s Online Review Service

7 Yelp publishes a popular website at www.yelp.com, which allows consumers to read and  
8 write reviews about local businesses online. FAC ¶¶ 2, 21-22. As Plaintiffs admit, the reviews on  
9 Yelp’s website are written by consumers, who rate local businesses on a scale of one to five stars. *Id.*  
10 ¶¶ 2, 22-23. As explained on portions of Yelp’s website referenced in the Amended Complaint,<sup>2</sup> well  
11 over 12 million reviews have been posted to Yelp’s website, and the overwhelming majority of these  
12 reviews are positive – approximately 85% of reviews are 3 stars or higher, whether or not the  
13 business advertises on Yelp. *See* Exhibit 1 to Declaration of Ashlie Beringer (“Beringer Decl.”)  
14 (referenced in ¶¶ 2-4 of the Am. Comp.).

#### 15 1. Yelp’s Automated Review Filter

16 As Plaintiffs concede, Yelp discloses on its website that it “has an automated filter that  
17 suppresses a small portion of reviews – it targets those suspicious ones you see on other sites.” FAC  
18 ¶ 4. The review filter is critical to ensuring that consumers see the most reliable reviews, rather than  
19 those that might have been written by a business owner hoping to promote his or her own business or  
20 to tarnish a competitor. *See id.* ¶ 5; Beringer Decl. Ex. 2 (cited in ¶¶ 3, 5, and 26 of the Am. Comp.).  
21 The filter does not take into account whether or not a business advertises with Yelp, and instead,  
22 filters reviews based on, among other things, an analysis of “how established a particular reviewer  
23 is.” *Id.* As Yelp discloses on its website (in disclosures referenced in the Amended Complaint),

---

24 <sup>1</sup> The following allegations contained in the Amended Complaint are deemed to be true solely for  
25 purposes of this motion. Yelp vigorously denies that it engaged in any misconduct, and if this case  
26 were to proceed past the pleading stage, Yelp would demonstrate that Plaintiffs’ allegations are  
entirely false.

27 <sup>2</sup> Because the Amended Complaint specifically references and relies upon disclosures contained on  
28 Yelp.com, the Court may consider the complete contents of these statements when assessing  
Plaintiffs’ allegations. *See, e.g., United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

1 because a reviewer’s activities and “trustworthiness” can vary over time, “reviews can disappear and  
2 reappear over time” based on the reviewer’s involvement in Yelp. *Id.*

3 **2. Yelp’s Advertising Program**

4 Yelp also provides businesses with an opportunity to advertise on Yelp.com. *See* Beringer  
5 Decl. Ex. 3. Advertising businesses are able to “enhance [their] business page” with a photo  
6 slideshow, and to prevent competitors’ advertisements from appearing on their business pages. *Id.*  
7 In addition, advertisers are given priority in general searches on Yelp.com, and advertisements appear  
8 as sponsored results at the top of Yelp search results and on related business pages. *Id.*<sup>3</sup>

9 **B. Named Plaintiffs’ Allegations**

10 **1. Non-Sponsor Plaintiffs:**

11 **(a) Boris Levitt**

12 Boris Levitt complains that positive reviews were removed from his business page before and  
13 after he received an offer to purchase advertising on Yelp. Levitt alleges that he contacted Yelp to  
14 “inquire about why a positive review of his business had disappeared.” FAC ¶¶ 42-45. Levitt  
15 concedes that he repeatedly was informed – correctly – that Yelp uses an “automated system that  
16 decides how much trust to instill in a particular reviewer” and that may remove or reinstate reviews,  
17 but that Yelp employees “don’t have the ability to evaluate or reinstate specific reviews” that are  
18 filtered. *Id.* ¶¶ 43, 45.

19 Levitt then alleges that he was contacted a few months later by a Yelp sales representative,  
20 who suggested that Levitt could increase his “page views” by advertising on Yelp. *Id.* ¶ 47. “[I]n  
21 response,” Levitt declined to advertise because he already had a “high volume of users reviewing his  
22 business page” and a “rating of 4.5 stars” – and not because of any statement by Yelp. *Id.*

23 Levitt contends that after he declined to advertise on Yelp, additional 5-star reviews were  
24  
25  
26

---

27 <sup>3</sup> Although Yelp previously offered advertisers the option to select a single “Favorite Review”  
28 (clearly labeled as such) to display prominently on the business’s review page (as referenced  
in paragraph 4 of the Amended Complaint), it has since discontinued this program.

1 removed from his business page – conditions that also existed *before* he spoke with Yelp. *Id.* ¶¶ 42-  
2 45, 49, 51. He vaguely complains that “since then,” his “business revenues” have declined, although  
3 he fails to identify a single customer he lost due to any alleged conduct by Yelp (or otherwise). *Id.*

#### 4 (b) Cats & Dogs

5 In contrast to Levitt, Cats and Dogs (“C&D”) focuses on negative consumer reviews it  
6 received, *before* receiving an offer to advertise on Yelp. FAC ¶ 53. Specifically, C&D alleges that it  
7 first contacted Yelp in September 2009 to request removal of a negative review about C&D alleged  
8 to be “defamatory” and “possibl[y] fals[e]”. *Id.* ¶¶ 53-54. Thereafter, the review was removed  
9 (although C&D does not allege by whom – whether the user or Yelp – or allege facts suggesting that  
10 this was due to anything other than the normal operation of the review filter). *Id.* ¶ 54.

11 C&D then claims that four months later it received a sales call from “Kevin,” who allegedly  
12 offered various benefits if C&D advertised on Yelp, including the ability to “hide negative reviews”  
13 or “place them lower on the listing page.” *Id.* ¶ 57. C&D “declined the offer, saying that [it] wanted  
14 to track referrals from Yelp for three months without ads.” *Id.* ¶ 58.

15 C&D contends after it declined to advertise with Yelp, negative and “highly . . .  
16 inflammatory” reviews continued to appear on its business page, just as they had before, but that  
17 Yelp was unwilling to remove these reviews – consistent with its stated policies. *Id.* ¶¶ 59-62.

18 Significantly, C&D concedes that *after* declining to advertise with Yelp, it nevertheless  
19 “enjoyed a 4-star rating” on Yelp, with more than 60% of reviews giving it “a perfect 5-star rating.”  
20 *Id.* ¶ 63. C&D then concludes, with no supporting facts, that it somehow was “damaged” through  
21 “lost patronage and prospective business.” *Id.* ¶ 65.

## 22 2. Sponsor Plaintiffs

### 23 (a) Tracy Chan

24 Tracy Chan alleges that a Yelp representative called to “offer her lots of benefits” if she  
25 advertised, such as “the opportunity” to “hid[e] or bury[] bad reviews” and to “put pictures on the  
26 Yelp page.” FAC ¶ 69. Despite these purported offers, Chan concedes that she “ultimately declined  
27 to purchase Yelp advertising” in response. *Id.* ¶ 72. Chan complains that, thereafter, various “5-star  
28 reviews” were removed from Chan’s business page – although she fails to allege that such removals

1 were due to anything other than the normal operation of the review filter. *Id.* ¶ 73.

