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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SANTA ANA

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

YELP! INC.,

Defendant.

Case No: **CV10 -1340 VBF (SSx)**

Pleading Type: Class Action

**COMPLAINT FOR VIOLATIONS
 OF THE UNFAIR
 COMPETITION LAW**

DEMAND FOR JURY TRIAL

1 Plaintiff Cats and Dogs Animal Hospital, Inc. (“Plaintiff” or “Cats and
2 Dogs”), on behalf of itself and all others similarly situated, by and through
3 undersigned counsel, hereby sues Defendant Yelp! Inc. (“Defendant” or “Yelp”)
4 and, upon information and belief and investigation of counsel, alleges as follows:
5

6 **JURISDICTION AND VENUE**

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

12 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
13 Plaintiff resides in and suffered injuries as a result of Defendant’s acts in this
14 district, many of the acts and transactions giving rise to this action occurred in this
15 district, and Defendants (1) are authorized to conduct business in this district and
16 have intentionally availed themselves of the laws and markets of this district
17 through the promotion, marketing, and sale of advertising in this district; (2) reside
18 in this district, and (3) are subject to personal jurisdiction in this district.
19

20 **PARTIES**

21 3. Plaintiff Cats and Dogs is a California corporation with its principal
22 place of business in Long Beach. Cats and Dogs is owned and operated by Gregory
23 Perrault (“Dr. Perrault”), a veterinarian.

24 4. Defendant Yelp is a Delaware corporation with its principal place of
25 business in San Francisco, California. Yelp owns and operates Yelp.com, a popular
26 online directory and user-ratings website.
27

1 **INTRODUCTION AND BACKGROUND**

2 5. The term “Web 2.0” describes internet websites and applications that
3 revolve around information sharing and user-centered design. Examples of Web
4 2.0 websites include social networking sites (e.g., Facebook.com), video sharing
5 sites (e.g., YouTube.com), wikis (e.g., Wikipedia.com), blogs, and many other
6 sites that allow users to create, upload, or modify content. Web 2.0 websites thus
7 allow internet users to do much more than simply retrieve information—the users
8 choose what information to interact with, how they interact with it, and how to
9 modify or add to pre-existing content.

10 6. Online review applications are an increasingly popular form of Web
11 2.0. Companies such as Amazon.com, Best Buy, and TripAdvisor.com, embed
12 Web 2.0 applications within their websites, which allow users to rate products and
13 services and share their experiences.

14 7. Yelp.com, a website owned and operated by Defendant Yelp, is a
15 website that utilizes Web 2.0 user-website interaction.

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

21 9. To rate businesses, internet users simply register on the Yelp.com
22 website. Any internet user (whether registered or not) can browse Yelp.com to find
23 reviews of businesses.

24 10. Ratings-based websites, including Yelp.com, are highly popular, and
25 have great power to direct the flow of commerce in a given area. Users frequently
26 read ratings and reviews for all of the businesses in a particular category and locale
27 and then decide where to spend their money based on those ratings and reviews.

1 11. Yelp, however, regularly manipulates the content on Yelp.com listing
2 pages, despite Yelp's mantra of "Real people. Real reviews."

3 12. One method Yelp uses to control content (and thereby raise or lower a
4 business's rating), is to promise to remove a business's negative reviews or
5 relocate them to the bottom of a listing page where fewer searchers will read them
6 if the business agrees to purchase a costly monthly advertising subscription from
7 Yelp. Yelp thus capitalizes on the presumed integrity of the Yelp.com ratings
8 system to extort business owners to purchase advertising.

9 13. As a result, business listings on Yelp.com, contrary to the website's
10 "Real people. Real reviews." mantra, are in fact biased in favor of businesses that
11 buy Yelp advertising.

12
13 **FACTUAL ALLEGATIONS**

14 14. On September 12, 2009, Dr. Perrault became aware of a negative
15 review posted by "Chris R." on the Cats and Dogs Yelp.com listing page.

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

19 16. Upon finding that the review of Chris R. referenced a visit that
20 occurred over 18 months prior to its posting (6 months outside of Yelp's 12-month
21 policy), Javier Vargas, the Hospital Manager at Cats and Dogs, called Yelp, on or
22 around September 15, 2009, to request that the review be removed from the
23 Yelp.com website for violating Yelp's review guidelines. The review was
24 subsequently removed from the Cats and Dogs Yelp.com listing page.

