

1 **THE WESTON FIRM**  
 2 GREGORY S. WESTON (239944)  
 3 888 Turquoise Street  
 4 San Diego, CA 92109  
 5 Telephone: (858) 488-1672  
 6 Facsimile: (480) 247-4553  
 7 greg@westonfirm.com

8 **JACK FITZGERALD (257370)**  
 9 2811 Sykes Court  
 10 Santa Clara, CA 95051  
 11 Telephone: (408) 459-0305  
 12 jack@westonfirm.com

13 **BECK & LEE BUSINESS TRIAL LAWYERS**

14 JARED H. BECK (233743)  
 15 ELIZABETH LEE BECK (233742)  
 16 Courthouse Plaza Building  
 17 28 West Flagler Street, Suite 555  
 18 Miami, FL 33130  
 19 Telephone: (305) 789-0072  
 20 Facsimile: (786) 664-3334  
 21 jared@beckandlee.com  
 22 elizabeth@beckandlee.com

23 **Attorneys for Plaintiffs and the Proposed Classes**

24 **UNITED STATES DISTRICT COURT**  
 25 **NORTHERN DISTRICT OF CALIFORNIA**

26 CATS AND DOGS ANIMAL HOSPITAL,  
 27 INC. et al., on behalf of themselves and all  
 others similarly situated,

Plaintiffs,

v.

YELP! INC.,

Defendant.

Case No. 3:10-cv-02351-MEJ  
 Pleading Type: Class Action

**DECLARATION OF JACK FITZGERALD**

Judge: The Hon. Maria-Elena James  
 Action Filed: February 23, 2010

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

I, Jack Fitzgerald, declare:

1. I am counsel to Plaintiffs and the Proposed Class in the above-captioned matter. I make this Declaration further to the concurrently-filed Notice of Stipulation & Administrative Motion to Relate Cases.

2. Attached hereto as Exhibit A is the Stipulation in Support of Administrative Motion to Relate Cases Pursuant to L.R. 3-12(b) and 7-11, was filed on June 2, 2010 in the matter of *Levitt v. Yelp! Inc.*, No. CV 10-01321 MHP (N.D. Cal.), pending before the Honorable Marilyn Hall Patel.

3. Attached hereto as Exhibit B is an Administrative Motion of Yelp! Inc. to Relate Cases, along with the exhibits thereto, which was filed on June 2, 2010 in the matter of *Levitt v. Yelp! Inc.*, No. CV 10-01321 MHP (N.D. Cal.), pending before the Honorable Marilyn Hall Patel.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed in Santa Clara, California on June 2, 2010

/s/ Jack Fitzgerald  
Jack Fitzgerald

Dated: May 28, 2010

Respectfully Submitted,

/s/ Jack Fitzgerald  
Jack Fitzgerald

**THE WESTON FIRM**  
GREGORY S. WESTON  
JACK FITZGERALD  
888 Turquoise Street  
San Diego, CA 92109  
Telephone: 858 488 1672  
Facsimile: 480 247 4553

**BECK & LEE BUSINESS TRIAL  
LAWYERS**  
JARED H. BECK  
ELIZABETH LEE BECK  
Courthouse Plaza Building  
28 West Flagler Street, Suite 555  
Miami, FL 33130

Telephone: 305 789 0072  
Facsimile: 786 664 3334

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

# **Exhibit A**

1 COOLEY LLP  
MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)  
2 MATTHEW D. BROWN (196972) (brownmd@cooley.com)  
BENJAMIN H. KLEINE (257225) (bkleine@cooley.com)  
3 101 California Street, 5th Floor  
San Francisco, CA 94111-5800  
4 Telephone: (415) 693-2000  
Fax: (415) 693-2222

5 Attorneys for Defendant  
6 YELP! INC.

7 MURRAY & ASSOCIATES  
LAWRENCE D. MURRAY (77536) (daydrmn@aol.com)  
8 1781 Union St.  
San Francisco, CA 94123  
9 Telephone: (415) 673-0555  
Fax: (415) 928-4048

10 Attorneys for Plaintiff  
11 BORIS Y. LEVITT

12 THE WESTON FIRM  
GREGORY S. WESTON (2939944) (greg@westonfirm.com)  
13 JACK FITZGERALD (257370) (jack@westonfirm.com)  
888 Turquoise St.  
14 San Diego, CA 92109  
Telephone: (858) 488-1672  
15 Fax: (480) 247-4553

16 Attorneys for Plaintiffs  
CATS AND DOGS ANIMAL HOSPITAL, INC., ET AL.  
17 (Plaintiffs in Case No. CV 10-02351 MEJ)

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20

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

23 Plaintiff,

24 v.

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

27 Defendants.  
28

No. CV 10-01321 MHP

**STIPULATION IN SUPPORT OF ADMINISTRATIVE  
MOTION TO CONSIDER WHETHER CASES  
SHOULD BE RELATED  
(CIVIL L.R. 3-12(b) AND 7-11)**

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

1 Pursuant to Civil Local Rules 3-12(b) and 7-11, Plaintiff Boris Y. Levitt, Plaintiffs Cats  
2 and Dogs Animal Hospital, Inc., et al., and Defendant Yelp! Inc., by and through their  
3 undersigned counsel of record, hereby stipulate that the following actions should be deemed  
4 related and conducted before the same judge:

- 5 • *Boris Y. Levitt v. Yelp! Inc.*, Case No. CV 10-01321 MHP; and
- 6 • *Cats and Dogs Animal Hospital, Inc., et al. v. Yelp! Inc.*, Case No. CV 10-02351  
7 MEJ.

8 **IT IS SO STIPULATED.**

9 Dated: June 2, 2010

COOLEY LLP

10  
11 /s/ Matthew D. Brown  
Matthew D. Brown (196972)

12 Attorneys for Defendant YELP! INC.

13  
14 Dated: June 2, 2010

MURRAY & ASSOCIATES

15  
16 /s/ Lawrence D. Murray  
Lawrence D. Murray (77536)

17 Attorneys for Plaintiff BORIS Y. LEVITT

18  
19 Dated: June 2, 2010

THE WESTON FIRM

20  
21 /s/ Gregory S. Weston  
Gregory S. Weston (239944)

22 Attorneys for Plaintiffs CATS AND DOGS ANIMAL  
23 HOSPITAL, ET AL. (Plaintiffs in Case No. CV 10-  
24 02351 MEJ)

25  
26  
27  
28

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

**ATTESTATION PURSUANT TO GENERAL ORDER 45**

I, Matthew D. Brown, attest that concurrence in the filing of this STIPULATION IN SUPPORT OF ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED (Civil L.R. 3-12(b) and 7-11) has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 2nd day of June, 2010, at San Francisco, California.

/s/ Matthew D. Brown  
Matthew D. Brown

674891/SD

# **Exhibit B**



1 COOLEY LLP  
MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)  
2 MATTHEW D. BROWN (196972) (brownmd@cooley.com)  
BENJAMIN H. KLEINE (257225) (bkleine@cooley.com)  
3 101 California Street, 5th Floor  
San Francisco, CA 94111-5800  
4 Telephone: (415) 693-2000  
Fax: (415) 693-2222  
5

6 Attorneys for Defendant  
YELP! INC.

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10  
11 BORIS Y. LEVITT, on behalf of himself  
and all others similarly situated,

12 Plaintiff,

13 v.

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

16 Defendants.

No. CV 10-01321 MHP

**YELP! INC.’S ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES SHOULD BE  
RELATED (CIVIL L.R. 3-12(b) AND 7-11)**

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

17  
18 Defendant Yelp! Inc. (“Yelp”), by and through its undersigned counsel of record, hereby  
19 files this Administrative Motion to Consider Whether Cases Should be Related pursuant to Civil  
20 Local Rules 3-12(b) and 7-11, to consider whether the action entitled *Boris Y. Levitt v. Yelp! Inc.*,  
21 Case No. CV 10-01321 MHP (“*Levitt*”), and the action entitled *Cats and Dogs Animal Hospital,*  
22 *Inc, et al. v. Yelp! Inc.*, Case No. CV 10-02351 MEJ (“*Cats and Dogs*”) should be related. This  
23 motion is supported by the stipulation, filed herewith, of all parties to the two cases.

24 The *Levitt* action was filed on March 12, 2010 in the Superior Court of the State of  
25 California, County of San Francisco, and was entitled *Boris Y. Levitt, on behalf of himself and all*  
26 *other similarly situated v. Yelp! Inc.; and Does 1 through 100, inclusive*, Case No. CGC-10-  
27 497777. Yelp removed the action to this Court pursuant to 28 U.S.C. § 1453(b) on March 29,  
28

1 2010. A true and correct copy of the Complaint in the *Levitt* action is attached hereto as **Exhibit**  
2 **A**.

3 The *Cats and Dogs* action was filed in the United States District Court for the Central  
4 District of California on February 24, 2010. It was assigned to the Honorable Valerie Baker  
5 Fairbank. A true and correct copy of the First Amended Complaint in the *Cats and Dogs* action is  
6 attached hereto as **Exhibit B**. On May 4, 2010, on Yelp's motion to transfer venue pursuant to 28  
7 U.S.C. § 1404(a), Judge Fairbank ordered *Cats and Dogs* transferred to this Court. A true and  
8 correct copy of the Order transferring the case is attached as **Exhibit C**. On May 28, 2010, the  
9 case was opened on this Court's docket.

10 On April 7, 2010, Yelp filed a Notice of Pendency of Other Actions or Proceedings  
11 pursuant to Northern District Civil Local Rule 3-13 in the *Levitt* action<sup>1</sup> and a Notice of Pendency  
12 of Other Actions or Proceedings pursuant to Central District Local Rule 83-1.4 in the *Cats and*  
13 *Dogs* action.

#### 14 **The *Cats and Dogs* and *Levitt* Actions Are Related**

15 The *Cats and Dogs* and *Levitt* actions are related under Civil Local Rule 3-12(a), since the  
16 actions concern substantially the same parties, property, transaction, or event and would result in  
17 an unduly burdensome duplication of labor and expense and increase the likelihood of conflicting  
18 results if the cases are conducted before different judges.

19 Yelp operates a website (www.yelp.com) that allows consumers to find local businesses,  
20 and to read and write reviews about them. The website features information on and reviews of  
21 businesses throughout the United States and is visited by approximately 30 million people per  
22 month. Yelp makes money by, *inter alia*, selling ads to local businesses, which appear as  
23 "Sponsored Results" on Yelp's website.

---

24  
25 <sup>1</sup> Yelp's Notice of Pendency included notice of a second related case pending in the Central  
26 District entitled *LaPausky v. Yelp! Inc.*, Case No. CV 10-01578 VBF (SSx). Plaintiff LaPausky  
27 had originally been represented by separate counsel. On April 16, 2010, counsel for plaintiffs in  
28 the *Cats and Dogs* action filed a Notice of Substitution of Counsel notifying the court and parties  
that such counsel was substituting in for LaPausky's previous counsel. On April 29, 2010,  
LaPausky's new counsel filed a Notice of Voluntary Dismissal dismissing the *LaPausky* action.

1 Plaintiffs in both actions seek to represent nearly identically defined putative classes in  
 2 lawsuits against the same defendant, Yelp. (*Compare* Ex. A ¶ 36 with Ex. B ¶ 171.) Plaintiffs in  
 3 both actions are businesses that allege that, based on whether a business chooses to advertise with  
 4 Yelp or not, the display of reviews of such business on www.yelp.com is either positively or  
 5 negatively affected. (*Compare, e.g.,* Ex. A ¶¶ 6-13 with Ex. B ¶¶ 91-93.) Plaintiffs in both  
 6 actions assert claims for violation of California's Unfair Competition Law, Business and  
 7 Professions Code Section 17200 *et seq.* Plaintiff in *Levitt* includes additional claims for (a)  
 8 violation of California Business and Professions Code Section 17500, (b) negligent  
 9 misrepresentation, and (c) intentional misrepresentation. Plaintiffs in *Cats and Dogs* include  
 10 additional claims for (a) violation of Cal. Penal Code §§ 518-19 (extortion), (b) violation of Cal.  
 11 Penal Code § 524 (attempted extortion), and (c) intentional interference with prospective  
 12 economic advantage.

13 Thus, the factors specified in Local Civil Rule 3-12(a) are met. The actions concern  
 14 substantially the same parties, and they concern substantially overlapping subject matter, namely  
 15 Yelp's advertising and review display policies and practices. If the cases were not related and  
 16 conducted before the same judge, there would be an unduly burdensome duplication of labor and  
 17 expense by Yelp, eventual class counsel, and the Court. There would also be a risk of conflicting  
 18 results.

### 19 **Conclusion**

20 For the foregoing reasons, Yelp, supported by the stipulation of the plaintiffs in each  
 21 action, respectfully submits that the *Levitt* and *Cats and Dogs* actions are related and should be  
 22 conducted before the same judge.