2 Several “months” *after* Chan declined the offer to advertise, she signed up for advertising on  
3 Yelp, due to an alleged “decline in new patients” – and not due to any statement or alleged threat by  
4 Yelp. *Id.* ¶ 74. Just three months later, Chan cancelled her advertising contract, even though she  
5 alleges that her star rating “increased” while she was an advertiser. *Id.* ¶ 75.

6 Chan complains that some time after she stopped advertising on Yelp, several positive  
7 reviews were removed from her business page – but again, fails to allege that this was due to factors  
8 other than the normal operation of the review filter. *Id.* ¶¶ 76-77. Chan contends that her business  
9 “experienced a decline in new patients” after she stopped advertising with Yelp, although she alleges  
10 no facts that in any way suggest that this unspecified “decline” was caused by any misrepresentation,  
11 threat or other wrongful conduct by Yelp. *Id.* ¶ 78.

12 **(b) Bleeding Heart Bakery**

13 Bleeding Heart Bakery (“BHB”) contends that it purchased advertising on Yelp “based on . . .  
14 promises” supposedly made by Yelp representatives, *inter alia*, to “push bad reviews to the very end  
15 of [its business] page[]” and to remove certain “bogus” reviews. FAC ¶¶ 82, 85.

16 In contrast to Chan (whose business’s star ratings allegedly “increased” after advertising on  
17 Yelp), BHB complains that consumers posted several negative reviews about its business *after* it  
18 purchased advertising on Yelp, while claiming that some positive reviews disappeared from its  
19 business page – allegations that defeat any suggestion that Yelp manipulates reviews in favor of  
20 advertisers. *Id.* ¶ 87. BHB also fails to allege that these reviews “disappeared” through any  
21 mechanism other than Yelp’s review filter.

22 BHB asserts that its sales declined – not as a result of any misrepresentation or wrongful  
23 conduct by Yelp – but “as a result of . . . negative reviews” posted by these users. *Id.* ¶ 89.

24 **3. Plaintiffs Do Not Allege The Core Elements of Their Claims**

25 Although the named Plaintiffs make wildly disparate claims concerning the statements  
26 allegedly made by Yelp and their resulting actions and “injuries,” they conspicuously fail to plead  
27 any of the basic facts necessary to support their claims here (much less to do so with the required  
28 specificity). Indeed:

- 1       ▪ No Plaintiff alleges that any statement made by Yelp was false or misleading, or in any  
2       way alleges how any statement was deceptive.
- 3       ▪ No Plaintiff alleges that Yelp threatened or even implied that it would subject Plaintiffs to  
4       harm if they did not advertise on Yelp.
- 5       ▪ No Plaintiff alleges that it relied in any way on any misrepresentation or threat by Yelp.  
6       To the contrary, three of the Plaintiffs concede that they declined to purchase advertising  
7       in response to Yelp’s offers, and the fourth (BHB) fails to allege that any alleged  
8       “promises” by Yelp were false or threatening.
- 9       ▪ All Plaintiffs allege generalized “harm” to their business in the most speculative terms,  
10      and no Plaintiff identifies a single customer relationship that was disrupted.

9       **C. Class Allegations**

10      Plaintiffs purport to assert claims individually and on behalf of all “businesses and persons . . .  
11      who were in contact with Yelp regarding the option to advertise on Yelp . . . and who were  
12      subsequently subject to the manipulation of the reviews of their businesses.” FAC ¶ 95(a) & (b).

13      The proposed class is divided into two subclasses: “Non-Sponsors” consist of businesses that  
14      “declined to purchase advertising,” while “Sponsors” consist of businesses that “advertis[ed].” *Id.*

15      Notably, the proposed class definition encompasses all “businesses and persons” who “were  
16      in contact with Yelp” about advertising, whether or not Yelp purportedly engaged in any deceptive,  
17      threatening or other wrongful conduct during those communications. Likewise, the class purports to  
18      include businesses and persons that were “subject to the manipulation of reviews,” whether or not  
19      such supposed “manipulation” resulted from the normal operation of Yelp’s automated review filter,  
20      and irrespective of whether such businesses were harmed – or flourished – as a result.

21      **D. Alleged Claims for Relief**

22      Based on these confusing and contradictory allegations, Plaintiffs assert claims for violations  
23      of the UCL, Cal. Bus. & Prof. Code § 17200 *et seq.*, and FAL, Cal. Bus. & Prof. Code § 17500,  
24      individually and on behalf of the proposed subclasses. In addition, the Non-Sponsor Plaintiffs  
25      purport to assert a claim for intentional interference with prospective business advantage.

1 IV. ARGUMENT

2 A. Applicable Legal Standard

3 1. Motion to Dismiss for Lack of Standing Under Rule 12(b)(1)

4 A challenge to standing under Article III “pertain[s] to a federal court’s subject-matter  
5 jurisdiction” and is therefore “properly raised in a motion under Federal Rule of Civil Procedure  
6 12(b)(1).” *Sanders v. Apple, Inc.*, 672 F. Supp. 2d 978, 983-84 (N.D. Cal. 2009). On a motion to  
7 dismiss for lack of standing, “[n]o presumptive truthfulness attaches to plaintiff’s allegations, and the  
8 existence of disputed material facts will not preclude the trial court from evaluating for itself the  
9 merits of jurisdictional claims.” *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983).

10 2. Motion to Dismiss Under Rule 12(b)(6)

11 A complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6) when it  
12 lacks sufficient facts to support a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*,  
13 749 F.2d 530, 533-34 (9th Cir. 1984). Although this Court must accept a plaintiff’s allegations as  
14 true and construe them in a light most favorable to the plaintiff, “[c]onclusory allegations of law and  
15 unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim.” *In*  
16 *re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996). To avoid dismissal, a complaint must  
17 do more than “plead[] facts that are ‘merely consistent with’ a defendant’s liability,” and, instead, a  
18 plaintiff must set forth enough factual information to make it “plausible,” not merely “possible,” that  
19 the defendant is liable. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v.*  
20 *Twombly*, 550 U.S. 544, 557 (2007)).

21 B. Plaintiffs Lack Standing To Pursue Their Claims

22 As a threshold matter, Plaintiffs have failed to plead facts sufficient to establish that they  
23 satisfy “the irreducible constitutional minimum of standing” under Article III, as required to pursue  
24 their claims in this Court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs also  
25 do not meet the statutory standing requirements applicable to their claims under the UCL and FAL.  
26 *See Californians for Disability Rights v. Mervyn’s, LLC*, 39 Cal. 4th 223, 227-29 (2006). Because  
27 Plaintiffs fail to make plausible allegations that they suffered a non-speculative injury in fact, or that

28

1 Yelp’s alleged conduct caused any purported “injury”, Plaintiffs lack standing under either Article III  
2 or the UCL, and their Amended Complaint must be dismissed.