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

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

13 18. Soon after the appearance of these negative reviews, Dr. Perrault and
14 Mr. Vargas began receiving frequent, high-pressure calls from Yelp advertising
15 employees, who promised to manipulate Cats and Dogs' Yelp.com listing page in
16 exchange for Cats and Dogs purchasing an advertising subscription.

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

- 22 a. Yelp would hide negative reviews on the Cats and Dogs Yelp.com
23 listing page, or place them lower on the listing page so internet users
24 "won't see" them;
- 25 b. Yelp would ensure negative reviews will not appear in Google and
26 other search engine results;

- 1 c. Yelp would allow Cats and Dogs to decide the order that its reviews
2 appear in on its Yelp.com listing page; and
3 d. Cats and Dogs could choose its “tagline,” i.e., the first few lines of a
4 single review shown on every search result page in which Cats and
5 Dogs appears (for instance, “Veterinarian in Long Beach”).

6 20. Dr. Perrault declined the offer, saying that he wanted to track referrals
7 from Yelp for three months without ads, but might thereafter be willing to test
8 Yelp’s advertising potential.

9 21. Within a week of denying Kevin’s advertising offer, the negative
10 review from Chris R. reappeared on the Cats and Dogs Yelp.com listing page.

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

13 *I’ve already left one review about how bad a vet Dr. Perrault is, but I*
14 *wanted to add something. I’ve been reading other people’s reviews*
15 *and I must have gone to a different Cats and Dogs Animal Hospital*
16 *with a vet named Dr. Perrault. Oh wait, no . . . he’s the only one.*
17 *Maybe it’s a Dr. Jeckyl / Mr. Hyde thing?! I don’t know. But the guy’s*
18 *an @\$\$. No other way around it. He’s a jerk, a D-Bag, And so*
19 *arrogant. I ran in to him in a neighborhood store right after he saw*
20 *my poor sick dog at his clinic and he looked right at me, recognized*
21 *me, rolled his eyes and looked away!!!! Seriously, someone needs to*
22 *knock this guy down to the size he really is. He needs to drop his*
23 *Napolean complex and be a professional. After my horrible*
24 *experience with him, I took my sick dog to Bixby Animal Clinic and I*
25 *have never had a more pleasant vet experience! Go there instead! My*
26 *dog loved everyone there!*

27

1 *Sorry to rant, but I just wanted to get the word out there. Don't spend*
2 *the money on this overpriced arrogant vet. It's not worth it!*

3 23. On or about January 12, 2010, Mr. Vargas contacted Yelp to protest
4 the reappearance of the "Chris R." review and the highly negative, inflammatory
5 "Kay K." reviews.

6 24. On January 13, 2010, Mr. Vargas received via email the following
7 response from Yelp:

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

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

23 *"Dr. Perrault is the most inept/rude veterinarian I have ever met. He*
24 *had my rescue dog cowering and barking in the corner of the exam*
25 *room within seconds of meeting him. He berated me for 20 . . ."*

26 26. Compare Cats and Dogs' tagline to the tagline (as of January 18,
27 2010) of Bixby Animal Clinic, a Long Beach veterinary business that is a Yelp

1 advertiser (and the same company the mysterious Kay K. referred users to in her
2 second Cats and Dogs review):

3 *“This place IS awesome. I brought my little man (Bruin) to Dr. A. as a*
4 *puppy for the puppy package. They have great hours and were able to*
5 *acommodate me AFTER work so I never had to take extra time . . . ”*

6 27. Yelp frequently exercises its control over the Yelp.com listing
7 application to modify business listing pages to the advantage of businesses that
8 purchase Yelp advertising subscriptions, and the disadvantage of those that
9 decline.

10 28. Dr. Perrault's experience with Yelp was not unique, but rather typical
11 of Yelp's advertisement sales tactics.