23 Dated: June 2, 2010

COOLEY LLP

24 /s/ Matthew D. Brown  
 25 Matthew D. Brown (196972)

26 Attorneys for Defendant YELP! INC.

27  
 28 1179787/SF

# **Exhibit A**



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**Document Scanning Lead Sheet**

Mar-12-2010 2:49 pm

Case Number: CGC-10-497777

Filing Date: Mar-12-2010 2:45

Juke Box: 001 Image: 02789015

COMPLAINT

BORIS Y LEVITT VS. YELP! INC. et al

001C02789015

**Instructions:**

Please place this sheet on top of the document to be scanned.

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

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

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

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

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

CASE NUMBER: 10-497777  
(Número del Caso)

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO  
400 MCALLISTER STREET

94102

SAN FRANCISCO  
Unlimited Jurisdiction

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Lawrence D. Murray (SBN 77536) (415) 673-0555  
Murray & Associates, 1781 Union Street, San Francisco, CA 94123

**D. STEPPEY**

DATE: MAR 12 2010  
(Fecha)

CLERK OF THE COURT

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para probar la entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

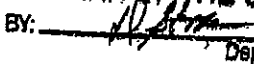


**NOTICE TO THE PERSON SERVED:** You are served

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):
- 3.  on behalf of (specify):

- under:
- CCP 416.10 (corporation)
  - CCP 416.20 (defunct corporation)
  - CCP 416.40 (association or partnership)
  - other (specify):
  - CCP 416.60 (minor)
  - CCP 416.70 (conservatee)
  - CCP 416.90 (authorized person)

- 4.  by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, telephone number, and address): 77536 Lawrence D. Murray 1781 Union Street San Francisco, CA 94123 TELEPHONE NO.: (415) 673-0555 FAX NO.: (415) 928-4084	FOR COURT USE ONLY  <b>F I L E D</b> Superior Court of California County of San Francisco  MAR 12 2010  CLERK OF THE COURT BY:  Deputy Clerk
ATTORNEY FOR (Name): Plaintiffs SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 MCALLISTER STREET MAILING ADDRESS: CITY AND ZIP CODE: SAN FRANCISCO 94102 BRANCH NAME: Unlimited Jurisdiction	CASE NUMBER: <b>CGC-10-497777</b>
CASE NAME: Levitt, et al. vs. YELP, Inc.	JUDGE: DEPT:
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	Complex Case Designation C G C - 1 0 - 4 9 7 7 7 7

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

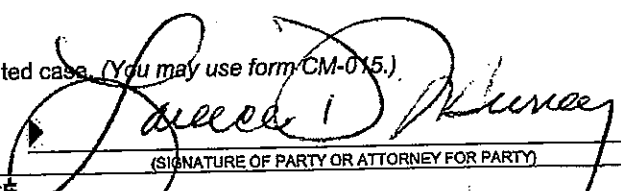
<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other P/PPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PPD/W/D (23) <b>Non-P/PPD/W/D (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PPD/W/D tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 Collections (09) <input type="checkbox"/> Other Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |   |   |
|---|---|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input checked="" type="checkbox"/> Large number of witnesses  |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision   |
3. Remedies sought (check all that apply): a.  monetary     b.  nonmonetary; declaratory or injunctive relief     c.  punitive
4. Number of causes of action (specify): 4
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related cases. (You may use form CM-015.)

Date: March 12, 2010  
 Lawrence D. Murray

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)



**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**CIVIL CASE COVER SHEET**

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

LAWRENCE D. MURRAY, State Bar No. 77536  
ROBERT C. STRICKLAND State Bar No. 243757  
MURRAY & ASSOCIATES  
1781 Union Street  
San Francisco, CA 94123  
Tel: 415 673-0555 Fax: 415 928-4084

CASE MANAGEMENT CONFERENCE SET

**FILED**  
Superior Court of California  
County of San Francisco

MAR 12 2010

CLERK OF THE COURT  
Deputy Clerk

AUG 13 2010 9:42 AM

Attorneys for Plaintiff  
BORIS LEVITT

DEPARTMENT 212

**SUMMONS ISSUED**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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

Plaintiff,

v.

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

Defendants.

Case No.

CGC-10-497777

**CLASS ACTION COMPLAINT FOR:**

- (1) VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200;
- (2) VIOLATION OF BUSINESS & PROFESSIONS CODE § 17500;
- (3) NEGLIGENT MISREPRESENTATION; and
- (4) INTENTIONAL MISREPRESENTATION

*Jury Trial Demanded*

Plaintiff Boris Y. Levitt, d/b/a Renaissance Restoration, a/k/a Renaissance Furniture Restoration ("Levitt" or "Plaintiff"), on behalf of himself and all others similarly situated, files this Class Action Complaint against Defendant Yelp!, Inc. and Does 1 through 100, inclusive ("Yelp" or Defendant):



INTRODUCTION

1  
2 1. Plaintiff brings this action on behalf of himself and other similarly situated  
3 businesses and persons in California and nationwide who were contacted by Yelp regarding the  
4 option to advertise on Yelp and were subsequently subject to the manipulation of the reviews of  
5 their businesses during the four years prior to the commencement of this lawsuit, through the final  
6 resolution of this lawsuit. This class action challenges Defendants' unfair and unethical conduct  
7 in promoting, marketing, and advertising its website as maintaining nonbiased reviews, and  
8 Defendants' unfair and unlawful conduct directed towards businesses and their owners.

9 2. Defendant's website allows users to post reviews of businesses. Users are able to  
10 rank businesses using a star rating of one (1) to five (5) stars with five (5) stars being the highest.  
11 The business is then given an overall star rating based on the total number of user reviews.  
12 Defendant's website draws over 25 million people each month, who are able to search for and  
13 review the public ratings of businesses.<sup>1</sup>

14 3. Defendant's website represents that "Yelp is the fun and easy way to find, review,  
15 and talk about what's great – and not so great, in your area," that Yelp is "Real People. Real  
16 Reviews," and that its purpose is to "connect people with great local businesses."

17 4. Defendant allows business owners to set up free accounts, however, Defendant  
18 makes money by selling advertisements to local businesses. Yelp states on its website that  
19 "[p]laying advertisers can also promote a favorite review at the top of their Yelp page, but can  
20 never change or re-order other reviews." Defendant also states that, "Yelp has an automated filter  
21 that suppresses a small portion of reviews –it targets those suspicious ones you see on other sites."

22 5. Users who posted reviews on Defendant's website are required to maintain an  
23 account. When logged into his or her personal profile, the user is able to view reviews he or she  
24 has posted even if Yelp's system has removed them from the public review page for the business.  
25 Accordingly, the posting user may not realize that his or her review has been removed by Yelp.  
26

27  
28 <sup>1/</sup> Defendant's website states that "As of December 2009, more than 26 million people  
visited Yelp in the past 30 days."

1           6. Defendant offers for free, and thereby induces businesses to sign up for a Yelp  
2 business account. A Yelp Business account allows a business to post offers, announcements,  
3 business information and photos, message customers, and respond to reviews. Yelp further offers  
4 businesses with Yelp accounts the opportunity to designate the business under certain Yelp search  
5 categories, which allow Yelp users to search for the business under the applicable category. After  
6 a business promotes itself on Yelp, the business begins to receive reviews.

7           7. Upon information and belief, once a business is actively receiving reviews on Yelp,  
8 Yelp starts to manipulate the overall rating and presentation of the business by deleting positive  
9 reviews from business page or/and posting negative reviews on the top of the review page.

10           8. After the overall rates or/and presentation of a business decline, Defendant will  
11 contact the businesses and offer it the opportunity to purchase advertising. Upon information and  
12 belief, Defendant induces businesses to pay for "Yelp's Targeted Advertising program" in amounts  
13 ranging from \$300 to \$1,000 per month. In exchange, Yelp offers to put the business's review  
14 page at the top of a Search Result and on the business's competitor's review pages, promising the  
15 business that it will receive approximately 600 to 3,600 page shows per month. Upon information  
16 and belief, if the business declines Yelp's offer, Yelp continues to manipulate the overall rating by  
17 removing most of positive reviews, which causes the business's overall star rating to fall. As the  
18 result, there are fewer Yelp users viewing the business page.

19           9. Upon information and belief, once a business's reviews are manipulated by Yelp,  
20 the business itself is impacted either by a loss of revenue or by the requirement of paying hundreds  
21 of dollars each month for advertising on Yelp.

22           10. Defendant maintains that reviews may only be removed from Yelp if: 1) A user  
23 removes the review; 2) Yelp removes the review for violating the Review Guidelines or Terms of  
24 Service; or 3) "The review may have been suppressed by Yelp's automated software system. This  
25 system decides how established a particular reviewer is and whether a review will be shown based  
26 on the reviewer's involvement on Yelp. While this may seem unfair to you, this system is designed  
27 to protect both consumers and businesses alike from fake reviews (i.e., a malicious review from a  
28

1 competitor or a planted review from an employee). The process is entirely automated to avoid  
2 human bias, and it affects both positive and negative reviews. It's important to note that these  
3 reviews are not deleted (they are always shown on the reviewer's public profile) and may reappear  
4 on your business page in the future.”

5 11. Relying on Defendants' representations that reviews would not be removed from  
6 Yelp unless one of the three criteria was met, businesses and/or their owners declined Yelp's  
7 solicitation that the businesses buy advertisements. Upon information and belief, once a business  
8 declines Yelp's advertisement offer, Yelp manipulates the reviews of the business.

9 12. Upon information and belief, to further induce businesses to advertise, Yelp offers  
10 businesses the opportunity to manipulate reviews in exchange for the business's purchase of  
11 advertisements. To ensure this placement, and to ensure that Yelp will not manipulate reviews in  
12 a way that adversely impacts business, a business owner pays for advertisements.

13 13. As a result, business owners who were contacted by Yelp suffered injury in fact by  
14 either paying for advertising or losing business if they did not.

15  
16 **THE PARTIES**

17 14. Plaintiff Boris Levitt, a resident of San Mateo County, owns a business called  
18 Renaissance Furniture Restoration, which is located in San Francisco, California.

19 15. Defendant Yelp is a Delaware corporation with its principal place of business in  
20 San Francisco, California. Yelp is licensed to do, and is doing, business in California and  
21 throughout the United States. At all relevant times, Yelp offered its services to businesses and  
22 persons nationwide.

23 16. Plaintiff is unaware of the true names and capacities of DOES 1-100, inclusive, but  
24 is informed and believes, and thereon alleges, that each of the DOE Defendants is responsible for  
25 the acts and obligations, and or should be subject to and bound by the declarations and judicial  
26 determinations sought herein. When Plaintiff learns the true names and capacities of DOE  
27 Defendants, it will amend this Complaint accordingly.  
28

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

**VENUE AND JURISDICTION**

17. Jurisdiction and venue is proper in San Francisco County because Defendant maintains its principal place of business in this county.

**GENERAL ALLEGATIONS**

18. At all relevant times, Defendant made its review and advertising services available to business owners nationwide.

19. Defendant's website contains language explicitly stating that user business reviews will only be removed as a result of user conduct or if an automated nonbiased software system removes the reviews. Defendant's website also contains language explicitly stating that it will not remove negative reviews or move a review to the bottom of the webpage if a business pays for advertising.

20. Upon information and belief, Defendant's representations regarding the removal and placement of reviews are false.

21. Upon information and belief, business reviews are subject to manipulation by Defendant.

22. Upon information and belief, whether Defendant manipulates the reviews of businesses depends on whether a business or person pays for advertising on Yelp.

23. Upon information and belief, Defendant's manipulation of reviews caused Plaintiff and the Class injuries as set forth below.

**Plaintiff's Experience with Yelp**

24. On or about May 13, 2009, Plaintiff contacted Yelp to inquire about why a positive review of his business disappeared.

25. On or about May 13, 2009, "Kris" from Yelp User support wrote Plaintiff back and included the following explanation:

1  
2 We decided early on that Yelp wasn't going to be another anonymous review site where  
3 everyone is given credibility whether they've earned it or not. We created an automated  
4 system that decides how much trust to instill in a particular reviewer. If the reviewer isn't  
5 involved with Yelp, it's awfully hard for our software to have much confidence in the  
6 reviewer and so it may not display that review. It's important to note that these reviews are  
7 not deleted (they are always shown on the reviewer's public profile) and may reappear on  
8 your business listing page in the future. While this may seem unfair to you, please know  
9 that this system is also in place to try to protect you from an untrustworthy review from a  
10 malicious competitor. While not perfect, we are committed to improving our site to keep  
11 Yelp useful for both consumers and businesses alike. We created a blog that explains our  
12 practices in more detail; please take a look here:  
13 <http://officialblog.yelp.com/2009/02/9-myths-about-yelp.html>

14 26. That same day, Plaintiff responded to the Yelp message, and requested that Yelp  
15 restore the positive review. Plaintiff also noted that the customer who posted the review had  
16 inquired about why it had disappeared.

17 27. Kris responded and included the following response:

18 Because the system is totally automated, unfortunately I don't have the ability to evaluate  
19 or reinstate specific reviews. However I will be sending your information to our  
20 engineering team so that they can make sure everything is working properly. They are  
21 always refining our system and sometimes it does misfire. I'm sorry I can't be of more  
22 direct assistance but wanted you to know that we're taking your feedback to heart as we  
23 continue to improve the system.

