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8 *et al.*

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 BORIS Y. LEVITT D/B/A RENAISSANCE
13 RESTORATION, CATS AND DOGS
14 ANIMAL HOSPITAL, INC., TRACY CHAN
15 D/B/A MARINA DENTAL CARE, and JOHN
16 MERCURIO D/B/A WHEEL TECHNIQUES;
17 on behalf of themselves and all others similarly
18 situated,

19 Plaintiffs,

20 v.

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

23 Defendants.

Case No. CV 10-01321 MHP
Consolidated with CV 3:10-cv-02351MHP

**THIRD AMENDED AND
CONSOLIDATED CLASS ACTION
COMPLAINT FOR**

- 1) **VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200;**
- 2) **CIVIL EXTORTION; and**
- 3) **ATTEMPTED CIVIL
EXTORTION**

Jury Trial Demanded

24 Plaintiffs Boris Y. Levitt, d/b/a Renaissance Restoration, a/k/a Renaissance Furniture
25 Restoration (“Levitt” or “Plaintiff”), Cats and Dogs Animal Hospital, Inc. (“Cats and Dogs” or
26 “Plaintiff”), Tracy Chan, d/b/a Marina Dental Care, a/k/a Marina Dental Care (“Chan” or
27 “Plaintiff”), and John Mercurio d/b/a Wheel Techniques (“Wheel Techniques” or “Plaintiff”) on
28 behalf of themselves and all others similarly situated, file this class action Third Amended and
Consolidated Complaint (hereafter “TAC”) against Defendant Yelp! Inc. (“Yelp” or “Defendant”) and Does 1 through 100, inclusive.

INTRODUCTION

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1. Plaintiffs bring this action on behalf of themselves and other similarly situated businesses and persons nationwide who were subject to extortion and/or attempted extortion by Defendant to obtain payments for advertising during the four years prior to the commencement of this lawsuit, through the final resolution of this lawsuit. This class action challenges Defendant’s unfair and unlawful conduct – in violation of California’s Unfair Competition Laws and liability for civil extortion and attempted civil extortion – directed towards businesses and their owners.

2. Defendant’s website allows users to post reviews of businesses. Users are able to rank businesses using a star rating of one to five stars with five stars being the highest. Defendant then gives the business an overall star rating based on some of the reviews. Upon information and belief, the overall star rating of some businesses is based on reviews that Defendant has posted. Defendant’s website draws over 25 million people each month who are able to search for and review the public ratings of businesses.¹

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

4. Defendant, however, actually makes money by selling advertisements to businesses located throughout the country. Contrary to the representations Defendant makes to the general public, a business’s reviews are often connected to whether a business advertises with Defendant.

5. Defendant states on its website that advertising allows a business to increase its exposure by the placement of advertisements above Yelp search results and on related business pages. Yelp also states that an advertising subscription allows a business to enhance its business page with a photo slideshow and prevents similar businesses from advertising on the middle of the page. Yelp further states on its website that “[p]aying advertisers can also promote a favorite review at the top of their Yelp page, but can never change or re-order other reviews.” In addition,

¹/ Defendant’s website states that “[a]s of December 2009, more than 26 million people visited Yelp in the past 30 days.”

1 Defendant states that, “Yelp has an automated filter that suppresses a small portion of reviews –it
2 targets those suspicious ones you see on other sites.” Defendant offers businesses advertising
3 subscriptions for amounts ranging from \$300 to \$1,200 per month.

4 6. Defendant maintains that reviews may only be removed from Yelp if: 1) A user
5 removes the review; 2) Yelp removes the review for violating the Terms of Service or Content
6 Guidelines; or 3) “The review may have been suppressed by Yelp's automated software system.
7 This system decides how established a particular reviewer is and whether a review will be shown
8 based on the reviewer's involvement on Yelp. While this may seem unfair to you, this system is
9 designed to protect both consumers and businesses alike from fake reviews (i.e., a malicious
10 review from a competitor or a planted review from an employee). *The process is entirely*
11 *automated to avoid human bias*, and it affects both positive and negative reviews. It’s important to
12 note that these reviews are not deleted (they are always shown on the reviewer’s public profile)
13 and may reappear on your business page in the future” [collectively “**Yelp Review Terms**”]
14 (emphasis added).²

15 7. Upon information and belief, Yelp will manipulate the reviews of businesses
16 nationwide to instill fear in businesses that if they do not purchase advertising, Yelp will
17 manipulate their reviews – in a manner that does not comply with its Review Terms – so that for
18 example: 1) Positive reviews are “removed” or “filtered”; 2) negative reviews are suddenly posted,
19 sometimes, upon information and belief, by Yelp itself or by individuals acting on behalf of Yelp;
20 3) negative reviews are posted by users even though the reviews do not comply with the Yelp
21 Terms and Conditions; 4) a business is unable to designate itself in categories for Yelp users to
22 search; or 5) negative reviews, which were previously filtered, are sometimes revealed or
23 rearranged for reasons unrelated to the automated review filter. Upon information and belief,

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26 ^{2/} Since the filing of this lawsuit, Yelp has permitted website users to see filtered reviews,
27 however, website users must click on a separate link and type in a code to do so. The filtered
28 reviews do not impact the overall star rating that Yelp lists for the business. Thus, upon information
and belief, Yelp can edit the overall star rating a business receives by manually filtering (or un-
filtering) reviews.