12 29. A February 18, 2009 article in the East Bay Express, titled *Yelp and*
13 *the Business of Extortion 2.0*,¹ describes Yelp's unlawful business practices.
14 According to the article:

15 • Yelp sales representatives contact business owners saying, “**[Y]ou have a**
16 **few bad [reviews] at the top. I could do something about those. . . We**
17 **can move them. Well, for \$299 a month.**”

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

20 • Mary Seaton, the owner of a furniture store in San Mateo, **took Yelp up**
21 **on an offer to remove her negative reviews if she advertised at a cost of**
22 **\$350 per month for six months. During that time, her negative reviews**
23 **were removed and old positive ones showed up. After her contract was**
24 **up, a negative review appeared**, which Seaton said contained lies.
25
26

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

1 • Greg Quinn, the owner of a San Francisco bar and bistro, said **a Yelp**
2 **sales representative moved negative reviews further down his page in an**
3 **effort to entice him to advertise.** The sales rep called Mr. Quinn and said,
4 **“Did you notice what I did? Well, we can keep doing that for you.”**

5
6 • An East Bay business owner said **Yelp offered to move one- or two-star**
7 **reviews of his business if he advertised.**

8
9 • Six people told the East Bay Express that **Yelp sales representatives**
10 **promised to move or remove negative reviews if their businesses would**
11 **advertise.**

12 • Six other people told the East Bay Express that **positive reviews**
13 **disappeared, or negative reviews appeared, after owners declined to**
14 **advertise.**

15
16 • Yelp pays its employees to write reviews of businesses; in one
17 documented instance, **a business owner who declined to advertise**
18 **subsequently received a negative review from a Yelp employee.** In other
19 cases, businesses that receive negative reviews from paid Yelp employees
20 are subsequently asked to advertise.

21
22 • Yelp’s Chief Operating Officer, Geoff Donaker, said advertisers and
23 sales representatives do not have the ability to move or remove negative
24 reviews. Donaker’s denials are challenged both by local business owners,
25 and by **a former Yelp employee, who said that several sales reps told him**
26 **they promised to move reviews to get businesses to advertise.**

1 30. As of February 8, 2010, there are 140 comments on the East Bay
2 Express website following the Yelp article, many from business owners describing
3 experiences similar to those discussed in the article.

4 31. A follow-up East Bay Express article provides further evidence of
5 Yelp's unlawful sales practices. The March 18, 2009 article, *Yelp Extortion*
6 *Allegations Stack Up: More business owners come forward with tales of unethical*
7 *behavior by the popular San Francisco-based web site*² states that since the
8 publication of the first article:

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

21 32. The article tells the stories of six California business owners'
22 experiences with Yelp:

- 23 • After Bob Hyde, owner of M&M Auto Werkes in Campbell, received a
24 negative rating from a customer's boyfriend, violating Yelp's Terms of
25 Service (prohibiting third parties from posting reviews), he contacted Yelp

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

1 sales representative Jacqueline Fitzhugh to complain. She told him, **“We**
2 **can't control that, but if you advertise you can control the order that**
3 **they're in.”** After declining, Mr. Hyde noticed some of his five-star posts
4 **were disappearing.** Yelp told him the website has a spam filter, like
5 Google. Hyde tracked his reviews, printing them daily to monitor which
6 ones would disappear. Some five-star reviews stayed up for as short as 31
7 days and as long as 131 days. **Yelp told Hyde that if he advertised, some**
8 **of those five-star reviews would come back.**

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

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

27

1 • Debbie Leonardo, director of membership at the Ruby Hill Golf Club in
2 Pleasanton, received a phone call from a **Yelp sales representative who**
3 **told her that the business could get rid of its worst review if it purchased**
4 **advertising.**

5
6 • Bob Kurtz, owner of Collectors Real 3 in Oakland, was contacted by a
7 Yelp sales person after receiving a negative review. In an email, **Yelp told**
8 **him that, as a paid advertiser, the negative review could be dealt with.**

9
10 • Nicholas Paul, an instructor at a Chicago art studio, declined to purchase
11 advertising and shortly thereafter three positive reviews disappeared from
12 and two negative ones were added to the studio's Yelp.com listing page. **A**
13 **Yelp sales rep told Mr. Paul he could control that.**

14
15 33. An August 13, 2008 article in The Register, a news website, titled
16 *Yelp "pay to play" pitch makes shops scream for help: User generated discontent*³
17 notes that:

18 At least some of Yelp's sales staff hope to make money by offering to
19 hide what you and I have to say. Over the last year, five San Francisco
20 Bay Area business have told *The Register* that **the company has**
21 **offered to "push bad reviews to the bottom" of their yelp pages if**
22 **they paid to advertise on the site.** One restaurant owner was
23 contacted "five or six" times, and each time, the Yelp sales rep
24 insisted that if he forked over \$6,000 a year for "sponsored link"
25 status, the site would suppress user posts that put his restaurant in a
26 less-than-positive light. "They told me I had 60 reviews on my [Yelp]

27
³ Available at http://www.theregister.co.uk/2008/08/13/yelp_sales_pitch/print.html

1 page,” said the owner “They told me ‘No one is going to read all
2 60. They’re only going to read the first few.’”