24 28. In July 2009, Plaintiff was contacted twice by phone by a female Yelp sales  
25 representative who wanted Plaintiff to purchase advertising from Yelp.

26 29. During the second telephone conversation, the sales representative told Plaintiff  
27 that his business was doing very well on Yelp because in July alone his business had 261 Yelp  
28 page views, but that Plaintiff's business would have an even greater number of Yelp page views if  
29 Plaintiff paid Yelp at least \$300.00 a month to advertise. In response, Plaintiff told the sales  
30 representative that he felt that he did not need to advertise on Yelp because there was a high  
31 volume of users reviewing his business page, and his business had an overall rating of 4.5 stars.  
32 He also asked the sales representative if Yelp could restore the 5-star review that had disappeared  
33 during last several months.

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

30. At the time Plaintiff was contacted by the sales representative, he had seven (7) 5-star reviews, one (1) 4-star review, and one (1) 1-star review.

31. Two days after Plaintiff's conversation with Yelp's employees where he declined to purchase advertising from the Yelp sales representative, six (6) out of the seven (7) 5-star reviews were removed from his business page leaving Plaintiff with an overall star-rating of 3.5 stars. As a result, during the month of August, Plaintiff's business Yelp page received only 158 page views as opposed to the 261 page views Plaintiff's business experienced in July of 2009. Since then Plaintiff's business revenues experienced a decline that corresponded almost directly to the decline in page views.

32. In addition, and following Plaintiff's decision to decline to purchase Yelp advertising, Defendant removed Plaintiff's business from the categories of services he had designated on his business account and restricted him to one and only one category. Upon information and belief, if Plaintiff had advertized with Yelp as a paying customer, the restriction would have been lifted.

33. Since Plaintiff declined to purchase advertising from Yelp, every 5-star review that has been posted by Plaintiff's clients on his Yelp business page has been removed 2-3 days after the Yelp user has posted his or her review of Plaintiff's services. As of the filing of this Complaint, ten (10) out of eleven (11) of the 5-star reviews have been removed from Plaintiff's business's Yelp review page.

**Other Businesses and Person's Experiences with Yelp**

34. Upon information and belief, Defendant manipulated the reviews for hundreds of other businesses after a person or business spoke to a Yelp customer service representative about advertising on Yelp, as it can be seen on Yelp's own review page, where hundreds of business owners and Yelp users express their opinion about Yelp.

///  
///

**CLASS ACTION ALLEGATIONS**

1  
2 35. Plaintiff brings this action on behalf of himself and all others similarly situated,  
3 pursuant to California Code of Civil Procedure (“CCP”) § 382 and California Civil Code § 1781.

4 36. The Class that Plaintiff seeks to represent is defined as follows:

5 All similarly situated businesses and persons in California and nationwide who were  
6 contacted by Yelp regarding the option to advertise on Yelp and who were subsequently  
7 subject to the manipulation of the reviews of their businesses during the four years prior to  
8 the commencement of this lawsuit, through the final resolution of this lawsuit.

9 37. This action has been brought and may be properly maintained as a class action  
10 under CCP § 382 and California Civil Code § 1781 because there is a well-defined community of  
11 interest in the litigation and the class is easily ascertainable.

12 38. Numerosity: The Class is so numerous and geographically dispersed that joinder of  
13 all Class members is impracticable. Upon information and belief, there are hundreds if not  
14 thousands of similarly situated individuals nationwide.

15 39. Commonality: This action presents questions of law and fact common to the  
16 members of the Class which predominate over questions affecting individual members of the  
17 Class, such questions of law or fact include, but are not limited to:

- 18 i. Whether Defendant unfairly and unlawfully manipulated the reviews of  
19 businesses of Plaintiff and the Class, in violation of California Business &  
20 Professions Code § 17200 *et seq.*;
- 21 ii. Whether Defendant made deceptive statements and misrepresentations  
22 directly to businesses and through its advertising regarding its unbiased  
23 review system in violation of California Business & Professions Code §  
24 17500 *et seq.*;
- 25 iii. Whether Defendant negligently misrepresented that its review system was  
26 not subject to Defendant’s manipulation; and
- 27 iv. Whether Defendant intentionally misrepresented that its review system was  
28 not subject to Defendant’s manipulation.





1           47. Defendant offered to or did in fact manipulate the reviews of businesses following  
2 the offer of advertising to each of the Class members in violation of public policy.

3           48. Defendant unlawfully attempted to and or did in fact commit extortion by  
4 unlawfully using fear (the removal of positive yelp reviews) to induce the Class members to pay  
5 for advertising on Yelp.

6           49. Accordingly, Defendant has violated Cal. Bus. & Prof. Code § 17200 *et seq.*,  
7 proscription against engaging in unfair and unlawful business practices and Plaintiff and the Class  
8 members are entitled to injunctive relief and equitable relief in the form of restitution and  
9 disgorgement of all earnings, profits, compensation and benefits Defendant obtained as a result of  
10 such unfair and unlawful business practices.

11           50. As a result of the conduct described above, Defendant has been and will be unjustly  
12 enriched at the expense of Plaintiff and the Class. Specifically, Defendant has been unjustly  
13 enriched by receiving substantial monies and profits from advertisements paid for by business  
14 owners hoping to avoid negative manipulations of their reviews. Further, both Plaintiff and the  
15 Class have been deprived of money, either in the form of lost revenues or in payments made to  
16 Defendant for advertising, as a result of Defendant's wrongful conduct and unlawful acts and  
17 practices and derogatory reviews of Plaintiff and the Class member's businesses, which have  
18 resulted in financial losses to Plaintiff and Class members. Plaintiff and the Class members,  
19 therefore, have sustained injury in fact.

20           51. Plaintiff and members of the Class seek a court order requiring Defendant to  
21 immediately cease such violations of consumer protection and unfair competition statutes and  
22 enjoining them from continuing to deceptively advertise or conduct business via the unlawful or  
23 unfair business acts and practices and deceptive and misleading advertising complained of herein.

24           52. Plaintiff additionally requests an order requiring Defendant to disgorge its ill-gotten  
25 gains as described above and awarding Plaintiff and Class members full restitution of all monies  
26 wrongfully acquired by Defendant by means of such unlawful business practices, acts of unfair  
27 competition and false advertising, plus interest and attorney fees so as to restore any and all  
28

1 monies to Plaintiff and the Class which were acquired and obtained by means of such deceptive,  
2 unfair, or unlawful business practices.

3 53. These violations serve as unlawful predicate acts for purposes of Business and  
4 Professions Code § 17200, and remedies are provided therein under Business & Professions Code  
5 § 17203.

6 **WHEREFORE**, Plaintiff Boris Levitt prays for relief as follows:

7  
8 **SECOND CAUSE OF ACTION**

9 (Violation of Business & Professions Code § 17500 *et seq.*)

10 (Plaintiff Levitt v. Defendant Yelp! Inc.)

11 54. Plaintiff incorporates by reference paragraphs 1 through 53 inclusive, as though  
12 fully set forth herein.

13 55. Plaintiff asserts this cause of action on behalf of himself and the Class.

14 56. California Business & Professions Code § 17500 *et seq.* prohibits the use of false  
15 and misleading statements to induce a party to enter into any obligation, including the purchase of  
16 goods.

17 57. Upon information and belief, Defendant made deceptive statements and  
18 misrepresentations to business owners and through its website regarding its unbiased reviews to  
19 induce businesses and persons, including Plaintiff and the Class, to utilize free business Yelp  
20 accounts.

21 58. Upon information and belief, once a business is on Yelp, Yelp contacts the business  
22 owner to attempt to sell the business advertising. Only after a business is contacted does Yelp  
23 reveal that it manipulates its review system depending on whether a business purchases  
24 advertising.

25 59. As a result of Defendant's practices, Plaintiff and the Class lost money in the form  
26 of advertising costs they were forced to pay to Defendant or lost revenues due to Defendant's  
27 manipulation of their reviews.

28

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

60. Accordingly, Defendant has violated Cal. Bus. & Prof. Code § 17500 *et seq.*, proscription against using false and misleading statements to induce business owners to join Yelp and Plaintiff and the Class members are entitled to injunctive relief and equitable relief in the form of restitution and disgorgement of all earnings, profits, compensation and benefits Defendants obtained as a result of such unfair and unlawful business practices.

61. As a result of the conduct described above, Defendant has been and will be unjustly enriched at the expense of Plaintiff and the Class. Specifically, Defendant has been unjustly enriched by receiving substantial monies and profits in advertising costs received as a result of its unfair and unlawful business practices.

62. Further, both Plaintiff and the Class have been deprived of money as a result of Defendant's wrongful conduct and unlawful acts and practices and, therefore, have sustained injury in fact.

63. Plaintiff and members of the Class seek a court order requiring Defendant to immediately cease such violations of consumer protection and unfair competition statutes and enjoining it from continuing to deceptively advertise or conduct business via the unlawful or unfair business acts and practices and deceptive and misleading advertising complained of herein.

64. Plaintiff additionally requests an order requiring Defendant to disgorge its ill-gotten gains as described above and awarding Plaintiff and Class Members full restitution of all monies wrongfully acquired by Defendant by means of such unlawful business practices, acts of unfair competition and false advertising, plus interest and attorney fees so as to restore any and all monies to Plaintiff and the Class which were acquired and obtained by means of such deceptive, unfair or unlawful business practices.

**WHEREFORE**, Plaintiff Boris Levitt prays for relief as follows:

///  
///

**THIRD CAUSE OF ACTION**

(Negligent Misrepresentation)

(Plaintiff Levitt v. Defendant Yelp! Inc.)

1  
2  
3  
4 65. Plaintiff incorporates by reference paragraphs 1 through 64 inclusive, as though  
5 fully set forth herein.

6 66. Plaintiff asserts this cause of action on behalf of himself and the Class.

7 67. Defendants made express statements on its website and to Plaintiff and the Class  
8 that it maintained an unbiased review system.

9 68. Upon information and belief, Defendant in fact maintains a biased review system  
10 whereby it manipulates reviews based on a business or person's purchase of advertisements.

11 69. As such, upon information and belief, Defendant uses false and misleading  
12 statements to induce businesses to maintain Yelp business accounts so that Yelp can contact the  
13 business regarding the purchase of advertisements.

14 70. Plaintiff and members of the Class justifiably relied upon Defendant's false and  
15 misleading statements regarding the unbiased review system.

16 71. As a direct and proximate result of the above described practices, Plaintiff and  
17 members of the class sustained damages in an amount to be proven at trial.

18 **WHEREFORE**, Plaintiff Boris Levitt prays for relief as follows:

19  
20 **FOURTH CAUSE OF ACTION**

(Intentional Misrepresentation)

(Plaintiff Levitt v. Defendant Yelp! Inc.)

21  
22  
23 72. Plaintiff incorporates by reference paragraphs 1 through 71 inclusive, as though  
24 fully set forth herein.

25 73. Plaintiff asserts this cause of action on behalf of himself and the Class.

26 74. Defendant made express statements on its website and to Plaintiff and the Class  
27 that it maintained an unbiased review system.

1           75. Upon information and belief, Defendant in fact maintains a biased review system  
2 whereby it manipulates reviews based on a business or person's purchase of advertisements.

3           76. Upon information and belief, Defendant actually manipulates its review system  
4 after contacting a business regarding the purchase of advertisements.

5           77. As such, upon information and belief, Defendant used false and misleading  
6 statements to induce business owners to maintain Yelp business accounts so that Defendant could  
7 contact the business regarding the purchase of advertisements.

8           78. Plaintiff and members of the Class justifiably relied upon Defendant's false and  
9 misleading statements regarding the unbiased review system.

10           79. As a direct and proximate result of the above described practices, Plaintiff and  
11 members of the class sustained damages in an amount to be proven at trial.

12           **WHEREFORE**, Plaintiff Boris Levitt prays for relief as follows:  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PRAYER FOR RELIEF**

**WHEREFORE**, as a result of the foregoing, Plaintiff Boris Levitt prays for relief as follows:

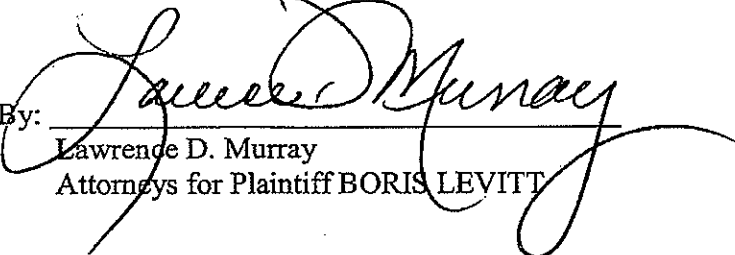
1. Declaring this action to be a proper class action maintainable under California Code of Civil Procedure § 382, certifying an appropriate Class and certifying Plaintiff as Class Representative;
2. Enjoining Defendant from conducting its business through the unlawful acts and practices described in this Complaint;
3. Requiring Defendant to disgorge its ill-gotten gains, as appropriate;
4. Awarding Plaintiff and the Class restitution, as appropriate;
5. Awarding Plaintiff and the Class damages, including punitive damages, as appropriate;
6. Awarding pre- and post-judgment interest;
7. Awarding Plaintiff all costs and expenses, including attorneys' fees, including fees permitted under Cal. Code Civ. Proc. § 1021 *et seq.*; and
8. Granting such other and further relief as this Court may deem necessary, proper, and/or appropriate.