1 Yelp's manipulation of reviews – in a manner that does not comply with its own Review Terms –
2 is done strategically, and in conjunction with or under the guise of the automated filter, to induce
3 business owners to pay for advertising with Yelp.

4 8. Upon information and belief, Yelp knows that when a business's overall star rating
5 declines or the business has negative reviews, the business itself suffers, and that therefore a
6 business fears the posting of negative reviews or the removal of positive reviews on its Yelp
7 review page. Yelp intentionally – either implicitly or explicitly – threatens businesses by using
8 this fear to force businesses to agree to pay for advertising on Yelp.

9 9. Due to Yelp's conduct, businesses and/or their owners who fear facing a negative
10 drop in the overall star rating and/or positive reviews of their businesses agree to purchase
11 advertising to avoid Yelp's manipulation of the business's reviews. Those businesses are injured
12 by the loss of money they are forced to pay Yelp in advertising costs.

13 10. Upon information and belief, as a result of Yelp's review manipulations – in a
14 manner that does not comply with its Review Terms – the businesses who decline to purchase
15 advertising have negative reviews, which otherwise would not have been posted on the Yelp
16 review page, attached to their businesses. In addition, positive reviews are also removed to induce
17 a business to advertise. As a result, fewer Yelp users view the business page and fewer existing
18 customers patronize the business, which causes a decrease in the business's revenues. Therefore,
19 the businesses that do not purchase advertising are injured – as a result of Defendant's conduct –
20 by a loss of sales, revenues and/or assets. In addition, due to the posting of negative reviews
21 and/or removal of positive reviews, the business's reputation is injured.

22 11. As a result of Yelp's actions, Plaintiffs bring a claim for a violation of California
23 Business and Professions Code section 17200 for unfair and unlawful conduct by Defendant and
24 for civil extortion and attempted civil extortion.

25 **THE PARTIES**

26 12. Plaintiff Boris Levitt, a resident of San Mateo County, owns and operates a
27 business called Renaissance Furniture Restoration, which is located in San Francisco, California.

1 Web 2.0 user-website interaction.

2 21. "Yelp.com" consists of an online search engine and directory of businesses. Each
3 business listed on Yelp.com has a unique Yelp.com listing page, which provides basic business
4 information and user-generated ratings and reviews. Once a business listing is created, individuals
5 registered on the "Yelp.com" website may rate and review the business.

6 22. To rate and review businesses, internet users simply register on the Yelp.com
7 website. When logged into his or her personal profile, the registered user is able to view reviews
8 he or she has posted even if Yelp has removed them from the public review page for the business.
9 Accordingly, the posting user may not realize that his or her review has been removed by Yelp.

10 23. Any internet user (whether registered or not) can browse Yelp.com to find ratings
11 and reviews of businesses.

12 24. Ratings-based websites, including "Yelp.com," are highly popular and have great
13 power to direct the flow of commerce in a given area. Due to their widespread usage, a business's
14 reputation is often connected to the reviews it receives on a ratings-based website.

15 25. Businesses may not opt out of being listed on the "Yelp.com" website.

16 26. Defendant allows businesses listed on the "Yelp.com" website to register for free
17 "Business Owner Accounts," which provides owners with: 1) the ability to track how many people
18 view their page; 2) the ability to update business information (such as hours of operation); and 3) a
19 limited ability to send messages directly to a reviewer.

20 27. Yelp further offers businesses with Yelp Business Owner Accounts the opportunity
21 to designate the business under certain Yelp search categories. Yelp users can then search for the
22 business under the applicable category.

23 **Yelp Advertising**

24 28. Upon information and belief, the "Yelp.com" website's only stream of revenue is
25 from the sale of advertisements on the "Yelp.com" website and Yelp's sales personnel are paid, in
26 part, through commissions.

27 29. Yelp refers to businesses that purchase advertising as Yelp "Sponsors."
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1 30. The term “Non-Sponsor” as used in this TAC, refers only to those businesses to
2 which Yelp offered paid advertising subscriptions, but which declined to purchase any advertising.

3 31. Non-Sponsors routinely see positive reviews disappear from their Yelp.com listing
4 pages soon after declining to become a Yelp Sponsor.

5 32. Non-Sponsors routinely see an increase in the number of negative reviews on their
6 Yelp.com listing pages soon after declining to become a Yelp Sponsor.

7 33. Sometimes such negative reviews are false. Examples of false reviews are reviews
8 that concern services or goods not offered by the business, or purporting to be from customers or
9 patients who never patronized the business.