3 **1. Plaintiffs Lack Article III Standing**

4 To establish Article III standing, Plaintiffs must allege that (1) they “have suffered an ‘injury  
5 in fact’ – an invasion of a legally protected interest which is (a) concrete and particularized and (b)  
6 actual and imminent, not conjectural or hypothetical”; (2) there is “a causal connection between the  
7 injury and the conduct complained of;” and (3) it is “likely, as opposed to merely speculative, that the  
8 injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 560-61. A plaintiff does not  
9 demonstrate standing “[w]hen speculative inferences are necessary . . . to establish either injury or the  
10 connection between the alleged injury and the act challenged.” *Johnson v. Weinberger*, 851 F.2d  
11 233, 235 (9th Cir. 1988) (affirming dismissal of plaintiff’s complaint for lack of standing because the  
12 alleged injury was “hypothetical” and “at best, speculative.”).

13 **(a) Plaintiffs Fail to Sufficiently Allege an Injury In Fact**

14 Plaintiffs assert in conclusory terms that they have suffered injury in the form of unspecified  
15 “lost revenues.” FAC ¶¶ 112, 114, 122, 124, 131.<sup>4</sup> Tellingly, Plaintiffs do not point to a single lost  
16 customer, and they provide no details or factual support for their speculative claims. Instead,  
17 Plaintiffs rely on vague and unsupported assertions of lost business, alleging, for example, that C&D  
18 “lost patronage and prospective business” after declining to advertise on Yelp, while Chan  
19 “experienced a decline in new patients” at some unspecified time. *See id.* ¶¶ 65, 74, 78; *see also id.*  
20 ¶ 49 (alleging that Levitt’s “business revenues experienced a decline”); *id.* ¶ 89 (alleging BHB’s  
21 “business suffered”).

22 Courts have dismissed claims for lack of Article III standing – including UCL claims – in  
23 precisely these circumstances. Most recently, in *Two Jinn, Inc. v. Gov’t Payment Serv., Inc.*, No.  
24 09CV2701, 2010 WL 1329077 (S.D. Cal. Apr. 1, 2010), the court found that such speculative and  
25 non-concrete allegations of “lost business” do not establish an “injury in fact” for purposes of Article  
26 III standing. In *Two Jinn*, the plaintiff asserted UCL claims, alleging that it lost customers, causing it

---

27 <sup>4</sup> To the extent Sponsor Plaintiffs allege that their injuries consist of advertising payments to Yelp,  
28 these allegations fail for lack of causation. *See infra*, pp. 11-13.

1 to “lose the financial benefits of sales they would have made but for [defendant’s] illegal activities.”  
2 *Id.* at \*2. The court dismissed the plaintiff’s claims for lack of Article III standing, finding that the  
3 plaintiff failed to allege an “injury in fact.” *Id.* at \*3. Specifically, the court concluded:

4 This alleged “injury” is mere conjecture, and is certainly not concrete or  
5 particularized. Plaintiff has not, and likely could not, point to any potential customers  
6 who would have purchased bail from sources other than Defendant, much less  
7 Plaintiff.

8 *Id.*

9 As in *Two Jinn*, Plaintiffs cannot point to a single “potential customer[] who would have  
10 purchased” products or services but for Yelp’s alleged conduct, and their claims of “lost revenues”  
11 are based entirely on impermissible conjecture. *Id.* Such speculative claims of injury are wholly  
12 insufficient to establish Article III standing. *See also Sanders*, 672 F. Supp. 2d at 984 (dismissing  
13 claim for lack of Article III standing where “speculative inferences are necessary to establish either  
14 injury or the connection between the alleged injury and the act challenged”); *Lee v. Capital One*  
15 *Bank*, No. C 07-4599, 2008 WL 648177, at \*3 (N.D. Cal. Mar. 5, 2008) (Patel, J.) (dismissing  
16 complaint for lack of Article III standing where injury was “hypothetical” and not “actual or  
17 imminent”).

18 **(b) Plaintiffs Have Not Alleged a Causal Connection**

19 Likewise, Plaintiffs cannot establish standing because they do not allege any nexus between  
20 their purported “injuries” and any alleged misstatement or misconduct by Yelp. *Lujan*, 504 U.S. at  
21 560-61 (Article III standing requires alleged injuries to be “fairly traceable to the challenged action of  
22 the defendant, and not the result of the independent action of some third party not before the court.”).

23 Non-Sponsor Plaintiffs

24 Non-Sponsor Plaintiffs fail to allege any facts creating a plausible inference that the alleged  
25 “decline” in their business was caused by any deception or other misconduct by Yelp. Indeed, Levitt  
26 asserts merely that his “business revenues experienced a decline” sometime *after* he declined to  
27 purchase advertising from Yelp, but does not allege, as he must, that this unspecified “decline”  
28 resulted from any misconduct by Yelp, as opposed to customer dissatisfaction, economic conditions,  
or a multitude of other possible factors. FAC ¶ 49. Likewise, C&D fails to allege how (or whether)

1 any misconduct by Yelp caused any “lost patronage and prospective business,” and instead complains  
2 that negative user reviews appeared on its business page after it declined to advertise. FAC ¶¶ 59-65.

3 At most, Non-Sponsor Plaintiffs appear to allege that they experienced an unspecified decline  
4 in business that somehow was connected to the content of user reviews. It is well-settled, however,  
5 that Yelp is immune from claims arising from the content of user reviews on its service under the  
6 Communications Decency Act (“CDA”), 47 U.S.C. § 230(c), or from any editorial functions  
7 (including the use of an automated review filter) that Yelp exercises in publishing such reviews. *See,*  
8 *e.g., Carafano v. Metrosplash*, 339 F.3d 1119, 1123 (9th Cir. 2003); *Mazur v. eBay Inc.*, No. C 07-  
9 03967, 2008 WL 618988, at \*9 (N.D. Cal. Mar. 4, 2008) (Patel, J.) (“Screening a potential auction  
10 house . . . is akin to deciding whether to publish and therefore eBay is immune under section 230 for  
11 its screening decisions.”).

12 Because the Non-Sponsor Plaintiffs fail to allege any causal connection between their  
13 purported injuries and any actionable conduct by Yelp, they cannot demonstrate Article III standing.  
14 *See Sanders*, 672 F. Supp. 2d at 984 (dismissing complaint for lack of causal nexus between alleged  
15 misconduct and injury); *Two Jinn*, 2010 WL 1329077, at \*3 (complaint dismissed where “there is no  
16 direct connection between Defendant’s activities and Plaintiff’s business”).

### 17 Sponsor Plaintiffs

18 Sponsor Plaintiffs also fail to allege any plausible nexus between their claims of “lost  
19 business” and any misconduct by Yelp. Like the Non-Sponsor Plaintiffs, Chan and BHB fail to  
20 allege (as required) that any “decline” in customers was due to any misconduct by Yelp. In fact,  
21 BHB asserts that its business suffered directly “as a result of . . . negative reviews” posted by users –  
22 content for which Yelp is immune as a matter of law. FAC ¶¶ 88-89. *See infra* p. 13.

