

FILED  
Superior Court of California  
County of Los Angeles

JAN 25 2013

John A. Clarke, Executive Officer/Clerk  
By h. J. Day Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

JAMES DEMETRIADES,

Plaintiff,

vs.

YELP, INC.,

Defendant.

) Case No.: BC484055

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[REDACTED]

RULINGS/ORDERS

Defendant's Special Motions to Strike are GRANTED.

Defendant's Demurrers are OFF CALENDAR.

I.

INTRODUCTION

James Demetriades ("Plaintiff") commenced action against  
Yelp, Inc. ("Defendant"). Plaintiff's First Amended Complaint  
(FAC) alleges causes of action for: (1) untrue or misleading

1 advertising (Bus. & Prof. C. §§17500, et seq.); and (2) unfair  
2 business practices (Bus. & Prof. C. §§17200, et seq.) Plaintiff  
3 alleges that Defendant falsely represents the efficacy and  
4 ability of its system for filtering comments and reviews.

5 Defendant filed two special motions to strike. After the  
6 filing of the first motion, Plaintiff filed a FAC. The second  
7 motion is therefore addressed to the FAC. Defendant argues that  
8 the complaints should be stricken because they target speech  
9 concerning matters of public interest and speech protected by  
10 the First Amendment. Defendant then argues that Plaintiff will  
11 not be able to establish a likelihood of prevailing on the  
12 merits because Plaintiff lacks standing, because the claims are  
13 barred by the Communications Decency Act, and because the  
14 alleged misrepresentations are mere puffery that could not have  
15 deceived a reasonable consumer.  
16

17 In Opposition, Plaintiff argues that Defendant fails to  
18 comprehend that this lawsuit is concerned with  
19 misrepresentations Yelp made regarding its filter and not the  
20 comments that were posted on Yelp concerning Plaintiff's  
21 restaurants. Plaintiff then argues that the conduct at issue  
22 does not arise from a protected activity because the FAC falls  
23 within the commercial speech exception and the public interest  
24 exception. Plaintiff next argues that it can establish a  
25 probability of prevailing on the merits. Plaintiff states that

1 he has standing because he is the sole owner of the LLC that  
2 owns the restaurants and paid for the advertising. Plaintiff  
3 further argues that the CDA does not apply because the  
4 statements at issue are not third party statements posted on  
5 Defendant's website. Finally, Plaintiff argues that the  
6 statements are not mere puffery but instead are statements of  
7 fact, and that, even if they are opinions, they are still  
8 actionable because Defendant held itself out as an expert  
9 regarding the filtering process.  
10

11 In Reply, Defendant argues that the commercial speech  
12 exception does not apply because the statements were not  
13 statements of fact, because Defendant's primary business is not  
14 selling advertising, and because the misrepresentations did not  
15 relate to the advertising. Defendant next argues that the  
16 public interest exception does not apply because Plaintiff  
17 clearly did not file this lawsuit solely for the public  
18 interest. Defendant further argues that Plaintiff lacks  
19 standing because the injury was to the LLC, not to him.  
20 Defendant further argues that the claims will also fail because  
21 they are protected by the CDA and because the statements are not  
22 actionable.  
23

24 //

25 //

26 //

1 II.

2 DISCUSSION

3 A. Generally

4 In a motion to strike under CCP §425.16, the court engages  
5 in a two-part analysis: (1) the court decides whether defendant  
6 has made a threshold showing that the challenged cause of action  
7 arises from a protected activity; and (2) if such a showing has  
8 been made, the burden then shifts to plaintiff to demonstrate a  
9 probability of prevailing on the merits of his or her claims.

10 Equilon Enterprises, LLC v. Consumer Cause, Inc. (2002) 29

11 Cal.4th 53. The purpose of this statute is to respond to  
12 lawsuits that chill citizens from exercising their political  
13 rights to free speech and activities.

14 B. Arising From Prong

15 A defendant has the initial burdening of showing a cause of  
16 action arises from a protected activity. CCP §425.16(e)<sup>1</sup>.

17 Martinez v. Metabolife Inter. Ins. (2003) 113 Cal.App.4th 181,

18  
19  
20 <sup>1</sup> Section 425.16(e) provides:

21 (e) As used in this section, "act in furtherance of a person's right of  
22 petition or free speech under the United States or California Constitution in  
23 connection with a public issue" includes: (1) any written or oral statement  
24 or writing made before a legislative, executive, or judicial proceeding, or  
25 any other official proceeding authorized by law, (2) any written or oral  
statement or writing made in connection with an issue under consideration or  
review by a legislative, executive, or judicial body, or any other official  
proceeding authorized by law, (3) any written or oral statement or writing  
made in a place open to the public or a public forum in connection with an  
issue of public interest, or (4) any other conduct in furtherance of the  
exercise of the constitutional right of petition or the constitutional right  
of free speech in connection with a public issue or an issue of public  
interest.

1 186; Fox Searchlight Pictures Inc. v. Paladino (2001) 89  
2 Cal.App.4th 294, 304. Specifically, courts decide whether  
3 moving parties have made a prima facie showing that the attacked  
4 claims arise from a protected activity, including defendants'  
5 right of petition, or free speech, under a constitution, in  
6 connection with issues of public interest. Soukup v. Law  
7 Offices of Herbert Hafif (2006) 39 Cal.4th 260, 278; Paulus v.  
8 Bob Lynch Ford, Inc. (2006) 139 Cal.App.4th 659, 671; Equilon  
9 Ent., supra, 29 Cal.4th at 67; Gov. Gray Davis Committee v.  
10 Amer. Taxpayers Alliance (2002) 102 Cal.App.4th 449, 458-59;  
11 Weil & Brown, Cal. Prac. Guide: Civ. Pro Before Trial (The  
12 Rutter Group 2006) ¶7:244.1; CCP §425.16(e).