10 34. Upon information and belief such false negative reviews are sometimes generated
11 by Yelp personnel or others who act on behalf of Yelp or at Yelp’s direction, or who are
12 compensated in some form by Yelp. Although such false negative reviews violate Yelp’s Terms
13 of Service, Yelp regularly fails and refuses to remove such reviews for Non-Sponsors.

14 35. The decline of their Yelp.com rating and the posting of false negative reviews
15 harms Non-Sponsors. Non-Sponsors frequently see a drop in the number of customers patronizing
16 their businesses, and a decrease in income and profits.

17 36. To coerce businesses to advertise with Yelp, Yelp sales people – either implicitly
18 or explicitly – represent to businesses that Yelp has the power to manipulate Yelp.com business
19 listing pages, and that Yelp will yield that power in favor of the business if it becomes a Yelp
20 Sponsor and against the business if it declines to become a Yelp Sponsor.

21 37. Upon information and belief, approximately 200 Yelp employees or individuals
22 acting on behalf of Yelp have written reviews of businesses on Yelp.

23 38. In fact, in the New York Times Bits Blog, dated May 12, 2008, Jeremy
24 Stoppelman, Yelp’s chief executive officer, admitted that Yelp has paid users to write reviews. At
25 the time of the posting, Mr. Stoppelman wrote, in explaining that Yelp does not pay “for reviews
26 *directly* anymore” that “in any of the 16 cities where we have community managers . . . we do not
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1 pay for reviews. Community managers in active communities are encouraged to review since they
2 are model citizens...”³

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

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

15 41. By manipulating the overall star rating of businesses, Yelp itself provides
16 information and content posted on its website (namely the overall star rating of a business)
17 because the overall star rating of a business does not represent the reviews posted by third-party
18 users. Upon information and belief, Yelp drafts the content of some reviews, either through its
19 employees or through its Yelp Elite members or other agents – with malice to induce businesses to
20 advertise – which also impacts the reviews of businesses.

21 **Plaintiffs’ Experiences with Yelp**

22 **Non-Sponsors**

23 **Boris Levitt**

24 42. Levitt owns a business called Renaissance Furniture Restoration.

25 43. Levitt did not voluntarily list his business on Yelp.com.

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27 ³ Saul Hansell, *Why Yelp Works*, NEW YORK TIMES, May 12, 2008,
28 <http://bits.blogs.nytimes.com/2008/05/12/why-yelp-works/?apage=1>.

1 44. In early 2008, Levitt signed up for a free business account on Yelp.com. After
2 doing so, Levitt's business received several positive reviews and one negative review on
3 Yelp.com. In early May 2009, several of the positive Yelp reviews disappeared from Levitt's
4 business's review page causing the overall star rating of Levitt's business to decline.

5 45. On or about May 13, 2009, Levitt contacted Yelp to inquire about why a positive
6 review of his business had disappeared. Levitt subsequently exchanged several emails with
7 "Kris" from Yelp User support, who indicated that she could not assist him in removing the
8 review, but that she would send his request to the Yelp engineering team to review.

9 46. In July 2009, Levitt was contacted twice by phone by a female Yelp sales
10 representative who wanted Levitt to purchase advertising from Yelp.

11 47. During the second telephone conversation, the sales representative told Levitt that
12 his business was doing very well on Yelp because in July alone his business had 261 Yelp page
13 views, but that Levitt's business would have an even greater number of Yelp page views if Levitt
14 paid Yelp at least \$300.00 a month to advertise. In response, Levitt told the sales representative
15 that he felt that he did not need to advertise on Yelp because there was a high volume of users
16 reviewing his business page, and his business had an overall rating of 4.5 stars. Levitt also asked
17 the sales representative if Yelp could restore the 5-star reviews that had disappeared during last
18 several months.

19 48. At the time Levitt was contacted by the sales representative, he had seven 5-star
20 reviews, one 4-star review, and one 1-star review.

21 49. Two days after Levitt's conversation with Yelp's employees – during which he
22 declined to purchase advertising – six out of the seven 5-star reviews were removed from his
23 business page leaving Levitt with an overall star rating of 3.5 stars. As a result, during the month
24 of August, Levitt's business Yelp page received only 158 page views as opposed to the 261 page
25 views Levitt's business experienced in July of 2009. Levitt's monthly income declined in
26 response.
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1 50. Upon information and belief, Yelp manipulated the reviews of Levitt's business
2 because he did not purchase advertising as a threat and with the intent to instill fear in Levitt that
3 he needed to purchase advertising to avoid a further decrease in the positive reviews posted about
4 his business.

5 51. As a result of Yelp's manipulations, Levitt's page views declined. Due to the
6 decline in the average or overall star rating of his business, the reputation of Levitt's business also
7 suffered as result of Yelp's manipulations.

8 52. To increase his overall star rating, Levitt attempted to contact the user who posted
9 the one-star review. While the user did not respond when Levitt contacted her through Yelp's
10 messaging system, when contacted via Facebook, the user immediately removed the one-star
11 review. Upon information and belief, Yelp blocked Levitt's communications with the user to
12 ensure that he would continue to fear that if he did not advertise, his overall star rating would
13 remain low.