23 In addition to speculative claims of “lost business,” Sponsor Plaintiffs make vague claims that  
24 they somehow suffered injury in the form of “payments made to Defendants for advertising.” *See,*  
25 *e.g.,* FAC ¶ 114. But the Sponsor Plaintiffs fail to connect these payments to any misrepresentation  
26 or misconduct by Yelp. In fact, Chan concedes that she *declined* to purchase advertising after her  
27 conversations with Yelp. *Id.* ¶ 72. Likewise, BHB concedes that it purchased advertising based on  
28 supposed “promises” of benefits – and not due to any threat or coercion – but fails to allege facts

1 suggesting that these purported promises were false. *Id.* ¶¶ 82-85. Because the Sponsor Plaintiffs do  
2 not allege any causal nexus between their payment of advertising fees and any fraudulent or wrongful  
3 conduct by Yelp, their claims must be dismissed for lack of standing. *See supra* pp. 11-12.

4 **(c) Plaintiffs Do Not Allege A Redressable Injury**

5 Finally, Plaintiffs do not – and cannot – allege facts establishing that their purported injuries  
6 are capable of being redressed by a favorable decision. At most, Plaintiffs’ claims of lost business  
7 stem from the content of reviews posted by consumers who are not before this Court. No decision in  
8 this case can (or should) bar public discussion about Plaintiffs’ services on Yelp or any other public  
9 forum, and such speech is squarely protected by the First Amendment. *See Gardner v. Martino*, 563  
10 F.3d 981, 992 (9th Cir. 2009) (statement by talk show host that plaintiff’s business “sucks” was  
11 “nonactionable opinion protected by the First Amendment”); *Browne v. Avvo, Inc.*, 525 F. Supp. 2d  
12 1249, 1251 (W.D. Wash. 2007) (opinions expressed through defendant’s website, which ranked  
13 attorneys by numerical score, were “absolutely protected by the First Amendment”).

14 Precisely to ensure such an open forum for discussion on the Internet, Plaintiffs also are  
15 barred under CDA Section 230 from pursuing claims against Yelp arising from its Internet service or  
16 its screening of reviews for publication through the use of an automated filter. *See, e.g., Carafano*,  
17 339 F.3d at 1122-25 (affirming dismissal of claim for negligently posting third party content because  
18 claim was barred by CDA Section 230); *Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193, 1201-02  
19 (N.D. Cal. 2009) (dismissing UCL claims because Google was immune under the CDA for  
20 publishing third-party advertising content). Because Plaintiffs cannot allege that their injuries are  
21 likely to be (or even can be) redressed by a favorable decision, they lack standing under Article III.

22 **2. Plaintiffs Also Lack Standing Under the UCL and FAL**

23 Plaintiffs also lack standing under the UCL and FAL because they fail to allege that they  
24 relied to their detriment on any allegedly deceptive or wrongful statement by Yelp. As the Supreme  
25 Court of California has held, a “plaintiff must plead and prove actual reliance to satisfy the standing  
26 requirement of [the UCL],” such that a plaintiff must demonstrate that defendant’s misrepresentation  
27 was “an immediate cause” of the plaintiff’s injury. *In re Tobacco II Cases*, 46 Cal. 4th 298, 326-28  
28 (2009). As discussed previously, however, Plaintiffs do not allege facts that remotely tie their

1 claimed injuries to any deception or misconduct by Yelp, much less plead reliance on any  
2 misconduct. *See supra* pp. 11-13. For this independent reason, Plaintiffs’ UCL and FAL claims  
3 must be dismissed for lack of standing. *See Gutierrez v. Wells Fargo & Co.*, No. C 07-05923, 2009  
4 WL 1246689, at \*4 (N.D. Cal. May 5, 2009) (plaintiff did “not read or in any way rel[y] on any  
5 challenged statement” and therefore could not “establish that he entered into any transactions as a  
6 result”); *Laster v. T-Mobile USA, Inc.*, 407 F. Supp. 2d 1181, 1194 (S.D. Cal. 2005) (no causation  
7 where “none of the named Plaintiffs allege[d] that they saw, read, or in any way relied on the  
8 advertisements [or that] they entered into any transaction *as a result* of those advertisements”).

9 **C. Plaintiffs’ FAL and UCL Claims Do Not Satisfy the Requirements of Rule 9(b)**

10 Even if Plaintiffs could demonstrate standing – and they cannot – their FAL and UCL claims  
11 still fail because they do not come close to satisfying the stringent requirements for pleading fraud or  
12 false advertising under Federal Rule of Civil Procedure 9(b).

13 **1. Rule 9(b) Applies to Plaintiffs’ FAL and UCL Claims**

14 The Ninth Circuit repeatedly has held that Rule 9(b)’s heightened pleading standards apply to  
15 claims for violations of the FAL, as well as UCL claims that arise from allegedly false or deceptive  
16 statements. *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009); *Vess v. Ciba-Geigy*  
17 *Corp. USA*, 317 F.3d 1097, 1102-05 (9th Cir. 2003) (FAL and UCL claims based upon false  
18 statements and misrepresentations must satisfy Rule 9(b)); *see also In re Actimmune Mktg. Litig.*, No.  
19 C 08-02376 MHP, 2009 WL 3740648, at \*8-9 (N.D. Cal. Nov. 6, 2009) (Patel, J.) (“[P]laintiffs’  
20 claims under the fraudulent prong of the UCL – which are predicated entirely on misstatements made  
21 by defendants – unmistakably ‘sound in fraud’ and thus must be pled with specificity.”).

22 Moreover, Rule 9(b) applies “to *all* averments of fraud, regardless of whether fraud is an  
23 essential element of the underlying cause of action.” *In re Calpine Corp. ERISA Litig.*, No. C 03-  
24 1685 SBA, 2005 WL 3288469, at \*6 (N.D. Cal. Dec. 5, 2005) (citing *Vess*, 317 F.3d at 1103-05,  
25 1108) (emphasis in original). “Fraud can be averred by specifically alleging fraud, or by alleging  
26 facts that necessarily constitute fraud (even if the word ‘fraud’ is not used).” *Vess*, 317 F.3d at 1105.

27 Plaintiffs repeatedly assert that Yelp “made deceptive statements and misrepresentations to  
28 business owners” – an essential element of their FAL claim. *See, e.g.*, FAC ¶¶ 106, 121, 123; *see*

1 *Nagel v. Twin Labs., Inc.*, 134 Cal. Rptr. 2d 420, 429 (Ct. App. 2003). Moreover, Plaintiffs vaguely  
2 allege that Yelp’s overarching goal is to induce businesses to purchase advertising through such  
3 purportedly “deceptive” advertising practices. FAC ¶¶ 106, 121. Plaintiffs further assert (albeit in  
4 conclusory terms) that they relied upon such unspecified misrepresentations when “either  
5 purchas[ing] or declin[ing] to purchase advertising from Yelp,” and suffered “injury” as a result.  
6 FAC ¶¶ 107, 114, 122. These allegations, while vague and deficient, clearly attempt to plead the  
7 “indispensable elements of a fraud claim” – misrepresentation, an intent to deceive, reliance, and  
8 resulting damages. *Vess*, 317 F.3d at 1105. As such, Plaintiffs’ claims are plainly grounded in fraud  
9 and must satisfy the particularity requirements of Rule 9(b). *See id.* at 1103-04.