**JURY DEMAND**

1. Plaintiff demands a trial by jury.

DATED: March 12, 2010

**MURRAY & ASSOCIATES**

By:   
 Lawrence D. Murray  
 Attorneys for Plaintiff BORIS LEVITT

# **Exhibit B**

1 THE WESTON FIRM  
2 GREGORY S. WESTON (239944)  
3 JACK FITZGERALD (257370)  
4 888 Turquoise Street  
5 San Diego, CA 92109  
6 Telephone: (858) 488-1672  
7 Facsimile: (480) 247-4553  
8 greg@westonfirm.com  
9 jack@westonfirm.com

10 BECK & LEE BUSINESS TRIAL LAWYERS  
11 JARED H. BECK (233743)  
12 ELIZABETH LEE BECK (233742)  
13 Courthouse Plaza Building  
14 28 West Flagler Street, Suite 555  
15 Miami, FL 33130  
16 Telephone: (305) 789-0072  
17 Facsimile: (786) 664-3334  
18 jared@beckandlee.com  
19 elizabeth@beckandlee.com

20 Attorneys for Plaintiffs and the Proposed Class

21 UNITED STATES DISTRICT COURT  
22 CENTRAL DISTRICT OF CALIFORNIA

23 CATS AND DOGS ANIMAL HOSPITAL,  
24 INC.; ASTRO APPLIANCE SERVICE;  
25 BLEEDING HEART, LLC d/b/a  
26 BLEEDING HEART BAKERY;  
27 CALIFORNIA FURNISHINGS, INC. d/b/a  
SOFA OUTLET; CELIBRÉ, INC.; J.L.  
FERRI ENTERTAINMENT, INC. d/b/a  
ADULT SOCIALS; LE PETITE  
RETREAT DAY SPA, LLC; SAN  
FRANCISCO BAY BOAT CRUISES, LLC  
d/b/a MERMAIDS CRUISE; WAG MY  
TAIL, INC.; and ZODIAC RESTAURANT  
GROUP, INC. d/b/a SCION  
RESTAURANT, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

YELPI INC.,

Defendant.

Case No: 2:10-cv-01340-VBF-SS  
Pleading Type: Class Action

**FIRST AMENDED COMPLAINT FOR:**

**EXTORTION;**

**ATTEMPTED EXTORTION;**

**INTENTIONAL INTERFERENCE  
WITH PROSPECTIVE BUSINESS  
ADVANTAGE; AND**

**VIOLATIONS OF THE UNFAIR  
COMPETITION LAW, CAL. BUS &  
PROF. CODE § 17200.**

**DEMAND FOR JURY TRIAL**



1 Plaintiffs Cats and Dogs Animal Hospital, Inc., Astro Appliance Service,  
2 Bleeding Heart, LLC d/b/a Bleeding Heart Bakery, California Furnishings, Inc.  
3 d/b/a Sofa Outlet, Celibré, Inc., J.L. Ferri Entertainment, Inc. d/b/a Adult Socials,  
4 Le Petite Retreat Day Spa, LLC; San Francisco Bay Boat Cruises, LLC d/b/a  
5 Mermaids Cruise, Wag My Tail, Inc. and Zodiac Restaurant Group, Inc. d/b/a  
6 Scion Restaurant, on behalf of themselves and all others similarly situated, by and  
7 through undersigned counsel, hereby sue Defendant Yelp! Inc. and, upon  
8 information and belief and investigation of counsel, allege as follows:

9 **JURISDICTION AND VENUE**

10 1. This Court has original jurisdiction under 28 U.S.C. § 1332(d)(2) (The  
11 Class Action Fairness Act) because the matter in controversy exceeds the sum or  
12 value of \$5,000,000 exclusive of interest and costs and more than two-thirds of the  
13 members of the Class reside in states other than that state of which Defendant is a  
14 citizen.

15 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because at  
16 least one Plaintiff resides in and suffered injuries as a result of Defendant's acts in  
17 this district, many of the acts and transactions giving rise to this action occurred in  
18 this district, and Defendant (1) is authorized to conduct business in this district and  
19 has intentionally availed itself of the laws and markets of this district through the  
20 promotion, marketing, and sale of advertising in this district; (2) resides in this  
21 district, and (3) is subject to personal jurisdiction in this district.

22 **PARTIES**

23 **The Non-Sponsor Plaintiffs**

24 3. Plaintiff Cats and Dogs Animal Hospital, Inc. ("Cats and Dogs") is a  
25 California corporation with its principal place of business in Long Beach,  
26 California.

27



1 Defendant

2 13. Defendant Yelp! Inc. ("Yelp") is a Delaware corporation with its  
3 principal place of business in San Francisco, California. Yelp owns and operates  
4 Yelp.com, a popular online business directory and user-ratings website.

5 INTRODUCTION AND BACKGROUND

6 14. The term "Web 2.0" describes internet websites and applications that  
7 revolve around information sharing and user-centered design. Examples of Web  
8 2.0 websites include social networking sites (e.g., Facebook.com), video sharing  
9 sites (e.g., YouTube.com), wikis (e.g., Wikipedia.com), blogs, and many other  
10 sites that allow users to create, upload, or modify content. Web 2.0 websites thus  
11 allow internet users to do much more than simply retrieve information—the users  
12 choose what information to interact with, how they interact with it, and how to  
13 modify or add to pre-existing content.

14 15. Online review applications are an increasingly popular form of Web  
15 2.0. Companies such as Amazon.com, Best Buy, and TripAdvisor.com embed Web  
16 2.0 applications within their websites, which allow users to rate products and  
17 services and share their experiences.

18 16. Yelp.com, a website owned and operated by Defendant Yelp, is a  
19 website that utilizes Web 2.0 user-website interaction.

20 17. Yelp.com consists of an online directory of businesses in multiple  
21 categories, much like an online Yellow Pages. Each business listed on Yelp.com  
22 has a unique Yelp.com listing page, which provides basic business information  
23 (such as address, phone number and hours of operation), and user-generated ratings  
24 and reviews.

25 18. To rate and review businesses, internet users simply register on the  
26 Yelp.com website. Any internet user (whether registered or not) can browse  
27 Yelp.com to find ratings and reviews of businesses.



1 (c) a limited ability to send messages directly to a reviewer  
2 (for example, responding to a review), although  
3 reviewers can choose to disable this feature.

4 25. Once a business listing is created, individuals registered on Yelp may  
5 rate and review the business.

6 26. Individuals register on the Yelp.com website by creating an individual  
7 profile, much like a profile on popular social networking sites like Facebook.com.  
8 The profile allows individuals to choose a screen name and upload photos,  
9 including a profile photo. The individual's reviews are listed within his profile, and  
10 the profile has other functions and information such as "Friends" and  
11 "Compliments."

12 27. Individuals who create profiles may do so anonymously by using a  
13 nickname or "handle," and by not including photos of themselves in their profiles.  
14 Anonymous users have the same rights to post ratings and reviews of businesses as  
15 named users.

16 28. Any individual internet users, whether registered on the Yelp.com  
17 website or not, may search the Yelp.com directory, view ratings, and read reviews.

18 29. Business ratings are made on a one- to five-star scale, with one star  
19 being the lowest rating, and five stars the highest.

20 30. In addition to ratings, reviewers must provide a written review of the  
21 business.

22 31. Business owners may not publicly (i.e., on their Yelp.com listing  
23 page) respond to reviews.

24 32. Registered Yelp users may, but are not required to, vote on written  
25 reviews, rating them as either "Useful," "Funny," or "Cool." There is no  
26 negatively-spun voting criterion, such as "Not Useful," or "Thumbs Down."  
27

1 33. Yelp purports to restrict ratings and reviews which constitute or  
2 contain (a) conflicts of interest, (b) second-hand experiences or hearsay, (c)  
3 personal attacks, (d) irrelevant material, (d) plagiarism, or (e) which are left blank.

4 34. Yelp also purports to “suppress” “a very small number” of reviews  
5 which its “automated software” determines are likely to be “fake.”

6 35. Yelp refers to this “automated software” as its “algorithm.”

7 36. “Suppressed” reviews remain within Yelp’s system and are listed in a  
8 registered user’s profile. Those reviews are not, however, displayed on the  
9 reviewed business’s Yelp.com listing page, *except that* when a registered user is  
10 logged-in to Yelp and navigates to the Yelp.com listing page of a business that the  
11 user reviewed, the review appears *for that user only*. Thus logged-in users are  
12 unable to determine when their reviews have been “suppressed.” While the public  
13 sees one version of the business listing (the version with the review suppressed),  
14 the reviewer sees a different version (the version where the review appears to  
15 remain intact).

16 37. The Yelp.com website draws internet users with the promise that, by  
17 conglomerating reviews of individuals with first-hand experiences of local  
18 businesses, the site offers an objective ranking of competing businesses through  
19 which users can determine the relative quality of a business when deciding where  
20 to spend money. Yelp’s mantra embodying this promise is “Real people. Real  
21 reviews.”

22 38. A business’s ranking on Yelp.com has immense power to direct  
23 customers either to or away from the business. While Yelp’s readership has been  
24 climbing, the website currently enjoys as least 29 million hits per month, and  
25 includes at least 8 million reviews.

26 39. Yelp’s only stream of revenue is through the sale of advertisements on  
27 the Yelp.com website.

1 40. Compensation of Yelp's sales force is one of Yelp's largest expenses.

2 41. Yelp's sales personnel are paid, in part, through commissions.

3 42. As a result, there is immense pressure on Yelp sales personnel to sell  
4 advertising subscriptions.

5 Yelp Sponsors

6 43. Yelp offers some businesses advertising subscriptions, which vary in  
7 cost from \$150 to \$1,000 per month. With the subscriptions, businesses receive an  
8 "enhanced profile," and between 1,500 and 10,000 targeted ads per month  
9 depending on the level of subscription.

10 44. Yelp refers to businesses that purchase advertising subscriptions as  
11 Yelp "Sponsors."

12 45. Businesses may become Sponsors only if they have a significant  
13 number of reviews and a minimum 3-star rating. Consequently, every Sponsor was  
14 favorably reviewed by a majority of Yelp reviewers before becoming a Sponsor.

15 46. Yelp sells advertising through the promise, express or implied, that  
16 Sponsors will see their Yelp.com rating increase and—more importantly to the  
17 business owner—that the business in turn will see increased patronage, business  
18 and, ultimately, profit.

19 47. The increased rating Yelp promises is attributable to a number of  
20 "favors" Yelp provides to a business in exchange for becoming a Sponsor.

21 48. Yelp admits to providing some of these favors, including:

22 (a) The ability to choose or highlight one favorite review,  
23 which will appear and remain at the top of the Sponsor's  
24 listing page;

25 (b) The privilege of showing up first in search results for  
26 similar businesses in the region;

27

- 1 (c) Ads for the Sponsor appear on competitors' listing pages,
- 2 while competitors' ads do not appear on the Sponsor's
- 3 listing page;
- 4 (d) The ability to post a photo slideshow;
- 5 (e) The ability to add a "personal message" about their
- 6 business;
- 7 (f) The ability to update information on special offers and
- 8 events; and
- 9 (g) Access to an account manager who will help "maximize"
- 10 the Sponsor's experience with Yelp.

11 49. Yelp provides Sponsors with additional favors including:

- 12 (a) Removing or relocating negative reviews, thereby
- 13 affecting the perception of the business's quality relative
- 14 to its competitors;
- 15 (b) Creating and posting positive reviews, thereby affecting
- 16 the perception of the business's quality relative to its
- 17 competitors;
- 18 (c) Allowing the business owner to determine the order in
- 19 which reviews will appear;
- 20 (d) Allowing the business owner to choose a "tagline" to be
- 21 displayed on the business's Yelp listing page; and
- 22 (e) Ensuring negative reviews will not appear in Google or
- 23 other search engine results.

24 50. Because these favors are designed at increasing a business's rating,

25 they do not strongly incentivize businesses which already enjoy a four- or five-star

26 rating.

27









- 1 (c) Having a real photo of oneself on one's profile;
- 2 (d) Using one's real name to write reviews;
- 3 (e) Personal pizzazz!, or what Yelp calls "Yelptitude"; and
- 4 (f) Being of legal drinking age.

5 77. If individuals think they meet these criteria, they must send an email  
6 to Yelp explaining why they should be admitted into the Yelp Elite Squad.

7 78. The primary benefit of becoming a Yelp Elite Squad member is  
8 receiving frequent invitations to free Yelp Sponsored Events.