14 53. In addition, in March 2010, Yelp removed Levitt's business from the multiple
15 categories of services he had designated on his business account and restricted him to one
16 category. Upon information and belief, the category restriction was to further induce Levitt to pay
17 Yelp for advertising, and if Levitt had advertised with Yelp, the restriction would have been lifted.

18 54. After Levitt declined to purchase advertising from Yelp, every 5-star review posted
19 on Levitt's Yelp business page was removed within 2-3 days after the Yelp user posted his or her
20 review of Levitt's services. As of the filing of Plaintiff's original Complaint, ten out of eleven of
21 the 5-star reviews had been removed from Levitt's business's Yelp review page. Upon
22 information and belief, Yelp repeatedly removed positive reviews from Levitt's business Yelp
23 review page to instill fear in him that if he did not pay Yelp to advertise, that Yelp would cause his
24 business's overall star rating to remain low.

25 55. As a result of Yelp's conduct, fewer Yelp users viewed Levitt's business's Yelp
26 page and fewer customers patronized his business, which caused a decrease in Levitt's business
27 revenues. Therefore, Levitt was injured – as a result of Defendant's conduct – by a loss of sales,
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1 revenues and/or assets. In addition, due to the posting of negative reviews and/or removal of
2 positive reviews, Levitt's business's reputation was injured.

3 **Plaintiff Cats and Dogs**

4 56. Dr. Perrault is a veterinarian and the owner of Cats and Dogs, which is located in
5 Long Beach, California.

6 57. Dr. Perrault did not voluntarily list his business on Yelp.com.

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

9 59. Concerned about the review's language, possible falsity, and the adverse impact it
10 could have on his business, Dr. Perrault cross-referenced the factual information alleged in the
11 review with his client history.

12 60. Upon finding that the review of Chris R. referenced a visit that occurred over 18
13 months prior to its posting (6 months outside of Yelp's 12-month policy), Javier Vargas, the
14 Hospital Manager at Cats and Dogs, called Yelp on or around September 15, 2009, to request that
15 the review be removed from the Yelp.com website for violating Yelp's review guidelines.

16 61. Yelp subsequently removed the review from the Cats and Dogs Yelp.com listing
17 page.

18 62. A second negative review, from "Kay K.," appeared on the Cats and Dogs
19 Yelp.com listing page within five days of the "Chris R." review's removal. The review read:

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

63. Soon after the appearance of these negative reviews, Dr. Perrault and Mr. Vargas
began receiving frequent, high-pressure calls from Yelp sales representatives, who promised to

1 manipulate Cats and Dogs' Yelp.com listing page in exchange for Cats and Dogs purchasing an
2 advertising subscription.

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

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

16 65. Dr. Perrault declined the offer, saying that he wanted to track referrals from Yelp
17 for three months without ads, but might thereafter be willing to test Yelp's advertising potential.

18 66. Within a week of declining Kevin's advertising offer, the negative review from
19 Chris R. – despite violating the Yelp Terms– suddenly reappeared on the Cats and Dogs Yelp.com
20 listing page.

21 67. Upon information and belief, Yelp posted the review – despite the fact that it
22 violated its own Terms – as a threat to cause Dr. Perrault to fear that if he did not pay Yelp money
23 to advertise, the negative review would remain.

24 68. Soon after, "Kay K." posted a second negative review. This review was added on
25 January 6, 2010, one day after Kevin's sales call:

26 *I've already left one review about how bad a vet Dr. Perrault is, but I wanted to add*
27 *something. I've been reading other people's reviews and I must have gone to a different*
28 *Cats and Dogs Animal Hospital with a vet named Dr. Perrault. Oh wait, no . . . he's the*

1 *only one. Maybe it's a Dr. Jeckyl / Mr. Hyde thing?! I don't know. But the guy's an @\$\$.
2 No other way around it. He's a jerk, a D-Bag, And so arrogant. I ran in to him in a
3 neighborhood store right after he saw my poor sick dog at his clinic and he looked right at
4 me, recognized me, rolled his eyes and looked away!!!! Seriously, someone needs to knock
5 this guy down to the size he really is. He needs to drop his Napoleon complex and be a
6 professional. After my horrible experience with him, I took my sick dog to Bixby Animal
7 Clinic and I have never had a more pleasant vet experience! Go there instead! My dog
8 loved everyone there! Sorry to rant, but I just wanted to get the word out there. Don't
9 spend the money on this overpriced errogent vet. It's not worth it!*

69. Upon information and belief, Yelp re-posted the "Chris R" and two "Kay K" reviews and/or manufactured its own reviews to instill fear in Dr. Perrault to advertise so that he could avoid the negative reviews and tagline.

70. Compare Cats and Dogs' tagline to the tagline (as of January 18, 2010) of Bixby Animal Clinic, a Long Beach veterinary business that is a Yelp Sponsor (and the same company the mysterious Kay K. referred users to in her second Cats and Dogs review):

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

71. As a result of Yelp's conduct, fewer Yelp users viewed the Cats and Dogs Yelp page and fewer customers patronized the business, which caused a decrease in business revenues. Therefore, Cats and Dogs was injured – as a result of Defendant's conduct – by a loss of sales, revenues and/or assets. In addition, due to the posting of negative reviews, Cats and Dogs' business's reputation was injured.