10 **2. Plaintiffs Do Not Allege Any Misrepresentation With Particularity**

11 To state a claim under the FAL or the UCL based upon allegedly deceptive statements or  
12 misrepresentations, a plaintiff must identify a specific statement alleged to be false, deceptive, or  
13 misleading at the time it was made. *Nagel*, 134 Cal. Rptr. 2d at 429; *Halton Co. v. Streivor, Inc.*, No.  
14 C10-00655, 2010 WL 2077203, at \*4 (N.D. Cal. May 21, 2010) (dismissing UCL claim where  
15 plaintiff’s “complaint failed to allege that [defendant’s] representations were actually false”).  
16 Moreover, under Rule 9(b), a plaintiff must specifically “set forth what is false or misleading about  
17 the statement, and *why it is false.*” *Vess*, 317 F.3d at 1106 (quoting *In re GlenFed, Inc. Sec. Litig.*, 42  
18 F.3d 1541, 1548 (9th Cir. 1994) (emphasis added)).

19 Contrary to these requirements, Plaintiffs fail to identify a single specific statement or  
20 representation alleged to be false, much less explain or allege plausible facts demonstrating *why* any  
21 statement was false. If anything, Plaintiffs allegations (if accepted as true) suggest that the statements  
22 allegedly made to Plaintiffs by Yelp were accurate. For example:

- 23
- 24 ■ Levitt alleges that he was informed that Yelp uses “an automated system” that assesses the  
25 trustworthiness of particular reviews and that “may not display” reviews that Yelp’s  
26 “software” detects to be untrustworthy. FAC ¶ 43. These statements are entirely  
27 *consistent with* Levitt’s core complaint that several positive reviews were thereafter  
28 removed from his business page and with the admitted disclosures about the review filter  
contained on Yelp.com. *Id.* ¶¶ 4-5, 49, 51.
  - Likewise, Chan alleges that “[w]ithin days” of advertising on Yelp, her company’s  
“overall star rating increased to 4 stars and various five star reviews were reinstated” –

1 facts that are entirely consistent with the supposed statements made by Yelp during a sales  
2 call months earlier. *Compare id.* ¶¶ 69-71 *with id.* ¶ 74.

3 Nor do Plaintiffs attempt to explain how any alleged representation supposedly made by Yelp  
4 concerning the benefits of advertising on Yelp were false:

- 5 ▪ Plaintiff C&D concedes that it *never purchased advertising* from Yelp (*id.* ¶¶ 56-58),  
6 making it impossible to assess the accuracy of any statements to C&D concerning the  
7 benefits it would have received had it advertised.
- 8 ▪ And BHB alleges merely that after purchasing advertising on Yelp, users posted negative  
9 reviews to its business page, while other positive reviews were removed. *Id.* ¶¶ 87-88.  
10 But these allegations in no way demonstrate how, or whether, any alleged statements were  
11 false, and BHB does not allege that Yelp ever suggested that it could prevent users from  
12 posting negative reviews on its business page, or prevent positive reviews from being  
13 removed by users or Yelp’s automated filter. *Id.* ¶¶ 82-85.

14 Because Plaintiffs do not identify a single statement that is alleged to be false, and because  
15 there is no indication whatsoever as to *how* any purported statement to Plaintiffs was false (much less  
16 with the specificity required by Rule 9(b)), Plaintiffs’ FAL and UCL claims must be dismissed. *See,*  
17 *e.g., In re Actimmune Mktg. Litig.*, 614 F. Supp. 2d 1037, 1055 (N.D. Cal. 2009) (Patel, J.)  
18 (dismissing UCL claims where allegations did not provide a basis from which court could infer that  
19 the statements were false or something other than puffery); *Smith v. Nat’l City Bank of Ind.*, No. C  
20 09-5715, 2010 WL 1729392, at \*3 (N.D. Cal. Apr. 27, 2010) (dismissing UCL claim where plaintiff  
21 failed to allege facts “as to why the statement by [defendant] . . . was false”).

### 22 **3. Plaintiffs Fail to Allege Reliance on Any Statement to Their Detriment**

23 Plaintiffs also fail to allege that they relied on any false or misleading statement to their  
24 detriment, as required. “A class representative proceeding on a claim of misrepresentation as the  
25 basis of his or her UCL [or FAL] action must demonstrate actual reliance on the allegedly deceptive  
26 or misleading statements, in accordance with well-settled principles regarding the element of reliance  
27 in ordinary fraud actions.” *In re Tobacco II Cases*, 46 Cal. 4th at 306.

28 As detailed in Sections III.B.1.(b) & B.2, none of the Plaintiffs plead reliance on any  
misstatement by Yelp. Indeed, the Non-Sponsor Plaintiffs concede that they did not purchase  
advertising from Yelp, precluding any showing of reliance here. Separately, the Sponsor Plaintiffs  
fail to allege, as they must, that they relied upon any alleged misrepresentation when purchasing

1 advertising. To the contrary, Plaintiff Chan admits that she decided to purchase advertising, not as  
2 the result of any misstatement made by Yelp, but due to a “decline in new patients” several months  
3 *after* she was contacted by Yelp. FAC ¶ 74. And while Plaintiff BHB suggests that it relied upon  
4 supposed “promises” made by an unidentified Yelp sales representative in purchasing advertising, it  
5 fails to allege or explain how these “promises” were false or misleading in any respect. *Id.* ¶¶ 85-87.

6 Plaintiffs’ failure to plead specific or plausible allegations that they relied on any alleged  
7 misstatement also requires dismissal of their claims under the UCL and FAL. *See Halton Co.*, 2010  
8 WL 2077203, at \*4 (dismissing UCL claims for failure to allege “a plausible theory of reliance”  
9 where plaintiff failed to specify the “who, what, when, where, and how” of the supposed  
10 misrepresentations); *Laster*, 407 F. Supp. 2d at 1194 (dismissing UCL and FAL claims where  
11 plaintiffs had not alleged that they purchased cell phones as a result of allegedly false advertising).

#### 12 **4. Plaintiffs Fail to Allege that Yelp Caused Their Purported Injuries**

13 As detailed extensively in Section IV.B.1.(b), Plaintiffs also have failed to allege any causal  
14 connection between their purported injuries and any misrepresentations by Yelp, much less with the  
15 specificity required under Rule 9(b). Plaintiffs’ FAL and UCL claims must be dismissed for this  
16 independent reason. *See Actimmune*, 2009 WL 3740648, at \*11 (dismissing UCL claims where  
17 plaintiffs did not allege facts indicating “that any of [the] . . . misrepresentations caused injury to  
18 plaintiffs by inducing them to pay for Actimmune”).