9 79. Yelp uses the Yelp Elite Squad as an agent of coercion, promising  
10 businesses positive reviews from Elite Squad members, or threatening negative  
11 reviews from Elite Squad members, depending upon whether a business agrees to  
12 host a free Sponsored Event and/or become a Yelp Sponsor.

13 80. For example, a Yelp Elite Squad member systematically went through  
14 businesses located in an arts district in Columbus, Ohio, giving negative reviews to  
15 galleries and other businesses in the district, which he visited briefly—but did not  
16 patronize—in order to review the businesses. When asked why he was doing this,  
17 his response was "you need to contact your customers and have them put up good  
18 reviews. My goal is to get you to use Yelp."

19 81. Yelp compensates Yelp Elite Squad members for their frequent  
20 reviews through the provision of free parties, goods, services and other items.  
21 Thus, Elite Squad members act as an agent of Yelp. When Elite Squad members  
22 review Yelp Sponsors, Yelp is endorsing paid advertisers.

23 82. Individuals employed by Yelp also review Yelp Sponsors.

24 83. Yelp does not disclose that, through Yelp employees and the Yelp  
25 Elite Squad writing reviews of Yelp Sponsors, Yelp endorses paid advertisers.

26  
27

1 Allegations of Misconduct

2 84. A February 18, 2009 article in the East Bay Express, titled *Yelp and*  
3 *the Business of Extortion 2.0*,<sup>1</sup> describes Yelp's unlawful business practices.  
4 According to the article:

5  
6 • Yelp sales representatives contact business owners saying, "[Y]ou have a  
7 few bad [reviews] at the top. I could do something about those. . . . We  
8 can move them. Well, for \$299 a month."

9  
10 • Almost all the time when Yelp calls business owners, negative reviews  
11 are at the top of the business's Yelp.com listing page.

12  
13 • Mary Seaton, the owner of a furniture store in San Mateo, took Yelp up  
14 on an offer to remove her negative reviews if she advertised at a cost of  
15 \$350 per month for six months. During that time, her negative reviews  
16 were removed and old positive ones showed up. After her contract was  
17 up, a negative review appeared, which Seaton said contained lies.

18  
19 • Greg Quinn, the owner of a San Francisco bar and bistro, said a Yelp  
20 sales representative moved negative reviews further down his page in an  
21 effort to entice him to advertise. The sales rep called Mr. Quinn and said,  
22 "Did you notice what I did? Well, we can keep doing that for you."

23  
24 • An East Bay business owner said Yelp offered to move one- or two-star  
25 reviews of his business if he advertised.

26  
27 <sup>1</sup> Available at <http://www.eastbayexpress.com/eastbay/yelp-and-the-business-of-extortion-20/Content?oid=1176635>.

1 • Six people told the East Bay Express that Yelp sales representatives  
2 promised to move or remove negative reviews if their businesses would  
3 advertise.

4  
5 • Six other people told the East Bay Express that positive reviews  
6 disappeared, or negative reviews appeared, after owners declined to  
7 advertise.

8  
9 • Yelp pays its employees to write reviews of businesses; in one  
10 documented instance, a business owner who declined to advertise  
11 subsequently received a negative review from a Yelp employee. In other  
12 cases, businesses that receive negative reviews from paid Yelp employees  
13 are subsequently asked to advertise.

14  
15 • Yelp's Chief Operating Officer, Geoff Donaker, said advertisers and  
16 sales representatives do not have the ability to move or remove negative  
17 reviews. Donaker's denials are challenged both by local business owners,  
18 and by a former Yelp employee, who said that several sales reps told him  
19 they promised to move reviews to get businesses to advertise.

20  
21 85. As of February 8, 2010, there are 140 comments on the East Bay  
22 Express website following the Yelp article, many from business owners describing  
23 experiences similar to those discussed in the article.

24 86. A follow-up East Bay Express article provides further evidence of  
25 Yelp's unlawful sales practices. The March 18, 2009 article, *Yelp Extortion*  
26 *Allegations Stack Up: More business owners come forward with tales of unethical*  
27

1 *behavior by the popular San Francisco-based web site*<sup>2</sup> states that since the  
2 publication of the first article:

3 [M]any business owners from around the country have come  
4 forward—via emails or comments on the *Express*' web site—alleging  
5 similar tales of extortionist tactics by Yelp sales reps. . . . Business  
6 owners contend that they just want [an] opportunity to respond to  
7 negative, false, or damaging information about their businesses.  
8 Instead, the only way for them to salvage their businesses' reputation  
9 is by paying Yelp—regardless of whether the reviews are true or false.  
10 . . . [S]everal [interviewees] said that the reps would offer to move  
11 negative reviews if they advertised; and in some cases positive  
12 reviews disappeared when they refused, or negative ones appeared. In  
13 one case, a nightclub owner said Yelp offered positive reviews of his  
14 business in exchange for free drinks.

15 87. The article tells the stories of six California business owners'  
16 experiences with Yelp:

17  
18 • After Barry<sup>3</sup> Hyde, owner of M&M Auto Werkes in Campbell, received a  
19 negative rating from a customer's boyfriend, violating Yelp's Terms of  
20 Service (prohibiting third parties from posting reviews), he contacted Yelp  
21 sales representative Jacqueline Fitzhugh to complain. She told him, "We  
22 can't control that, but if you advertise you can control the order that  
23 they're in." After declining, Mr. Hyde noticed some of his five-star posts  
24 were disappearing. Yelp told him the website has a spam filter, like  
25

26 <sup>2</sup>Available at [http://www.eastbayexpress.com/eastbay/yelp-extortion-allegations-  
27 stack-up/Content?oid=1176984](http://www.eastbayexpress.com/eastbay/yelp-extortion-allegations-stack-up/Content?oid=1176984).

<sup>3</sup> The Article incorrectly identifies him as "Bob" Hyde.

1 Google. Hyde tracked his reviews, printing them daily to monitor which  
2 ones would disappear. Some five-star reviews stayed up for as short as 31  
3 days and as long as 131 days. Yelp told Hyde that if he advertised, some  
4 of those five-star reviews would come back.

5  
6 • Calvin Gee of Haight Street Dental in San Francisco saw his rating drop  
7 from five-stars to 3.5-stars following his declining to buy advertising. Yelp  
8 reps told Gee that if he advertised, they would let him choose his  
9 favorite review and would move the negative reviews to the bottom of  
10 the page. Gee noticed that one of his competitors, CitiDent, had two  
11 separate listings on Yelp.com. The business had more positive reviews and a  
12 higher star rating on the page that was marked a Yelp sponsor, and more  
13 negative reviews and a lower star rating on the harder to find non-sponsored  
14 page.

15  
16 • Larry Trujillo owns the Uptown Nightclub in Oakland. Shortly after  
17 opening the club, a Yelp sales rep began calling him "almost daily" about  
18 advertising. The sales rep would say "I notice you have a lot of positive  
19 reviews. We could make sure that those reviews stay positive." Sarah  
20 Lippman, a Sales Manager at Yelp, separately asked Mr. Trujillo for free  
21 use of his club with Yelp staff and alcohol expenses paid by the club in  
22 exchange for positive reviews on the club's Yelp.com listing page.

23  
24 • Debbie Leonardo, director of membership at the Ruby Hill Golf Club in  
25 Pleasanton, received a phone call from a Yelp sales representative who  
26 told her that the business could get rid of its worst review if it purchased  
27 advertising.



1 • Bob Kurtz, owner of Collectors Real 3 in Oakland, was contacted by a  
 2 Yelp sales person after receiving a negative review. In an email, Yelp told  
 3 him that, as a paid advertiser, the negative review could be dealt with.

4  
 5 • Nicholas Paul, an instructor at a Chicago art studio, declined to purchase  
 6 advertising and shortly thereafter three positive reviews disappeared from  
 7 and two negative ones were added to the studio's Yelp.com listing page. A  
 8 Yelp sales rep told Mr. Paul he could control that.

9  
 10 88. An August 13, 2008 article in The Register, a news website, titled  
 11 *Yelp "pay to play" pitch makes shops scream for help: User generated discontent*<sup>4</sup>  
 12 notes that:

13 At least some of Yelp's sales staff hope to make money by offering to  
 14 hide what you and I have to say. Over the last year, five San Francisco  
 15 Bay Area business have told *The Register* that the company has  
 16 offered to "push bad reviews to the bottom" of their yelp pages if  
 17 they paid to advertise on the site. One restaurant owner was  
 18 contacted "five or six" times, and each time, the Yelp sales rep  
 19 insisted that if he forked over \$6,000 a year for "sponsored link"  
 20 status, the site would suppress user posts that put his restaurant in a  
 21 less-than-positive light. "They told me I had 60 reviews on my [Yelp]  
 22 page," said the owner . . . . "They told me 'No one is going to read all  
 23 60. They're only going to read the first few.'"

24 89. A March 9, 2009 Chicago Tribune article, titled *Questions arise over*  
 25 *Yelp's ads, reviews; Businesses say site rearranges opinions for price; CEO*  
 26 *denies,*<sup>5</sup> reported:

27  
<sup>4</sup> Available at [http://www.theregister.co.uk/2008/08/13/yelp\\_sales\\_pitch/print.html](http://www.theregister.co.uk/2008/08/13/yelp_sales_pitch/print.html)

1 • Ina Pinkney of Ina's restaurant in the West Loop said that last  
2 summer a Yelp salesperson offered "to move up my good reviews  
3 if I sponsored one of their events. They called it rearranging my  
4 reviews."

5  
6 • Jason Luros, an attorney at Hudson & Luros in Napa, California,  
7 stated "one of our reviews mysteriously disappeared, so I contacted  
8 Yelp and was given the usual canned response about how no humans  
9 control the reviews. But when I said I would consider advertising if  
10 they restored the review, it mysteriously reappeared."

11  
12 90. An April 3, 2009 article in the Santa Monica Daily Press titled *Yelp*  
13 *Sales Tactics Cause Concern Among Businesses*,<sup>6</sup> reported:

14 After declining to advertise, the [Los Angeles area] business owner checked  
15 the Yelp page again and noticed that at least 10 positive reviews had  
16 disappeared while a few negative ones had been posted. . . . They estimate  
17 that at least 20 positive reviews had been deleted from the site since the  
18 conversation with Yelp about three weeks ago.

19 A Summary of Yelp's Misconduct

20 91. Yelp sales people represent to businesses that Yelp has the power to  
21 manipulate Yelp.com business listing pages, and that Yelp will yield that power in  
22 favor of the business if it becomes a Yelp Sponsor, and against the business if it  
23 declines to become a Yelp Sponsor.

24  
25  
26 <sup>5</sup> No longer available online.

27 <sup>6</sup> Available at [http://www.smdp.com/Articles-c-2009-04-02-52021.113116\\_Yelp\\_sales\\_tactics\\_cause\\_for\\_concern\\_among\\_businesses.html](http://www.smdp.com/Articles-c-2009-04-02-52021.113116_Yelp_sales_tactics_cause_for_concern_among_businesses.html)

1           92. The mere representation of the ability to manipulate page content is  
2 sufficient to instill in businesses the fear that, through such manipulation, the  
3 business will suffer if it elects not to become a Yelp Sponsor. Businesses  
4 frequently become Sponsors, not based on a cost-benefit analysis of the  
5 advertising, but simply because they fear the consequences of declining a  
6 Sponsorship.

7           93. Yelp in fact manipulates Yelp.com business listing pages in favor of  
8 Yelp Sponsors and detrimentally to Yelp Non-Sponsors, including by (a)  
9 relocating or removing negative reviews of Sponsors; (b) posting positive reviews  
10 of Sponsors and urging others, such as Yelp Elite Squad members, to do the same;  
11 (c) allowing Sponsors to choose the order in which reviews appear on their  
12 Yelp.com listing pages; (d) removing positive reviews of Non-Sponsors; (e)  
13 posting negative reviews of Non-Sponsors and urging others, such as Yelp Elite  
14 Squad members, to do the same; and (f) enforcing Yelp's Terms of Service for  
15 Sponsors, but refusing to enforce Yelp's Terms of Service for Non-Sponsors.

16                           **PLAINTIFF-SPECIFIC FACTUAL ALLEGATIONS**

17                                   **THE NON-SPONSOR PLAINTIFFS**

18   **Plaintiff Cats and Dogs**

19           94. On September 12, 2009, Dr. Perrault, a veterinarian and the owner of  
20 Cats and Dogs, became aware of a negative review posted by "Chris R." on the  
21 Cats and Dogs Yelp.com listing page.

22           95. Concerned about the review's defamatory language, possible falsity,  
23 and the adverse impact it could have on his business, Dr. Perrault cross-referenced  
24 the factual information alleged in the review with his client history.

25           96. Upon finding that the review of Chris R. referenced a visit that  
26 occurred over 18 months prior to its posting (6 months outside of Yelp's 12-month  
27 policy), Javier Vargas, the Hospital Manager at Cats and Dogs, called Yelp, on or

1 around September 15, 2009, to request that the review be removed from the  
2 Yelp.com website for violating Yelp's review guidelines. The review was  
3 subsequently removed from the Cats and Dogs Yelp.com listing page.