John Mercurio

72. Wheel Techniques is a wheel body shop and is owned by John Mercurio.

73. Mercurio did not voluntarily list his business on Yelp.

74. In or around late 2008 and early 2009, negative reviews started appearing on Wheel Technique's Yelp review page by reviewers who had never visited Wheel Techniques. Specifically, Wheel Techniques had no record of the names of the reviewers having visited the shop, or records of performing the work described in the reviews during or anywhere close to the time referenced in the reviews.

1 75. For example, on March 5, 2009, “Kevin T” posted a one-star review of Wheel
2 Techniques, but Wheel Techniques had no records of “Kevin T’s” name in its system, and could
3 not locate the type of problem he identified, regarding a weld job, on any invoice during or around
4 the time period of “Kevin T’s” review.

5 76. Around the same time, Wheel Techniques also began receiving frequent telephone
6 calls from Yelp requesting that it purchase advertising.

7 77. Upon information and belief, Yelp employees or individuals acting on behalf of
8 Yelp posted some or all of the false reviews on the Wheel Techniques Yelp review page prior to or
9 soon after soliciting Wheel Techniques for advertising as a threat to induce Wheel Techniques to
10 advertise.

11 78. In 2009, Mercurio, perplexed at why Wheel Techniques maintained an overall star
12 rating of 2.5 or 3 stars, called Yelp to inquire about why one of his competitors, known in the
13 industry for its “shotty work,” maintained an overall Yelp star-rating of five stars. In response,
14 Mercurio was told by Yelp that it was because his competitor advertised and that “we work with
15 your reviews if you advertise with us.”

16 79. On or about March 8, 2010, Wheel Techniques was contacted by Yelp to purchase
17 advertising. At the time Wheel Techniques was contacted for advertising, a five-star review was
18 listed at the top of its Yelp review page.

19 80. Wheel Techniques declined to purchase advertising and expressed frustration with
20 what it believed to be an advertising scam. Within minutes, a one-star review was moved to the
21 top of its Yelp review page.

22 81. Upon information and belief, Yelp placed the one-star review at the top of the
23 Wheel Techniques review page as a threat to cause Wheel Techniques to fear that if it did not pay
24 Yelp money to advertise, the negative review would remain at the top of its Yelp review page
25 and/or additional negative reviews would appear, and lower its overall star rating.

26 82. Mercurio was told several times that a former Yelp employee stated that Yelp,
27 upon information and belief, terminated a group of sales employees around the time that this and
28

1 similar lawsuits were filed as a result of scamming related to advertising. Mercurio was also told
2 that the computers of sales employees were, at one point, frozen to prohibit employees from being
3 able to change reviews.

4 83. As a result of Yelp's conduct, fewer customers patronized the business, which
5 caused a decrease in business revenues. Therefore, Wheel Techniques was injured – as a result of
6 Defendant's conduct – by a loss of sales, revenues and/or assets and was recently forced to file for
7 bankruptcy. In addition, due to the posting of negative reviews, Wheel Techniques business's
8 reputation was injured. Wheel Techniques also, upon information and belief, lost large amounts
9 of business from insurance company referrals due to the negative reviews that were, upon
10 information and belief, posted by Yelp and/or the maintenance of a negative overall star rating due
11 to Yelp's manipulative conduct.

12 **SPONSORS**

13 **Dr. Tracy Chan, DDS**

14 84. Dr. Tracy Chan is a licensed dentist. Chan's office, Marina Dental Care, is located
15 in San Francisco, California.

16 85. Chan did not voluntarily list her business on Yelp.com.

17 86. Prior to spring 2008, Chan's business's overall Yelp star rating was approximately
18 4.5 or 5 five stars. There were approximately 30 reviews on Dr. Chan's Yelp review page.

19 87. In or around May or June of 2008, Chan started getting telephone calls from a Yelp
20 representative named Quinn Zimmerman ("Zimmerman"). Zimmerman would call Chan
21 frequently, offering her the opportunity to become a business sponsor. Zimmerman told Chan that
22 if she became a business sponsor (i.e., paid for advertising on Yelp), that Yelp could offer her lots
23 of benefits, such as the opportunity to keep Chan's business ratings high by hiding or burying bad
24 reviews, and by keeping positive reviews at the top of the Marina Dental Care Yelp page and
25 negative reviews at the bottom of the page. Further, Zimmerman indicated that Chan could put
26 pictures on the Yelp page, and track and increase the number of page views per month.

27 88. In addition to the benefits Zimmerman offered Chan, Zimmerman told her that
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1 although many Yelp reviews were manipulated by a computer system, Yelp employees also had
2 the ability to remove reviews from a business's Yelp page. Zimmerman offered Chan advertising
3 for between \$300-\$500 per month.