#### 19 **D. Plaintiff Fails To State a Claim Under The UCL**

20 Plaintiffs also fail to state a valid claim for violation of the UCL, which requires a showing  
21 that Yelp engaged in an “unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof.  
22 Code § 17200; *Daugherty v. Am. Honda Motor Co.*, 144 Cal. App. 4th 824, 837 (2006). Despite  
23 vague allegations that Yelp has engaged in “misrepresentations,” “extortion,” and unspecified  
24 “unfair” acts, the Amended Complaint lacks facts that give rise to a plausible inference that Yelp  
25 engaged in conduct that could be deemed “unlawful, unfair or fraudulent.” *See e.g.*, FAC ¶¶ 106, 109,  
26 113, 115.

1           **1. Plaintiffs Have Not Alleged “Fraudulent” Conduct**

2           As discussed previously, Plaintiffs allege that Yelp made unspecified “deceptive statements  
3 and misrepresentations” in violation of the UCL. FAC ¶¶ 106, 111. As demonstrated in  
4 Section IV.C.2, however, Plaintiffs’ claims of “deceptive” statements and “misrepresentations” fail  
5 because they do not identify or explain how any statement is fraudulent – as they must to avoid  
6 dismissal of their claims under the “fraudulent” prong of the UCL. *See, e.g., Kearns*, 567 F.3d at  
7 1127 (affirming dismissal of plaintiff’s UCL claims where allegations of fraudulent conduct failed to  
8 “satisfy the particularity requirement of Rule 9(b)”). *See supra* pp. 14-17.

9           **2. Plaintiffs Have Not Alleged “Unlawful” Conduct**

10          The “unlawful” prong of the UCL “borrows violations of other laws . . . and makes those  
11 unlawful practices actionable under the UCL.” *Actimmune*, 2009 WL 3740648, at \*15. “Thus, a  
12 violation of another law is a predicate for stating a cause of action under the UCL’s unlawful prong.”  
13 *Id.* Here, Plaintiffs do not identify any law allegedly violated by Yelp; rather, they claim that Yelp  
14 “attempted to or did in fact commit extortion.” FAC ¶ 109. Because Plaintiffs fail to plead facts  
15 demonstrating extortion, their claim under the UCL’s “unlawful” prong also should be dismissed.

16          As an initial matter, extortion is a “duress” claim that must be pled with particularity. *See,*  
17 *e.g., Leeper v. Beltrami*, 53 Cal. 2d 195, 205 (1959) (“Duress is a species of fraud”). Because  
18 Plaintiffs do not satisfy the stringent requirements for pleading claims of fraud under Rule 9(b), their  
19 “unlawful” claim should be dismissed for this reason alone. *See supra* pp. 14-17.

20          Plaintiffs also fail to plead even the most basic facts necessary to allege extortion. Extortion  
21 consists of “obtaining of property from another, with his consent . . . *induced by a wrongful use of*  
22 *force or fear.*” Cal. Penal Code § 518 (emphasis added). Because extortion requires a showing that  
23 property was acquired by means of “force or fear,” it may be found only when the victim is so fearful  
24 of a defendant’s threatened action that he is “coerced . . . [into] surrender[ing] his property.” *People*  
25 *v. Goodman*, 159 Cal. App. 2d 54, 61 (1958). As such, a threat is an essential element of extortion.  
26 *Mitchell v. Sharon*, 59 F. 980, 982 (9th Cir. 1894).

27          Here, Plaintiffs do not allege that Yelp threatened them, as is required to demonstrate  
28 extortion. Plaintiffs allege instead that Yelp offered them various benefits if they advertised with

1 Yelp – offers that, in most cases, Plaintiffs admittedly declined. For example, Sponsor Plaintiff Chan  
2 alleges that she was told “Yelp could *offer her lots of benefits*” before she “*declined* to purchase Yelp  
3 advertising.” FAC ¶¶ 69, 72 (emphasis added); *see also id.* ¶¶ 82-85 (alleging that BHB received  
4 “promises” of advertising benefits). Yelp’s alleged *offers* of various advertising benefits cannot  
5 support a claim for extortion as a matter of law. For example, in *Sigmond v. Brown*, 645 F. Supp.  
6 243, 246 (C.D. Cal. 1986), the court found that defendant’s offer to provide a chiropractor with more  
7 favorable reviews by the chiropractor peer review committee in exchange for client referrals was not  
8 an extortionist threat, but merely an offer. *See also People v. Anderson*, 75 Cal. App. 365, 374-75  
9 (1925), *disapproved of on other grounds by In re Wright*, 65 Cal. 2d 650 (1967) (no threat – and  
10 hence no extortion – where defendant offered to drop criminal charges in exchange for payment).

11 Moreover, the Non-Sponsor Plaintiffs cannot demonstrate extortion because, by their own  
12 admission, they refused to purchase advertising or provide any other property to Yelp – an essential  
13 element of an extortion claim. *See* FAC ¶¶ 47-49, 57-58; *see, e.g., Arista Records v. Sanchez*, No.  
14 CV 05-07046, 2006 WL 5908359, at \*2 (C.D. Cal. Mar. 1, 2006) (dismissing extortion counterclaim  
15 for failure to allege that any property was taken).

16 Likewise, the Sponsor Plaintiffs assert either that they “declined to purchase Yelp  
17 advertising” after being approached by Yelp, or that they voluntarily purchased advertising “based on  
18 [alleged] promises” by Yelp – and not due to any threat of force or other coercion. FAC ¶¶ 69, 72,  
19 82-85. *Cf. Goodman*, 159 Cal. App. 2d at 61 (the “force or fear” required for extortion must  
20 “control” the victim’s consent so that his actions are “coerced and unwilling”); *Durell v. Sharp*  
21 *Healthcare*, 183 Cal. App. 4th 1350, 1360-64 (2010) (“actual reliance” is an element of a claim under  
22 the “unlawful” prong of the UCL).

23 Because Plaintiffs fail to allege that Yelp engaged in “extortion” or any other “unlawful” act  
24 that coerced them to advertise on Yelp, the Court should dismiss their claims under the unlawful  
25 prong of the UCL. *See, e.g., Actimmune*, 2009 WL 3740648, at \*15 (dismissing unlawful claims for  
26 failure to sufficiently allege violations of the predicate regulations under the “unlawful” prong of the  
27 UCL); *Marcelos v. Dominguez*, No. C 08-00056, 2008 WL 1820683, at \*12 (N.D. Cal. Apr. 21,  
28 2008) (dismissing UCL claims for failure to identify, beyond an insufficient “in violation of federal

1 and state law” “catchall,” the provisions upon which the unlawful claims were predicated).