4 97. A second defamatory review, from "Kay K.," appeared on the Cats  
5 and Dogs Yelp.com listing page within five days of the "Chris R." review's  
6 removal. The review read:

7 *The only reason I am even giving one star is because it wouldn't*  
8 *allow me to continue without it . . . otherwise, I would have given*  
9 *them no stars. Dr. Perrault is the rudest vet I've ever been to . . .*  
10 *probably one of the rudest people I've had the displeasure of meeting.*  
11 *I agree with the previous reviews about making you feel like an unfit*  
12 *mom. My pup had been sick and I had a theory on what the problem*  
13 *may have been and he wouldn't even entertain the idea, but instead,*  
14 *made me feel bad because my dog got sick. And, my poor dog was*  
15 *terrified of him! He made me feel like I was 2 inches tall and*  
16 *repeatedly looked down his nose at me. Oh, and OVER PRICED!*  
17 *OMG! Who does he think he is??? I did not feel welcomed by him nor*  
18 *his staff. I paid you for a service! No need to treat me so bad!*

19 98. Soon after the appearance of these negative reviews, Dr. Perrault and  
20 Mr. Vargas began receiving frequent, high-pressure calls from Yelp sales  
21 representatives, who promised to manipulate Cats and Dogs' Yelp.com listing page  
22 in exchange for Cats and Dogs purchasing an advertising subscription.

23 99. For example, on or about January 5, 2010, Cats and Dogs received a  
24 Yelp sales call from "Kevin." Kevin said that Cats and Dogs could advertise with  
25 Yelp for a minimum payment of \$300 per month, with a minimum 12-month  
26 commitment. Kevin stated that if Cats and Dogs purchased a one-year advertising  
27 subscription from Yelp:

- 1 a. Yelp would hide negative reviews on the Cats and Dogs Yelp.com  
2 listing page, or place them lower on the listing page so internet users  
3 “won’t see” them;
- 4 b. Yelp would ensure negative reviews will not appear in Google and  
5 other search engine results;
- 6 c. Yelp would allow Cats and Dogs to decide the order that its reviews  
7 appear in on its Yelp.com listing page; and
- 8 d. Cats and Dogs could choose its “tagline,” i.e., the first few lines of a  
9 single review shown on every search result page in which Cats and  
10 Dogs appears (for instance, “Veterinarian in Long Beach”).

11 100. Dr. Perrault declined the offer, saying that he wanted to track referrals  
12 from Yelp for three months without ads, but might thereafter be willing to test  
13 Yelp’s advertising potential.

14 101. Within a week of declining Kevin’s advertising offer, the negative  
15 review from Chris R. reappeared on the Cats and Dogs Yelp.com listing page.

16 102. Soon after, “Kay K.” posted a second negative review. This review  
17 was added on January 6, 2010, one day after Kevin’s sales call:

18 *I've already left one review about how bad a vet Dr. Perrault is, but I*  
19 *wanted to add something. I've been reading other people's reviews*  
20 *and I must have gone to a different Cats and Dogs Animal Hospital*  
21 *with a vet named Dr. Perrault. Oh wait, no . . . he's the only one.*  
22 *Maybe it's a Dr. Jeckyl / Mr. Hyde thing?! I don't know. But the guy's*  
23 *an @\$\$. No other way around it. He's a jerk, a D-Bag, And so*  
24 *arrogant. I ran in to him in a neighborhood store right after he saw*  
25 *my poor sick dog at his clinic and he looked right at me, recognized*  
26 *me, rolled his eyes and looked away!!! Seriously, someone needs to*  
27 *knock this guy down to the size he really is. He needs to drop his*

1 *Napolean complex and be a professional. After my horrible*  
2 *experience with him, I took my sick dog to Bixby Animal Clinic and I*  
3 *have never had a more pleasant vet experience! Go there instead! My*  
4 *dog loved everyone there! Sorry to rant, but I just wanted to get the*  
5 *word out there. Don't spend the money on this overpriced arrogant*  
6 *vet. It's not worth it!*

7 103. On or about January 12, 2010, Mr. Vargas contacted Yelp to protest  
8 the reappearance of the "Chris R." review and the highly negative, inflammatory  
9 "Kay K." reviews.

10 104. On January 13, 2010, Mr. Vargas received via email the following  
11 response from Yelp:

12 We wanted to let you know that we've taken a close look at the  
13 reviews by Chris R and Kay K, and after careful evaluation, we have  
14 decided to leave both intact. Because we don't have firsthand  
15 knowledge of a reviewer's identity or personal experience, we are not  
16 in a position to verify your claims that these reviewers are the same  
17 person, or that they are connected to the recent vandalism at your  
18 hospital. If a review appears to reflect the personal opinion and  
19 experiences of the reviewer while adhering to our review guidelines  
20 [link], it is our policy to allow the reviewer to stand behind his or her  
21 review.

22 105. As of January 18, 2010 Cats and Dogs enjoyed a 4-star rating (out of a  
23 possible 5) on its Yelp.com listing page. Sixteen out of 26 reviews (over 60%)  
24 gave Cats and Dogs a perfect 5-star rating. Despite this, as of January 18, 2010, a  
25 Yelp.com search for "veterinarian in Long Beach" displayed the following tagline  
26 for Dogs and Cats:  
27



1 112. Within two days of declining to become a Sponsor, Mr. Gutgsell saw  
2 several positive reviews disappear from Astro's Yelp.com listing page, leaving  
3 only a single negative review.

4 113. Mr. Gutgsell contacted Yelp to ask why positive reviews of the  
5 business were disappearing. The Yelp sales representative he spoke to advised him  
6 that Yelp could "control" that, and if Astro became a Sponsor, the positive reviews  
7 could be restored.

8 114. Yelp further told Mr. Gutgsell that Yelp could control the reviews and  
9 hits on Astro's Yelp.com listing page if he became a Sponsor, helping his business  
10 listing to "shine" above his competitors' listings.

11 115. Astro was damaged as a result of Yelp's actions, including through  
12 lost patronage and prospective business.

13 116. Astro's experience with Yelp was not unique, but rather typical of  
14 Yelp's advertisement sales tactics.

15 **Plaintiff Adult Socials**

16 117. In November, 2009, Adult Socials had several positive reviews on its  
17 Yelp.com listing page.

18 118. In late November, 2009, a Yelp sales representative contacted Jack  
19 Irona, an Adult Socials employee, and proposed that Adult Socials purchase an  
20 advertising subscription.

21 119. After researching Yelp and considering the offer, Mr. Irona placed a  
22 call back to the Yelp sales representative who had contacted him, and declined the  
23 offer to purchase an advertising subscription.

24 120. The following day, all of Adult Socials' reviews—all positive—  
25 disappeared from Adult Socials' Yelp.com listing page.

26 121. Adult Socials was damaged as a result of Yelp's actions, including  
27 through lost patronage and prospective business.



1 122. Adult Socials' experience with Yelp was not unique, but rather typical  
2 of Yelp's advertisement sales tactics.

3 **Plaintiff Le Petite Retreat**

4 123. Le Petite Retreat began receiving sales calls from Yelp sales  
5 representatives in approximately June 2009, usually from Yelp employee named  
6 Michelle Mak.

7 124. These sales calls were aggressive. Ms. Mak told Le Petite Retreat that,  
8 if the company purchased advertising, she would "help" with Le Petite Retreat's  
9 negative reviews and would ensure that positive reviews remained on Let Petite  
10 Retreat's Yelp.com listing page.

11 125. Le Petite Retreat declined Yelp's offers to purchase advertising on  
12 several occasions. Each time, shortly after declining, Le Petite Retreat saw positive  
13 reviews removed from its Yelp.com listing page, while negative reviews remained.  
14 Approximately ten positive reviews have been removed from Le Petite Retreat's  
15 Yelp.com listing page since the company began receiving sales calls from Yelp.

16 126. In September, 2009, Le Petite Retreat contacted Yelp about a false  
17 negative review that had been posted, which violated Yelp's Terms of Service. In  
18 fact, an identical review had been posted on Citysearch.com (a review website like  
19 Yelp.com) five years earlier, which prompted legal action by Le Petite Retreat.  
20 Despite violating Yelp's Terms of Service, Yelp refused to remove the review.

21 127. Le Petite Retreat was damaged as a result of Yelp's actions, including  
22 through lost patronage and prospective business.

23 128. Le Petite Retreat's experience with Yelp was not unique, but rather  
24 typical of Yelp's advertisement sales tactics.

25 **Plaintiff Mermaids Cruise**

26 129. In April 2009, three negative reviews of Mermaids Cruise were posted  
27 by Yelp Elite Squad members on Mermaids Cruise's Yelp.com listing page.

1 130. Mermaids Cruise runs cruise events in the San Francisco Bay. The  
2 company keeps records of all persons who contact the company, regardless of  
3 whether they ultimately book a cruise.

4 131. At least two of the April 2009 negative reviews by Yelp Elite Squad  
5 members were written by individuals who had never contacted or patronized  
6 Mermaids Cruise. When John Lewis, the owner of Mermaids Cruise, contacted  
7 Yelp to ask that the reviews be removed because they violated Yelp's Terms of  
8 Service (in that they were not based on first-hand experiences with the company),  
9 Yelp refused to remove the reviews.

10 132. At the same time, positive reviews of Mermaids Cruise regularly  
11 disappeared within 48-72 hours of posting. Even where positive reviews remained,  
12 though, the negative Yelp Elite Squad reviews always remained prominent, located  
13 at the top of the Mermaids Cruise Yelp.com listing page.

14 133. After these negative reviews appeared, Mr. Lewis received a call from  
15 a Yelp sales representative who told him that, if Mermaids Cruise became a  
16 Sponsor, Yelp could adjust the reviews so that the negative Yelp Elite Squad  
17 reviews were not so prominent.

18 134. Mermaids Cruise was damaged as a result of Yelp's actions, including  
19 through lost patronage and prospective business.

20 135. Mermaids Cruise's experience with Yelp was not unique, but rather  
21 typical of Yelp's advertisement sales tactics.

22 **Plaintiff Wag My Tail**

23 136. After receiving several negative reviews and seeing positive reviews  
24 disappear, a Yelp sales person called Wag My Tail seeking the company's  
25 agreement to become a Yelp Sponsor.

26 137. Wag My Tail has a brick-and-mortar dog salon, and also runs a  
27 mobile grooming service. Although it is the same company performing both

1 functions, Yelp has inexplicably divided the business into two separate listings,  
2 one for the salon and one for the mobile service.

3 138. The Yelp sales representative who contacted Wag My Tail told the  
4 company that if it advertised at a rate of \$135 per month for the Wag My Tail  
5 salon, and \$270 per month for the mobile service, the representative's "assistant"  
6 could help to manage the issues Wag My Tail was complaining about, and would  
7 help the company better its rating. Wag My Tail has declined to become a Sponsor.

8 139. Potential customers have told Wag My Tail that they have chosen not  
9 to patronize the business based on Yelp reviews.

10 140. Wag My Tail was damaged as a result of Yelp's actions, including  
11 through lost patronage and prospective business.

12 141. Wag My Tail's experience with Yelp was not unique, but rather  
13 typical of Yelp's advertisement sales tactics.

14 **Plaintiff Scion**

15 142. Scion opened in Washington, D.C., in June 2009. In August, 2009,  
16 Julie Liu, Scion's owner and operator, signed up for a free Yelp Business Owner  
17 Account. Two weeks later, Ms. Liu began receiving calls from Yelp sales  
18 representatives, offering Scion advertising packages. The calls were from different  
19 Yelp sales representatives and occurred approximately bi-weekly.

20 143. A Yelp sales representative told Ms. Liu that negative reviews could  
21 be removed with the payment of fees. Concerned that if she agreed, negative  
22 reviews could be continuously added to Scion's Yelp.com listing page in order to  
23 solicit more fees—a process which might be never-ending and completely out of  
24 her control—Ms. Liu questioned the sales representative as to how she could be  
25 sure that Yelp would not post negative reviews itself in order to request more fees  
26 from Scion. The sales representative hung up on Ms. Liu. When Ms. Liu attempted  
27 to call the sales representative back, there was no answer.

1 144. After two months of receiving sales calls and discussing the  
2 possibility of becoming a Sponsor, Ms. Liu unequivocally declined to do so. The  
3 following day, approximately five 5-star reviews disappeared from Scion's  
4 Yelp.com listing page, and three negative reviews were posted to the page.

5 145. Two of the new negative reviews were demonstrably false. The  
6 reviews commented on a menu that was still posted on Scion's website, but that  
7 Scion was no longer actually using at the time the experiences described in the  
8 reviews supposedly took place.

9 146. Scion was damaged as a result of Yelp's actions, including through  
10 lost patronage and prospective business.

11 147. Scion's experience with Yelp was not unique, but rather typical of  
12 Yelp's advertisement sales tactics.

13 **THE SPONSOR PLAINTIFFS**

14 **Plaintiff Bleeding Heart Bakery**

15 148. Bleeding Heart Bakery has two locations in Chicago. Each location  
16 has a separate Yelp.com listing page.