4 89. In or around August 2, 2008, Chan ultimately declined to purchase Yelp
5 advertising from Zimmerman.

6 90. Within 2 to 3 days of the time in which Chan told Zimmerman that she did not
7 want to purchase advertising from Yelp, Yelp removed nine 5-star reviews from Chan's Yelp
8 review page. As a result, the overall star rating of Marina Dental Care dropped from 5 stars to 3
9 stars.

10 91. After the drop in Marina Dental Care's overall star rating, Chan called Zimmerman
11 to attempt to determine why the drop in the star rating had occurred. Zimmerman told Chan that
12 Yelp "tweaks" the ratings every so often and that he could help her if she signed up for advertising
13 services with Yelp.

14 92. Upon information and belief, Yelp removed positive reviews of Chan's business as
15 a threat to cause Chan to fear that if she did not purchase advertising that her business's overall
16 star rating would stay low. Chan – due to the representations made by Zimmerman and the
17 immediate decline in the reviews of her business – believed that Yelp manipulated Marina Dental
18 Care's reviews to induce her to advertise.

19 93. As a result, and out of fear of further manipulations, Chan felt compelled to sign up
20 for advertising on Yelp so that Yelp would reinstate the positive reviews. Chan feared that if she
21 did not pay for advertising, the posting of negative reviews would continue, and her business
22 would suffer. On August 11, 2008, Dr. Chan signed a one-year contract with Yelp for advertising.
23 Within days of signing the contract, Marina Dental Care's overall star rating increased to 4 stars
24 and various five star reviews were reinstated by Yelp. Upon information and belief, the positive
25 reviews were reinstated not because of Yelp's automated review filter (or because a user re-
26 posted), but because of Chan's purchase of advertising.

1 94. In October 2008, Zimmerman asked Chan to start paying an increased payment of
2 \$500.00 a month to advertise with Yelp. Chan said no, and in response, she noticed that her
3 reviews were again declining.

4 95. In October 2008, Chan – fed up with what she believed to be extortion – decided to
5 cancel her Yelp advertising contract. Following the termination of her contract, Yelp removed
6 positive reviews on the Marina Dental Care Yelp page and replaced them with negative reviews.
7 Upon information and belief, Yelp’s removal of positive reviews was not done pursuant to the
8 Yelp Review Terms, but because Chan decided to terminate her advertising contract. Upon
9 information and belief, Yelp removed the positive reviews to cause Chan to fear that if she did not
10 pay Yelp for advertising, Yelp would continue to remove positive reviews from her business’s
11 Yelp listing.

12 96. In March 2009, after Yelp had – once again – removed several positive reviews,
13 Chan attempted to post a negative review about Yelp’s conduct towards her to the Marina Dental
14 Care Yelp review page. Within two to three days, Yelp removed six positive reviews – all of
15 which were 4 or 5-star ratings – from the Marina Dental Care Yelp page. As a result, the Marina
16 Dental Care overall Yelp star rating fell to 3 stars. Upon information and belief, Yelp’s removal
17 of the positive reviews was not done pursuant to the Yelp Review Terms, but to induce Chan to
18 pay for advertising and/or to retaliate against her to discourage her from posting negative
19 information about Yelp.

20 97. In May 2010, Chan posted a negative review about Yelp to her own website.
21 Within two days, Yelp removed six positive reviews from the Marina Dental Care Yelp page
22 dropping the overall star review of Chan’s business from 4 stars to 3.5 stars.

23 98. That same month, Chan wrote a letter to Yelp, which described her experiences. In
24 response, Yelp removed additional positive ratings from the Marina Dental Care Yelp page and
25 the Marina Dental Care overall star rating fell to 2.5 stars. Upon information and belief, Yelp’s
26 removal of the positive reviews was not done pursuant to the Yelp Review Terms, but to induce
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1 Chan to pay for advertising and/or to discourage her from posting negative information about
2 Yelp.

3 99. Thereafter Chan called Yelp's New York office to inquire about Yelp's automated
4 review system and spoke with "Paul." Paul stated that the review process was all automated, but
5 when pressed, Paul admitted to Chan that Yelp manually adds and removes reviews based on its
6 own discretion. He also admitted that Yelp's primary revenue stream is from Sponsors.

7 100. As of spring 2010, Yelp had filtered 77 reviews of Chan's office, 75 of which were
8 positive reviews, meaning that the positive reviews were not factored into Chan's office's overall
9 star rating on Yelp. Upon information and belief, the filtering was not done by entirely by the
10 automated filter, but primarily by Yelp as an attempt to threaten Chan so that she would pay for
11 advertising with Yelp.

12 101. As a result of Yelp's manipulation of the Marina Dental Care reviews, Chan lost
13 money in advertising costs she paid to Yelp to avoid Yelp's manipulation of the reviews of her
14 business in a manner that did not comply with the Yelp Review Terms. Chan also experienced a
15 decline in new patients that corresponded almost directly to the decline in Yelp star ratings.