2 **3. Plaintiffs Have Not Alleged “Unfair” Conduct**

3 Plaintiffs also fail to allege that Yelp engaged in any “unfair” conduct within the meaning of  
4 the UCL. Indeed, Plaintiffs make no attempt to specify any conduct by Yelp that could be deemed  
5 unfair, and instead, rely on a single, boilerplate claim that Yelp’s conduct somehow is “unfair” and  
6 “in violation of public policy.” FAC ¶ 108.

7 Because Plaintiff’s bare contention that Yelp’s conduct is “unfair” arises from the exact same  
8 allegations as their claims under the FAL (and the “fraudulent” and “unlawful” UCL prongs), this  
9 claim too sounds in fraud, and likewise fails to meet the heightened pleading requirements of Rule  
10 9(b). *See, e.g., Actimmune*, 2009 WL 3740648, at \*14 (dismissing plaintiffs’ claims under the UCL  
11 “unfair” prong claims because they “overlap entirely with their claims of fraud,” and fail under Rule  
12 9(b) for the same reasons as plaintiff’s fraud claim).

13 Although courts are divided as to what constitutes an “unfair” activity under the UCL,  
14 Plaintiffs have failed to plead facts that demonstrate “unfair” conduct under any definition. Indeed,  
15 Plaintiffs have pled no facts that plausibly suggest that Yelp’s actions “offend[ed] an established  
16 public policy [or that they are] immoral, unethical, oppressive, unscrupulous or substantially injurious  
17 to consumers.” *McDonald v. Coldwell Banker*, 543 F.3d 498, 506 (9th Cir. 2008); *Buena Vista, LLC*  
18 *v. New Res. Bank*, No. 10-1502 CW, 2010 WL 3448561, at \*6 (N.D. Cal. Aug. 31, 2010).

19 In fact, Plaintiffs identify no conduct at all beyond that alleged to be “deceptive” and  
20 “unlawful” under the FAL and UCL, which does not support a UCL claim. *See, e.g., Buena Vista,*  
21 *LLC*, 2010 WL 3448561, at \*6 (allegations that defendants “worked in concert to take advantage of  
22 [plaintiffs’] precarious financial situation, bilk [plaintiffs] of thousands of dollars for Defendants’  
23 own profit, and foreclose on [property] . . . do not support a claim that Defendants’ actions” are  
24 unfair under the UCL); *Leong v. Square Enix of Am. Holdings, Inc.*, CV 09-4484, 2010 WL 1641364,  
25 at \*7 (C.D. Cal. Apr. 20, 2010) (plaintiff’s allegations did not establish “unfair” conduct, where  
26 “Plaintiffs fail to provide any facts that suggest they were in any way coerced or forced to spend any  
27 money at all by Defendants” on a for-profit service).

1 Nor are Plaintiff’s allegations of unfairness “tethered to some legislatively declared policy or  
2 proof of some actual or threatened impact on competition” in Yelp’s industry, as would be required to  
3 establish “unfairness” under the definition established in *Cel-Tech Commc’ns, Inc. v. Los Angeles*  
4 *Cellular Tel. Co.*, 20 Cal. 4th 163, 185-87 (1999). See, e.g., *Baba v. Hewlett-Packard Co.*, No. C 09-  
5 05946, 2010 WL 2486353, at \*7-8 (N.D. Cal. June 16, 2010) (consumer UCL claims asserting  
6 “unfair” practices must be “tethered to some legislatively declared policy”).

7 Because Plaintiffs have provided no details or facts indicating how Yelp’s conduct is unfair –  
8 other than the conclusory allegation contained in paragraph 108 – their claim under the UCL  
9 “unfairness” prong should be dismissed. See, e.g., *Smith & Hawken, Ltd. v. Gardendance, Inc.*, No.  
10 C04-1664, 2004 WL 2496163, at \*5 (N.D. Cal. Nov. 5, 2004) (dismissing UCL claim, finding that  
11 “[a plaintiff] alleging unfair business practices under the unfair competition statutes must state with  
12 reasonable particularity the facts supporting the statutory elements of the violation”).

13 **E. Non-Sponsor Plaintiffs Fail to State a Claim for Intentional Interference with**  
14 **Prospective Business Advantage**

15 Non-Sponsor Plaintiffs<sup>5</sup> assert a claim for intentional interference with prospective business  
16 advantage based on vague allegations that Yelp somehow interfered with unspecified “economic  
17 relationships” with unidentified third parties. FAC ¶¶ 131-36. These unspecific and unsupported  
18 allegations are deficient for two separate reasons: (a) Plaintiffs have not identified any non-  
19 speculative, concrete business opportunity, and (b) Plaintiffs have failed to allege that Yelp knew of  
20 any such unspecified business opportunity, much less deliberately interfered with it.

21 **1. Plaintiffs Have Not Alleged a Concrete Economic Relationship**

22 As this Court observed during the initial conference in this action, to state a claim for  
23 intentional interference, Plaintiffs must point to “third parties that are identifiable and that the . . .  
24 defendant . . . knows or is aware of.” See Beringer Decl. Ex. 4, Transcript of July 19, 2010  
25 Proceedings, Docket No. 30 at 17:8-9. Contrary to these requirements, Plaintiffs have failed to

---

26 <sup>5</sup> Although the Amended Complaint erroneously states that this claim is being asserted on behalf of  
27 “Subclass (b)” (the Sponsor Plaintiffs), the allegations make clear that this claim is intended to be  
28 asserted solely on behalf of the Non-Sponsor Plaintiffs. See FAC ¶ 131. Defendant’s counsel  
confirmed this with lead counsel for Plaintiffs during the parties’ meet and confer on this motion.  
Beringer Decl. ¶ 7.

1 identify, as they must, the existence of a single “economic relationship between [themselves] and  
2 some third party, with the probability of future economic benefit to the [Plaintiffs].” *Pac. Gas &  
3 Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 n.2 (1990). Instead, they allege in the most  
4 general terms only that “there existed economic relationships between the Non-Sponsor Plaintiffs”  
5 and third parties, without identifying a single customer or party to these supposed “relationships.”  
6 *See* FAC ¶¶ 49, 65, 78, 89, 131.

7 These conclusory allegations plainly are insufficient to state a claim for intentional  
8 interference. *See Buxton v. Eagle Test Sys., Inc.*, No. C-08-04404, 2010 WL 1240749, at \*2 (N.D.  
9 Cal. Mar. 26, 2010) (dismissing intentional interference claim where plaintiff did not allege the  
10 “existence of any economic relationships with identifiable third parties” that were intentionally  
11 disrupted); *Sound Appraisal v. Wells Fargo Bank, N.A.*, No. C 09-01630, 2009 WL 3353057, at \*7  
12 (N.D. Cal. Oct. 15, 2009) (dismissing intentional interference claim where plaintiffs made “vague  
13 and general assertion[s]” of defendants’ disruption of “unspecified relationships with unnamed  
14 parties for unspecified future potential business”); *Silicon Knights, Inc. v. Crystal Dynamics, Inc.*,  
15 983 F. Supp. 1303, 1311-12 (N.D. Cal. 1997).