17 149. Beginning in 2007, Yelp began calling Michelle Garcia, Bleeding  
18 Heart Bakery's owner and operator, including on her personal cell phone, trying to  
19 get Ms. Garcia to purchase a Yelp advertising subscription on behalf of the  
20 Bleeding Heart Bakery.

21 150. On one or more occasions on these phone calls, Ms. Garcia pointed  
22 out that some reviews of the Bleeding Heart Bakery were demonstrably "bogus,"  
23 for example, purporting to describe an experience that occurred on a day that  
24 Bleeding Heart Bakery was closed.

25 151. A Yelp sales person calling Ms. Garcia promised that, if she agreed to  
26 purchase an advertising subscription, Yelp would push bad reviews to the very end  
27 of Bleeding Heart Bakery's Yelp.com listing pages, and that the sales

1 representative would personally remove the "bogus" reviews Ms. Garcia  
2 complained of.

3 152. Yelp further promised Ms. Garcia that, as a Yelp Sponsor, she would  
4 be allowed to choose her favorite ten reviews, which would always appear at the  
5 top of Bleeding Heart Bakery's Yelp.com listing pages.

6 153. Yelp further promised Ms. Garcia that, as a Yelp Sponsor, she could  
7 choose which pictures uploaded by reviewers would appear on Bleeding Heart  
8 Bakery's Yelp.com listing pages, and which would be removed.

9 154. Based on these promises, in November, 2008 Ms. Garcia agreed to  
10 purchase an advertising subscription from Yelp. Although Yelp had urged her to  
11 purchase a sponsorship for just one of the Bleeding Heart Bakery's Yelp.com  
12 listing pages for \$500 per month, Ms. Garcia eventually negotiated a deal that  
13 would cover both of the Bleeding Heart Bakery's Yelp.com listing pages for \$600  
14 per month. The term of the contract was one year. Ms. Garcia paid the first  
15 month's charge by credit card, and Yelp automatically charged subsequent months  
16 to her credit card on a monthly basis.

17 155. At the time Bleeding Heart Bakery became a Yelp Sponsor, the  
18 company enjoyed a 4-star Yelp rating.

19 156. During the same month that Bleeding Heart Bakery became a Yelp  
20 Sponsor, six negative reviews of the business were posted by Yelp Elite Squad  
21 members. Some of the reviews contained personal attacks. During the same time,  
22 several 4-star reviews disappeared from Bleeding Heart Bakery's Yelp.com listing  
23 page.

24 157. As a result of the new negative reviews and disappearing positive  
25 reviews, Bleeding Heart Bakery's rating dropped to 3.5-stars.

26 158. As a result of these negative reviews, Bleeding Heart Bakery's  
27 business suffered. For example, during a week following the posting of these

1 negative reviews by Yelp Elite Squad members, Bleeding Heart Bakery went from  
2 typical sales of 300 cupcakes per week, to just 24 cupcakes, and was forced to  
3 throw out the remainder of its inventory.

4 159. When Ms. Garcia called Yelp to complain about the reviews,  
5 including the personal attacks, Yelp told her that if she became a “premier”  
6 advertiser—at a higher cost—Yelp would talk to the Yelp Elite Squad and “ask  
7 them to give the business another shot.”

8 160. Yelp further told Ms. Garcia said that if Bleeding Heart Bakery  
9 increased the amount of its advertising subscription to become a “premier”  
10 advertiser, Yelp would bring Bleeding Heart Bakery’s star rating back up.

11 161. Bleeding Heart Bakery’s experience with Yelp was not unique, but  
12 rather typical of Yelp’s advertisement sales tactics.

13 **Plaintiff Sofa Outlet**

14 162. Mary Seaton, Sofa Outlet’s owner, received a call from a Yelp sales  
15 representative, who told her that, if Sofa Outlet agreed to purchase an advertising  
16 subscription, Sofa Outlet’s positive reviews would be made more prominent while  
17 Sofa Outlet’s negative reviews would be made less prominent and, eventually,  
18 removed altogether.

19 163. On January 25, 2008, Mary Seaton entered into a \$350 per month  
20 advertising subscription with Yelp on behalf of Sofa Outlet.

21 164. Sofa Outlet cancelled its advertising subscription on June 17, 2008,  
22 which was officially terminated June 20, 2008.

23 165. Within approximately two weeks of Sofa Outlet’s termination date,  
24 many positive reviews that Sofa Outlet had received, especially those written  
25 during the subscription period, disappeared from the Sofa Outlet Listing Page,  
26 while negative reviews that had been previously removed reappeared.

27

1 166. Sofa Outlet's experience with Yelp was not unique, but rather typical  
2 of Yelp's advertisement sales tactics.

3 **Plaintiff Celibré**

4 167. Celibré is currently a Yelp Sponsor, having purchased an advertising  
5 subscription in January, 2010 at a cost of \$300 per month.

6 168. Celibré became a Yelp Sponsor because a Yelp sales representative  
7 promised Kevin DiCerbo, Celibré's owner, that Yelp would allow Celibré to  
8 choose the order of reviews on its Yelp.com listing page in exchange for becoming  
9 a Sponsor.

10 169. Yelp has in fact moved reviews on Celibré's Yelp.com listing page  
11 according to Celibré's wishes.

12 170. Celibré's experience with Yelp was not unique, but rather typical of  
13 Yelp's advertisement sales tactics.

14 **CLASS REPRESENTATION ALLEGATIONS**

15 171. Plaintiffs bring this action on behalf of themselves and the following  
16 Classes:

17 **The Sponsor Class**

18 All persons and entities (excluding officers, directors, and employees  
19 of Yelp) in the United States who, from October 1, 2004 to the  
20 present, as a result of Yelp offering or threatening to manipulate a  
21 Yelp.com listing page in exchange for purchasing or declining to  
purchase advertising services, purchased advertising services from  
Yelp.

22 **The Non-Sponsor Class**

23 All persons and entities (excluding officers, directors, and employees  
24 of Yelp) in the United States to whom, from October 1, 2004 to the  
25 present, Yelp offered or threatened to manipulate a Yelp.com listing  
26 page in exchange for purchasing or declining to purchase advertising,  
and who declined to purchase advertising.

27 172. Like Plaintiffs, all members of the Non-Sponsor and Sponsor Classes  
have a Yelp.com listing page.

1           173. Like Plaintiffs, all members of the Non-Sponsor and Sponsor Classes  
2 were contacted by Yelp sales representatives and asked to buy advertising  
3 subscriptions from Yelp.

4           174. Like Plaintiffs, all members of the Non-Sponsor and Sponsor Classes  
5 were promised that, if they purchased advertising from Yelp, negative reviews  
6 would be removed or relocated from their Yelp.com listing pages, or those pages  
7 would otherwise be favorably manipulated, including through their own input or  
8 control.

9           175. Like Plaintiffs, all members of the Non-Sponsor and Sponsor Classes  
10 were threatened, implicitly or expressly, that if they did not purchase advertising  
11 from Yelp, their Yelp.com listing pages would be detrimentally manipulated,  
12 including for example, by removing positive reviews and posting new, negative  
13 reviews.

14           176. Like Non-Sponsor Plaintiffs Cats and Dogs, Astro, Adult Socials, Le  
15 Petite Retreat, Mermaids Cruise, Wag My Tail, and Scion, all members of the  
16 Non-Sponsor Class declined to become a Yelp Sponsor.

17           177. Like Non-Sponsor Plaintiffs Cats and Dogs, Astro, Adult Socials, Le  
18 Petite Retreat, Mermaids Cruise, Wag My Tail, and Scion, all members of the  
19 Non-Sponsor Class saw their Yelp.com listing pages detrimentally modified after  
20 declining to become a Yelp Sponsor.

21           178. Like Non-Sponsor Plaintiffs Cats and Dogs, Astro, Adult Socials, Le  
22 Petite Retreat, Mermaids Cruise, Wag My Tail, and Scion, all members of the  
23 Non-Sponsor Class were damaged as a result of Yelp's actions.

24           179. Like Sponsor Plaintiffs Bleeding Heart Bakery, Sofa Outlet and  
25 Célibré, all members of the Sponsor Class purchased advertising subscriptions  
26 from Yelp based on Yelp's promises and threats, express or implicit.

27



1 180. Like Sponsor Plaintiffs Bleeding Heart Bakery, Sofa Outlet and  
2 Celibré, all members of the Sponsor Class would not have purchased advertising  
3 subscriptions with Yelp absent Yelp's promises and threats, express or implicit.

4 181. Plaintiffs' claims on behalf of the Class are maintainable under Rules  
5 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure.

6 182. The questions of law and fact common to Plaintiffs and the Classes  
7 include:

- 8 a. Whether Yelp extorted the Sponsor Plaintiffs and members of  
9 the Sponsor Class;
- 10 b. Whether Yelp attempted to extort Plaintiffs and members of the  
11 Classes;
- 12 c. Whether Yelp intentionally interfered with the prospective  
13 economic advantage of Plaintiffs and members of the Classes;
- 14 d. Whether Yelp violated the "unlawful" prong of California's  
15 Unfair Competition Law, including by:
  - 16 i. Committing Extortion in violation of Cal. Pen. Code  
17 §§518-19;
  - 18 ii. Committing Attempted Extortion in violation of Cal. Pen.  
19 Code §524;
  - 20 iii. Intentionally interfering with the Non-Sponsor Plaintiffs'  
21 and Non-Sponsor Class Members' Prospective Economic  
22 Advantages; and
  - 23 iv. Violating 16 C.F.R. Part 255 by failing to disclose that  
24 Yelp provides endorsed reviews of paid advertisers;
- 25 e. Whether Yelp violated the "unfair" prong of California's Unfair  
26 Competition Law;
- 27 f. Whether Yelp violated the "fraudulent" prong of California's  
Unfair Competition Law;
- g. Whether Plaintiffs and the Classes were injured by the conduct  
complained of herein;
- h. Whether the conduct described herein is ongoing;
- i. Whether Plaintiffs and members of the Classes are entitled to  
damages;

- 1 j. Whether Plaintiffs and members of the Classes are entitled to  
2 injunctive relief; and  
3 k. Whether Plaintiffs and members of the Classes are entitled to  
4 restitution.

5 **CLAIMS FOR RELIEF**

6 **COUNT I**

7 **Extortion**

8 **Cal. Pen. Code §§ 518-19**

9 **(With Respect to the Sponsor Plaintiffs and Sponsor Class)**

10 183. Plaintiffs reallege and incorporate the allegations elsewhere in the  
11 Complaint as if set forth in full herein.

12 184. By the advertising and reviewing practices of Yelp as alleged herein,  
13 Yelp obtained the property of the Sponsor Plaintiffs and members of the Sponsor  
14 Class, with their consent, through the threat to do an unlawful injury to the person  
15 or property of the Sponsor Plaintiffs and members of the Sponsor Class threatened.

16 185. Yelp's conduct constitutes a violation of Cal. Pen. Code §§ 518-19.

17 **COUNT II**

18 **Attempted Extortion**

19 **Cal. Pen. Code § 524**

20 **(With respect to All Plaintiffs and All Classes)**

21 186. Plaintiffs reallege and incorporate the allegations elsewhere in the  
22 Complaint as if set forth in full herein.

23 187. By the advertising and review practices of Yelp as alleged herein,  
24 Yelp attempted to obtain the property of Non-Sponsor Plaintiffs and members of  
25 the Non-Sponsor class, with their consent, through the threat to do an unlawful  
26 injury to the person or property of the Non-Sponsor Plaintiffs and members of the  
27 Non-Sponsor Class.

1 188. Yelp had a specific intent to commit Extortion, in violation of Cal.  
2 Pen. Code §§ 518-19, against the Non-Sponsor Plaintiffs and Non-Sponsor Class.

3 189. Yelp engaged in one or more direct ineffectual acts towards the  
4 commission of Extortion against the Non-Sponsor Plaintiffs and members of the  
5 Non-Sponsor Class.

6 190. The Non-Sponsor Plaintiffs and members of the Non-Sponsor Class  
7 were harmed as a result of Yelp's actions.

8 191. The foregoing constitutes Attempted Extortion in violation of Cal.  
9 Pen. Code § 524.

10 **COUNT III**

11 **Intentional Interference With Prospective Economic Advantage**  
12 **(With Respect to All Plaintiffs and All Classes)**

13 192. Plaintiffs reallege and incorporate the allegations elsewhere in the  
14 Complaint as if set forth in full herein.

15 193. There existed economic relationships between the Non-Sponsor  
16 Plaintiffs and Non-Sponsor Class members, and third parties, with the probability  
17 of future economic benefit to the Non-Sponsor Plaintiffs and Non-Sponsor Class  
18 Members.

19 194. Yelp knew of these relationships.

20 195. Yelp intentionally committed wrongful acts designed to disrupt those  
21 relationships.

22 196. Those relationships were actually disrupted.

23 197. The Non-Sponsor Plaintiffs and Non-Sponsor Class members suffered  
24 economic harm proximately caused by Yelp's acts.