16 102. In addition and as a result of Yelp's conduct, fewer Yelp users viewed Chan's
17 business's Yelp page and fewer patients patronized her business, which caused a decrease in
18 Chan's business revenues. Therefore, Chan was injured – as a result of Defendant's conduct – by
19 a loss of sales, revenues and/or assets. In addition, due to the posting of negative reviews and/or
20 removal of positive reviews, Chan's business's reputation was injured.

21 **Other Businesses and Persons' Experiences with Yelp**

22 103. Upon information and belief, Defendant manipulated the reviews for hundreds or
23 thousands of other businesses before and/or after a Yelp customer service representative spoke to a
24 person or business about advertising on Yelp. Upon information and belief, Defendant
25 manipulated the reviews, under the guise of or in conjunction with its automated filter, to cause
26 fear in businesses or persons that if they did not purchase advertising, Yelp would cause negative
27 reviews to appear or positive reviews to disappear, which would, in turn, decrease the overall star
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1 rating of the business or person and cause it to incur a decrease in sales, assets, profits, and/or
 2 revenues, harm to the business's or person's reputation, and a loss in advertising costs.⁴
 3 Defendant's conduct impacted businesses and persons located nationwide and therefore impacted
 4 interstate commerce.

CLASS ACTION ALLEGATIONS

6 104. Plaintiffs bring this action on behalf of themselves and all others similarly situated,
 7 pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3).

8 105. The subclasses that Plaintiffs seek to represent are defined as follows:

- 9 **a) Non Sponsors:** All similarly situated businesses and persons nationwide who were in
 10 contact with Yelp regarding the option to advertise on Yelp, declined to purchase
 11 advertising, and as a result of not purchasing advertising, were subject to the
 12 manipulation of the reviews of their businesses by Yelp – in a manner that did not
 13 comply with Yelp's representations regarding its Review Terms⁵ – during the four
 14 years prior to the commencement of this lawsuit, through the final resolution of this
 15 lawsuit.
- 16 **b) Sponsors:** All similarly situated businesses and persons nationwide who were in
 17 contact with Yelp regarding the option to advertise on Yelp, whose reviews were
 18 manipulated by Yelp in a manner that did not comply with Yelp's representations

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 20 ^{4/} Many stories have been published that describe similar allegations relating to Yelp's
 21 conduct. *See e.g. Yelp and the Business of Extortion 2.0*, available at
 22 <http://www.eastbayexpress.com/eastbay/yelp-and-the-business-of-extortion-20/Content?oid=1176635>; *see also* <http://www.yelp.com/biz/yelp-san-francisco>.

23 ⁵ For purposes of both subclass definitions, Review Terms means, as set forth in the
 24 complaint, Yelp's public representation that reviews may only be removed from Yelp if: 1) A user
 25 removes the review; 2) Yelp removes the review for violating the Terms of Service or Content
 26 Guidelines; or 3) "The review may have been suppressed by Yelp's automated software system.
 27 This system decides how established a particular reviewer is and whether a review will be shown
 28 based on the reviewer's involvement on Yelp. While this may seem unfair to you, this system is
 designed to protect both consumers and businesses alike from fake reviews (i.e., a malicious review
 from a competitor or a planted review from an employee). The process is entirely automated to
 avoid human bias, and it affects both positive and negative reviews. It's important to note that these
 reviews are not deleted (they are always shown on the reviewer's public profile) and may reappear
 on your business page in the future."

1 regarding its Review Terms and who thereafter purchased advertising during the four
2 years prior to the commencement of this lawsuit, through the final resolution of this
3 lawsuit (“**Sponsors**”).

4 106. This action has been brought and may be properly maintained as a class action
5 under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3).

6 107. Defendant has acted or refused to act on grounds that apply generally to the Class,
7 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class
8 as a whole.

9 108. Numerosity: The Class is so numerous and geographically dispersed that joinder of
10 all Class members is impracticable. Upon information and belief, there are hundreds, if not
11 thousands, of similarly situated businesses and persons nationwide.

12 109. Commonality: This action presents questions of law and fact common to the
13 members of the Class which predominate over questions affecting individual members of the
14 Class. Such questions of law or fact include, but are not limited to:

- 15 a) Whether Defendant unlawfully committed extortion, and/or attempted
16 extortion, as a predicate for a violation of California Business &
17 Professions Code § 17200 *et seq.*;
- 18 b) Whether Defendant unfairly manipulated the reviews of businesses of
19 Plaintiffs and the Class to encourage them to advertise in violation of
20 California Business & Professions Code § 17200 *et seq.*;
- 21 c) Whether Defendant is liable for civil extortion to Plaintiffs and the
22 Class; and
- 23 d) Whether Defendant is liable for attempted civil extortion to Plaintiffs
24 and the Class.

25 110. Typicality: Plaintiffs’ claims are typical of the claims of the Class, and Plaintiffs
26 have no interests that are adverse or antagonistic to the interests of the other members of the Class.
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1 fear in businesses and/or their owners that if they did not pay Yelp for advertising, Yelp would
2 manipulate the reviews of their business in a way that would cause them financial harm and harm
3 to their business' reputations.