16 **2. Plaintiffs Have Not Alleged That Yelp Knew Of or Deliberately Interfered With**  
17 **Any Economic Relationship**

18 Non-Sponsor Plaintiffs’ intentional interference claim should also be dismissed because they  
19 have failed to allege that Yelp knew of any specific economic relationship with the Non-Sponsor  
20 Plaintiffs, much less that Yelp had the specific intent to disrupt any such relationship. *See Pac. Gas*  
21 *& Elec. Co.*, 50 Cal. 3d at 1126 n.2 (intentional interference claim requires allegations that defendant  
22 knew about the relationship, and engaged in intentional acts designed to disrupt the relationship); *see*  
23 *Beringer Decl.*, Ex. 4 (intentional interference claim requires Plaintiffs to identify specific third party  
24 relationships “that the . . . defendant . . . knows or is aware of”).

25 Instead, the Amended Complaint contains two conclusory assertions: (1) that “Yelp knew of  
26 these relationships” and (2) that “Yelp intentionally committed wrongful acts designed to disrupt  
27 those relationships.” FAC ¶¶ 132-33. Such boilerplate allegations – which fail to identify a single  
28 specific relationship of which Yelp was aware – are insufficient to allow plaintiffs to avoid dismissal

1 here. *See Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 129 S. Ct. at  
2 1951) (allegations that merely recite legal conclusions “are not entitled to an assumption of truth”); *In*  
3 *re Stac Elecs. Sec. Litig.*, 89 F.3d at 1403 (“[c]onclusory allegations of law and unwarranted  
4 inferences are insufficient to defeat a motion to dismiss”).

5 Likewise, Plaintiffs fail to allege that Yelp had a specific motive or intent to interfere with any  
6 specific (or unspecific) business relationship. Instead, the basic premise of Plaintiffs’ claims appears  
7 to be that Yelp was motivated by a desire to sell advertising, and not by a specific intent to interfere  
8 with any third party relationship. This, too, requires dismissal of Non-Sponsor Plaintiffs’ intentional  
9 interference claim. *See New.Net, Inc. v. Lavasoft*, 356 F. Supp. 2d 1090, 1114 (C.D. Cal. 2004).

10 **F. Because Plaintiffs Do Not Have Standing and Fail to State a Sufficient Claim, The Class**  
11 **Allegations Also Must Be Dismissed**

12 It is well-settled that claims asserted on behalf of a putative class cannot go forward where, as  
13 here, the named plaintiffs lack standing or fail to state a legally sufficient claim for relief. *O’Shea v.*  
14 *Littleton*, 414 U.S. 488, 494-95 (1974). Because Plaintiffs’ claims fail for the reasons addressed in  
15 detail above, this also requires dismissal of all claims asserted on behalf of the proposed class.  
16 *Lierboe v. State Farm Mut. Auto. Ins. Co.*, 350 F.3d 1018, 1022-24 (9th Cir. 2003).

17 **G. Plaintiffs Have Not Pleaded Legally Sufficient Class Allegations**

18 Finally, this Court also should strike Plaintiffs’ purported class action allegations under Rule  
19 12(f). When, as here, plaintiffs have failed to allege an ascertainable class, and where it is apparent  
20 from the face of the pleading that individual issues predominate, courts in this district repeatedly have  
21 stricken class allegations. *See, e.g., Stearns v. Select Comfort Retail Corp.*, No. 08-cv-02746, 2009  
22 WL 4723366, at \*15-16 (N.D. Cal. Dec. 4, 2009) (dismissing class allegations that involved elements  
23 “individual to each purported class member, such as the provision of notice, an opportunity to cure,  
24 and reliance”); *Brazil v. Dell Inc.*, 585 F. Supp. 2d 1158, 1166-67 (N.D. Cal. 2008) (striking class  
25 allegations because “the proposed class cannot, as alleged, be presently ascertained”).

26 Plaintiffs’ class allegations are deficient for three separate reasons. First, Plaintiffs purport to  
27 represent a class that would include *every* business and person “who [was] in contact with Yelp  
28 regarding the option to advertise,” irrespective of whether Yelp made any deceptive or threatening

1 statements to such class members, and whether or not the class members were in any way injured.  
2 FAC ¶ 95(a)-(b). Likewise, the class encompasses all businesses that allegedly were “subject to the  
3 manipulation of reviews,” whether or not the businesses were harmed by this purported  
4 “manipulation” and including advertisers who according to Plaintiffs, *benefited* from the  
5 manipulation of reviews. *Id.* Accordingly, “the class is not ascertainable because it includes  
6 members who have not experienced any problems” as a result of Yelp’s conduct, and who cannot  
7 demonstrate the essential elements of the claims asserted here. *Hovsepian v. Apple, Inc.*, No. 08-  
8 5788, 2009 WL 5069144, at \*6 (N.D. Cal. Dec. 17, 2009) (striking class action allegations because  
9 proposed class included individuals with no claims against defendants).

10 Second, the named Plaintiffs do not – and cannot – satisfy the typicality requirement under  
11 Rule 23 because their disparate, individualized and contradictory claims are not typical of the  
12 proposed class, and are materially inconsistent *even within the same subclass*. For example:

- 13 ▪ *Purported Representations:* Levitt contends that Yelp informed him that employees  
14 “don’t have the ability to evaluate or reinstate specific reviews,” whereas C&D  
15 complains that Yelp “promised to manipulate” its business page if it purchased  
16 advertising. *Compare* FAC ¶ 45 with ¶¶ 56-57.
- 17 ▪ *Reliance:* BHB alleges it purchased advertising “based on . . . promises” supposedly  
18 made by a Yelp sales representative but “negotiated a deal” with individualized term,  
19 whereas Chan concedes that she “declined to purchase Yelp advertising” in response to  
20 an offer from Yelp. *Compare id.* ¶ 85 with ¶ 72.
- 21 ▪ *Causation/Injury:* Levitt contends his business had an “overall rating of 4.5 stars”  
22 when Yelp contacted him, but complains that *positive* reviews disappeared *before and*  
23 *after* he declined to purchase advertising. *Id.* ¶¶ 42, 47-49. By contrast, C&D  
24 complains about *negative* reviews posted *before* speaking with Yelp, while conceding  
25 that it enjoyed a positive “4-star rating on its Yelp.com listing page” *after* it declined to  
26 purchase advertising, which included more than 60% “perfect 5-star ratings.” *Id.* ¶¶ 52,  
27 55, 59-60, 63.

28 Given the enormous variation among Plaintiffs’ allegations within the same subclass, they cannot  
possibly establish that their claims are typical of any that could be asserted by hundreds of thousands  
of individual businesses, each of which participated in distinct sales conversations and received  
entirely distinct reviews and ratings before and after their decisions to purchase advertising on Yelp  
or not. *See, e.g., Dodd-Owens v. Kyphon, Inc.*, No. C06-3988, 2008 WL 410241, at \*1 (N.D. Cal.