25

26

27

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

**COUNT IV**

**Violations of the Unfair Competition Law  
Cal. Bus. & Prof. Code § 17200  
(With Respect to All Plaintiffs and All Classes)**

198. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint as if set forth in full herein.

**“Unlawful”**

199. Yelp violated Cal. Pen. Code §§ 518-19.

200. Yelp violated Cal. Pen. Code § 524.

201. Yelp intentionally interfered with prospective economic advantages held by the Non-Sponsor Plaintiffs and members of the Non-Sponsor Class.

202. Yelp violated 16 C.F.R. Part 255 by failing to disclose that the Yelp.com website provides endorsed reviews of Sponsors.

203. The practices of Yelp complained of herein therefore violated the “unlawful” prong of the California Unfair Competition Law.

**“Unfair”**

204. The practices of Yelp complained of herein are immoral, unscrupulous, and offend public policy.

205. The practices of Yelp complained of herein had no countervailing benefit to consumers or competition when weighed against the harm caused by such practices.

206. The practices of Yelp complained of herein therefore violated the “unfair” prong of the California Unfair Competition Law.

**“Fraudulent”**

207. Yelp’s conduct constitutes “fraudulent” business acts and practices because the conduct has a tendency to deceive the Plaintiffs and the Classes, and the general public.



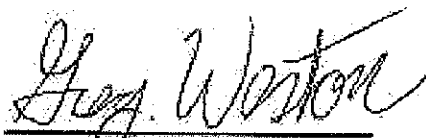
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED: March 16, 2010

Respectfully Submitted,



Gregory S. Weston

THE WESTON FIRM  
Gregory S. Weston  
Jack Fitzgerald  
888 Turquoise Street  
San Diego, CA 92109  
Telephone: (858) 488-1672  
Facsimile: (480) 247-4553

BECK & LEE BUSINESS TRIAL  
LAWYERS  
Jared H. Beck  
Elizabeth Lee Beck  
Courthouse Plaza Building  
28 West Flagler Street, Suite 555  
Miami, FL 33130  
Telephone: (305) 789-0072  
Facsimile: (786) 664-3334

**Attorneys for Plaintiffs and the  
Proposed Classes**

# **Exhibit C**

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 10-1340-VBF(SSx)**

Dated: **May 3, 2010**

Title: **Cats and Dogs Animal Hospital, Inc. -v- YELP!, Inc.**

---

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Rita Sanchez  
Courtroom Deputy

None Present  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS):

COURT ORDER: (1) MOTION TO TRANSFER  
VENUE (DKT. #25); (2) MOTION TO  
DISMISS PLAINTIFFS' FIRST AMENDED  
COMPLAINT (DKT. #23)

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing set for May 10, 2010 at 1:30 p.m. is hereby vacated and the matter taken off calendar.

The Court has received, read, and considered Defendant Yelp! Inc. Motion to Transfer Venue (dkt. #25), Plaintiffs' Opposition (dkt. #31), and Defendant's Reply (dkt. #32). Under 28 U.S.C. § 1404(a) and for the reasons set forth herein, the Court finds that Defendant has met its burden of showing that the Northern District of California is clearly more convenient and **GRANTS** Defendant's Motion to Transfer Venue to that District.

In light of this disposition, the separate Motion to Dismiss filed by Defendant Yelp!, Inc. (dkt. #23) is moot and taken off calendar.

MINUTES FORM 90  
CIVIL - GEN

Initials of Deputy Clerk rs



## I. Introduction and Summary of Court's Analysis

In this action, Plaintiffs accuse Defendant Yelp! Inc. ("Defendant"), an online directory of businesses, of manipulating its business listing pages depending on whether Plaintiffs advertise with Yelp. (First Amended Compl. ¶ 93.) Plaintiffs assert claims for violations of California's Unfair Competition Law, Business and Professions Code Section 17200 *et seq.*, Cal. Penal Code 518-19, Cal. Penal Code 524 and intentional interference with prospective economic advantage. (FAC ¶¶ 183-208)

Defendant persuasively argues that Plaintiffs' chosen forum should be given less weight where Plaintiffs seek to represent a nationwide class. See *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). Other relevant factors, such as the convenience of the witnesses and parties and consolidation with a related case pending in the Northern District of California also weigh in favor of transfer.

## II. Analysis

Title 28, section 1404(a), states, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The party seeking a transfer bears the burden of proving transfer is warranted. *Decker Coal Co. v. Commonwealth Edison Co*, 805 F.2d 834, 843 (9th Cir. 1986). "A transfer will not be ordered if the result is merely to shift the inconvenience from one party to another." *Schwarzer, Tashina & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial* 4:785 (The Rutter Group 2010). "When the transferee forum is no more convenient than the chosen forum, the plaintiff's choice should not be disturbed. When the transferee forum is clearly more convenient, a transfer should be ordered." *Id.* (quoting *In re Volkswagen of America, Inc.*, 506 F.3d 376, 385 (5th Cir. 2007) (emphasis added)).

First, Defendant must prove the district to which it seeks to transfer is a forum in which the action originally could have been brought. *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960). Defendant meets this burden. This action could have been brought in the Northern District of California. The Northern District of California would have subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) to the same extent as this Court. That District would also have personal jurisdiction, as Defendant has its principal place of business in San Francisco, California. (FAC ¶ 13) Finally, venue is proper. 28 U.S.C. §§ 1391(a)(c) (civil action by a corporation wherein

MINUTES FORM 90  
CIVIL - GEN

Initials of Deputy Clerk \_\_\_\_\_ rs

jurisdiction is founded on diversity of citizenship may be brought in any jurisdiction in which the corporation is subject to personal jurisdiction).

Second, Defendant must prove that transfer is for the convenience of the parties and witnesses and in the interest of justice. 28 U.S.C. § 1404(a). In determining whether transfer will accomplish these goals, courts look to a variety of factors, including: "(1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof." *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000); see also *Decker Coal*, 805 F.2d at 843. As set forth below, Defendant makes the requisite showing.

#### 1. Plaintiffs' Choice of Forum

Plaintiffs argue that its choice of forum should not be disturbed. (Opp. at 4-5) Generally, a defendant must make a "strong showing of inconvenience to warrant upsetting the plaintiff's choice of the forum." *Decker Coal*, 805 F.2d at 843. The Defendant argues, however, that Plaintiffs' choice of forum is entitled to less deference in this case because Plaintiffs propose to represent a nationwide class. (Motion at 17).

Defendant's argument is persuasive. The Ninth Circuit has held that in class actions, plaintiffs' choice of forum must be given less weight where they propose to represent a nationwide class. See *Lou*, 834 F.2d at 739 ("Although great weight is generally accorded plaintiff's choice of forum, when an individual brings a derivative suit or represents a class, the named plaintiff's choice of forum is given less weight.") (internal citations omitted). Here, where Plaintiffs purport to represent a nationwide class (FAC ¶ 171), their choice of forum is given less weight.

Alternatively, Plaintiffs argue that courts consider the distribution of putative class members as a key factor in deciding venue transfer motion. See *Ellis v. Costco Wholesale Corp.*, 372 F. Supp. 2d 530, 545 (N.D. Cal. 2005) (denying venue transfer motion where Northern

District of California was "home to a proportionately large segment of the putative class").

However, the evidence presented does not show that a large segment of the putative class is located in the Central District of California. Four of the ten named Plaintiffs maintain their principal place of business in the Central District, while three maintain their principal place of business in the Northern District. (Motion at 14-15; FAC ¶¶ 3, 4, 6, 7, 8, 11, 12) Other named Plaintiffs are located in New York, Washington, D.C., and Illinois. (FAC ¶¶ 5, 9, 10)

Based on the foregoing, this factor weighs in favor of transfer.

## 2. Convenience of Witnesses

The convenience of witnesses is an important factor to consider. *Amini Innovation Corp. v. JS Imports, Inc.*, 497 F. Supp. 2d 1093, 1111 (C.D. Cal. 2007). However, the convenience of party witnesses is entitled to less weight than non-party witnesses, as they presumably would be able to testify in either forum. See *id.* The materiality of every witness' testimony must be shown. Defendant must demonstrate through affidavits who the key witnesses will be and what their testimony will generally include. See *Hope v. Otis Elevator Co.*, 389 F. Supp. 2d 1235, 1243-44 (E.D. Cal. 2005).

Based on the evidence submitted, this factor weighs for transfer. Defendant asserts that 251 of its 362 employees work at the company's headquarters, located in the Northern District of California, while it has only four employees in the Central District of California. (Motion at 14; Byrne Decl. ¶ 14) Defendant states that the majority of witnesses, including Defendant's Salespeople, Sales Trainers, Engineers, Executives, User Operations, "are likely to be located in the Northern District of California." (Motion at 15; Byrne Decl. ¶ 14). Defendant does not, however, identify any non-employee witnesses, stating that "[s]ince discovery has yet to commence and initial disclosures have not yet been made, the identity of specific witnesses remains to be determined." (Motion at 15)

Plaintiffs do not list any non-party witnesses located in the Central District of California, and only four of the ten named Plaintiffs maintain their principal place of business in the Central District, while

MINUTES FORM 90  
CIVIL - GEN

Initials of Deputy Clerk rs

three maintain their principal place of business in the Northern District. (Motion at 14-15; FAC ¶¶ 3, 4, 6, 7, 8, 11, 12)

### 3. Convenience of the Parties

The convenience of the parties also weighs in favor of transfer. As stated above, Defendant is headquartered in the Northern District. (Motion at 16) Defendant argues that the Northern District is more convenient for the parties because they both have greater contact with the Northern District than the Central District. (Motion at 14) As stated above, Defendant asserts that 251 of its 362 employees work at the company's headquarters, located in the Northern District, while it has only four employees in the Central District. (Motion at 14; Byrne Decl. ¶ 14) Defendant again notes that three of the ten named Plaintiffs maintain their principal place of business in the Northern District. (Motion at 14; FAC ¶¶ 4, 7, 11)

Further, Defendant claims that all named Plaintiffs have agreed to a forum selection clause consenting to jurisdiction and venue in the Northern District of California. (Motion at 1; Byrne Decl. 3-5, 10-11 & Exs. E, F) Defendant argues that although the forum selection clause is likely permissive and not mandatory, "the fact that the parties contemplated [a particular state] as a possible forum is entitled to 'substantial consideration' in [a venue transfer] analysis." *Unisys Corp. v. Access Co., Ltd.*, No. C05-3378, 2005 WL 3157457, at \*5 (N.D. Cal. Nov. 23, 2005).

Plaintiffs do not sufficiently explain why the Central District is more convenient, and instead focus much of their Opposition on two arguments: that permissive forum selection clauses carry little weight in the transfer analysis, and alternatively, that the Defendant's forum selection clause is unconscionable or that it is an adhesion contract. (Opp. at 11-24) The Court finds that these arguments do not factor heavily into its analysis. Because each of the other considerations weigh for transfer, it is unnecessary to determine what weight permissive forum selection clauses should carry in the transfer analysis.

### 4. Ease of Access to Evidence

This factor is neutral. Defendant claims that its primary servers and documents are located in the Northern District. (Motion at 15-16;

MINUTES FORM 90  
CIVIL - GEN

Initials of Deputy Clerk rs

Byrne Decl. ¶ 14) However, as Plaintiffs states, "ease of access to documents does not weigh heavily in the transfer analysis, given that advances in technology have made it easy for documents to be transferred to different locations." *Metz v. U.S. Life Ins. Co.*, No. 09-CV-06811, 2009 U.S. Dist. LEXIS 126876, at \*18 (C.D. Cal. Dec. 11, 2009) (internal citations omitted).

#### 5. Consolidation with Northern District Case

The potential consolidation of this case with a related action currently pending in the Northern District of California also weighs for transfer. As Defendant asserts, transfer to the Northern District would serve the interest of justice by lowering the costs to the courts, facilitating expeditious pre-trial proceedings and discovery, and avoiding duplicative litigation and inconsistent results. (Motion at 11-13) (citing *See Ferens v. John Deere Co.*, 494 U.S. 516, 531 (1990) (internal quotations and citation omitted) (finding that "to permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent"))).

Plaintiffs argue that the first-to-file rule weighs against transfer. Indeed, "[w]here two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit under the first-filed rule." *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005).

However, as Defendant states, a court may relax the first-to-file rule "if the balance of convenience weighs in favor of the later-filed action." *Ward v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994). The Court finds that the balance of convenience weighs in favor of transfer, and thus the first-to-file rule does not prevent transfer.

### III. Conclusion

In sum, although the plaintiff's choice of forum is generally entitled to significant deference, because Plaintiffs here purport to represent a nationwide class, their choice is afforded less weight. Other factors, including related litigation pending in the Northern District of

MINUTES FORM 90  
CIVIL - GEN

Initials of Deputy Clerk rs

California, similarly weigh in favor of transfer. For the reasons set forth herein, the Court finds that Defendant has clearly established that for the convenience of the parties and witnesses, and in the interests of justice, this action should be transferred to the Northern District of California.

MINUTES FORM 90  
CIVIL - GEN

Initials of Deputy Clerk rs