4 118. As a result, Defendant unlawfully attempted to and/or did in fact commit extortion,
5 as set forth in California Penal Code sections 518, 519, 523, 524, the Hobbs Act, civil extortion
6 and civil attempted extortion by intentionally and unlawfully using fear (the removal of positive
7 reviews and/or the addition or manipulation of negative reviews by implicit or explicit threats to
8 cause injury to Class members' businesses) to induce the Class members to consent to pay
9 Defendant for advertising.

10 119. Defendant's conduct is unfair and harms competition by favoring businesses that
11 submit to Yelp's manipulative conduct and purchase advertising to the detriment of competing
12 businesses that decline to purchase advertising and have their reviews negatively manipulated by
13 Yelp.

14 120. Defendant's conduct further constitutes unfair competition because the harm
15 caused by Defendant's manipulation of Class members' reviews to class members, including
16 damage caused to their sales, revenues and/or assets and business reputations, greatly outweighs
17 any benefit to Defendant in advertising sales. Any reason, justification and/or motive for Yelp's
18 manipulations of Class members' reviews does not justify the substantial financial and
19 reputational harm businesses have suffered.

20 121. In addition, the harm to class members caused by Defendant's conduct, which
21 includes threats, retaliation, extortion and/or attempted extortion, is substantially injurious to
22 consumer class members, and constitutes unfair competition. Class members have lost sales,
23 profits, revenues, assets, advertising payments, and their business reputations have been harmed
24 due to Defendant's conduct. Defendant's actions have devastated businesses that are struggling to
25 survive in today's economy.

26 122. Defendant's conduct towards Class members – most of whom did not choose to be
27 on Yelp in the first place – is also immoral and unethical.

1 123. Both Plaintiffs and the Class have been deprived of money, either in the form of
2 lost business revenues and/or assets or in payments made to Defendant for advertising, as a result
3 of Defendant's wrongful conduct and unlawful acts and practices. Plaintiffs and the Class
4 members, therefore, have sustained injury in fact.

5 124. As a result, Sponsor Class members were injured in the form of advertising
6 payments they made to Defendants, and are entitled to restitution.

7 125. Sponsor Class members are entitled to equitable and injunctive relief in the form of
8 restitution and disgorgement of all earnings, profits, compensation and benefits Defendants
9 obtained as a result of such unfair and unlawful business practices. Defendant has been unjustly
10 enriched by receiving substantial monies and profits from advertising payments made by Plaintiffs
11 and the Class to avoid negative manipulations of their reviews.

12 126. For Non-Sponsor Class members, Defendants took a direct ineffectual step towards
13 committing extortion by attempting to make the Class members fear that if they did not purchase
14 advertising, their overall star rating and/or public reviews would decline.

15 127. Non-Sponsor Class members were injured by Defendant's conduct by the harm
16 caused to the reputations of their businesses, a decline in their business assets and profits, and
17 goodwill. As such, they are entitled to injunctive relief.

18 128. Plaintiffs and members of the Class seek a court order requiring Defendant to
19 immediately cease such violations of consumer protection and unfair competition statutes and
20 enjoining Defendant from continuing to conduct business via the unlawful or unfair business acts
21 and practices complained of herein.

22 129. Plaintiffs additionally request an order requiring Defendant to disgorge its ill-gotten
23 gains as described above and awarding Sponsor Class Members full restitution of all monies
24 wrongfully acquired by Defendant by means of such unlawful business practices and acts of unfair
25 competition, plus interest and attorney fees so as to restore any and all monies to Plaintiffs and the
26 Class that were acquired and obtained by means of such unfair and unlawful business practices.

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1 145. Non-Sponsor Class members were injured by Defendant’s conduct by the harm
2 caused to the reputations of their businesses, a decline in their business assets and profits, and
3 goodwill, and are entitled to damages in an amount to be proven at trial.

4 146. The acts of Defendant were so outrageous, willful, wanton and in reckless
5 disregard to Non-Sponsors as to entitle Non-Sponsors to punitive damages in an amount to be
6 proven at trial.

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PRAYER FOR RELIEF

WHEREFORE, as a result of the foregoing, Plaintiffs pray for relief as follows:

- 1. Declaring this action to be a proper class action maintainable under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), certifying appropriate subclasses and certifying Plaintiffs as Class Representatives;
- 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 restitution, as appropriate;
- 5. Awarding pre- and post-judgment interest;
- 6. Awarding damages in an amount to be proven at trial;
- 7. Awarding punitive damages in an amount to be proven at trial;
- 8. Awarding Plaintiffs all costs and expenses, including attorneys’ fees, fees permitted under California Code Civil Procedure section 1021 *et seq.*; and
- 9. Granting such other and further relief as this Court may deem necessary, proper, and/or appropriate.

DATED: May 23, 2011

ONGARO BURTT & LOUDERBACK LLP

By: /s/ David R. Ongaro
David R. Ongaro
Attorneys for Plaintiff Boris Y. Levitt *et al.*