3 34. A March 9, 2009 Chicago Tribune article, titled *Questions arise over*
4 *Yelp’s ads, reviews; Businesses say site rearranges opinions for price; CEO*
5 *denies*,⁴ reported:

6 • Ina Pinkney of Ina’s restaurant in the West Loop said that last
7 summer **a Yelp salesperson offered “to move up my good reviews**
8 **if I sponsored one of their events. They called it rearranging my**
9 **reviews.”**

10
11 • Jason Luros, an attorney at Hudson & Luros in Napa, California,
12 stated “one of our reviews mysteriously disappeared, so I contacted
13 Yelp and was given the usual canned response about how no humans
14 control the reviews. But **when I said I would consider advertising if**
15 **they restored the review, it mysteriously reappeared.”**

16
17 35. An April 3, 2009 article in the Santa Monica Daily Press titled *Yelp*
18 *Sales Tactics Cause Concern Among Businesses*,⁵ reported:

19 After declining to advertise, the [Los Angeles area] business owner
20 checked the Yelp page again and noticed that at least 10 positive
21 reviews had disappeared while a few negative ones had been posted. .
22 . . They estimate that at least 20 positive reviews had been deleted
23 from the site since the conversation with Yelp about three weeks ago.
24
25

26 ⁴ No longer available online.

27 ⁵ Available at http://www.smdp.com/Articles-c-2009-04-02-52021.113116_Yelp_sales_tactics_cause_for_concern_among_businesses.html

1 **CLASS REPRESENTATION ALLEGATIONS**

2 36. Plaintiff brings this action on behalf of itself and the following Class:

3 All persons and entities (excluding officers, directors, and employees
4 of Yelp) in the United States for which Yelp has offered or threatened
5 to manipulate a Yelp.com listing page in exchange for purchasing or
6 declining to purchase advertising.

7 37. Like Cats and Dogs, all members of the Class have a Yelp.com listing
8 page.

9 38. Like Cats and Dogs, all members of the Class were contacted by Yelp
10 sales representatives.

11 39. Like Cats and Dogs, all members of the Class were promised that, if
12 they purchased advertising from Yelp, negative reviews would be removed or
13 relocated from their Yelp.com listing pages, or those pages would otherwise be
14 favorably manipulated, including through their own input or control.

15 40. Like Cats and Dogs, all members of the Class were threatened,
16 implicitly or expressly, that if they did not purchase advertising from Yelp, their
17 Yelp.com listing pages would be detrimentally manipulated, including for
18 example, by removing positive reviews and posting new, negative reviews.

19 41. Plaintiff's claims on behalf of the Class are maintainable under Rules
20 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure.

21 42. The questions of law and fact common to Plaintiff and the Class
22 include:

- 23 a. Whether Yelp violated the Unfair Competition Law;
- 24 b. Whether Plaintiff and the Class were injured by the conduct
25 complained of herein;
- 26 c. Whether the conduct described herein is ongoing; and
- 27 d. Whether members of the class are entitled to injunctive
relief.

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CLAIM FOR RELIEF

Violations of the Unfair Competition Law, Bus. & Prof. Code § 17200

43. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set forth in full herein.

44. The advertising sales and employee reviewing practices of Yelp as alleged herein constitute unfair business acts and practices because they are immoral, unscrupulous, and offend public policy.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of itself, all others similarly situated, and the general public, prays for judgment and relief against Yelp Inc. as follows:

- A. Declaring this action to be a proper class action.
- B. An order permanently enjoining Yelp from engaging in the practices complained of herein.
- C. An order compelling Yelp to disgorge all monies, revenues, and profits obtained by means of its wrongful acts and practices.
- D. An order requiring Yelp to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be unlawful, plus pre- and post- judgment interest thereon.
- E. Costs, expenses, and reasonable attorneys' fees.
- F. Any other and further relief the Court deems necessary, just, or proper.


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JURY DEMAND

Plaintiff demands a trial by jury.

DATED: February 22, 2010

Respectfully Submitted,



Gregory S. Weston

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