14 In determining whether the burden has been satisfied, "the  
15 court shall consider the pleadings, and supporting and opposing  
16 affidavits stating the facts upon which the liability or defense  
17 is based." Brill Media Co., LLC v. TCW Group, Inc. (2005) 132  
18 Cal.App.4th 324, 329. Moving parties can satisfy their burden  
19 by showing (1) statements made before legislative, executive or  
20 judicial proceedings, or made in connection with matters being  
21 considered in such proceedings, or (2) statements made in a  
22 public forum, or other conduct in furtherance of the exercise of  
23 the constitutional rights of petition or free speech, in  
24 connection with issues of public interest. CCP §425.16(e);  
25 Equilon Ent., supra, 29 Cal.4th at 66. The motion must be

1 supported by declarations stating facts upon which the liability  
2 or defense is based. CCP §425.16(b).

3 Defendant met its initial burden in establishing that the  
4 alleged statements and alleged misrepresentations arise from a  
5 protected activity. Statements regarding the filtering of  
6 reviews on a social media site such as yelp.com are matters of  
7 public interest and are therefore protected. A public interest  
8 involves more than mere curiosity, a broad and amorphous  
9 interest, or private information communicated to a large number  
10 of people, and instead concerns a substantial number of people,  
11 some closeness between the statements and the public interest,  
12 and a focus upon the communications as being the interest and  
13 not upon a private controversy. McGarry v. Univ. Of San Diego  
14 (2007) 154 Cal.App.4th 97, 110. "Consumer information ..., at  
15 least when it affects a large number of persons, also generally  
16 is viewed as information concerning a matter of public  
17 interest." Wilbanks v. Wolk (2004) 121 Cal.App.4th 883, 898.  
18 The statements were also made in a public forum. Barrett v.  
19 Rosenthal (2006) 40 Cal.4th 33, 41 n.4 ("Web sites accessible to  
20 the public ... are 'public forums' for purposes of the anti-  
21 SLAPP statute.")

22  
23 Plaintiff's opposition does not discuss whether the alleged  
24 statements qualify as protected speech concerning a matter of  
25 public interest pursuant to CCP §425.16. Instead, Plaintiff

1 argues that the protections of the anti-SLAPP statute do not  
2 apply because of the commercial speech exception and public  
3 interest exception found in CCP §425.17. "The burden of proof  
4 as to the applicability of the commercial speech exemption,  
5 therefore, falls on the party seeking the benefit of it-i.e.,  
6 the plaintiff." Simpson Strong-Tie Company, Inc. v. Gore (2010)  
7 49 Cal.4th 12, 26.

8  
9 The commercial speech exception in CCP §425.17(c) provides:

10 Section 425.16 does not apply to any cause of action  
11 brought against a person primarily engaged in the  
12 business of selling or leasing goods or services,  
13 including, but not limited to, insurance, securities,  
or financial instruments, arising from any statement  
or conduct by that person if both of the following  
conditions exist:

14 (1) The statement or conduct consists of  
15 representations of fact about that person's or a  
16 business competitor's business operations, goods, or  
17 services, that is made for the purpose of obtaining  
18 approval for, promoting, or securing sales or leases  
of, or commercial transactions in, the person's goods  
or services, or the statement or conduct was made in  
the course of delivering the person's goods or  
services.

19 (2) The intended audience is an actual or potential  
20 buyer or customer, or a person likely to repeat the  
21 statement to, or otherwise influence, an actual or  
22 potential buyer or customer, or the statement or  
23 conduct arose out of or within the context of a  
24 regulatory approval process, proceeding, or  
25 investigation, except where the statement or conduct  
was made by a telephone corporation in the course of a  
proceeding before the California Public Utilities  
Commission and is the subject of a lawsuit brought by  
a competitor, notwithstanding that the conduct or  
statement concerns an important public issue.

1 "Code of Civil Procedure section 425.17, subdivision (c), simply  
2 does not provide... that every case arising from statements  
3 uttered by a commercial enterprise are exempted from the anti-  
4 SLAPP statute's purview." Mendoza v. ADP Screening and  
5 Selection Services, Inc. (2010) 182 Cal.App.4th 1644, 1652.

6 As recently stated by the Court of Appeals, the commercial  
7 special exception requires establishing all of the following  
8 elements:  
9

10 Section 425.17, subdivision (c) exempts a cause of  
11 action arising from commercial speech from the anti-  
12 SLAPP law when '(1) the cause of action is against a  
13 person primarily engaged in the business of selling or  
14 leasing goods or services; (2) the cause of action  
15 arises from a statement or conduct by that person  
16 consisting of representations of fact about that  
17 person's or a business competitor's business  
18 operations, goods, or services; (3) the statement or  
19 conduct was made either for the purpose of obtaining  
20 approval for, promoting, or securing sales or leases  
of, or commercial transactions in, the person's goods  
or services or in the course of delivering the  
person's goods or services; and (4) the intended  
audience for the statement or conduct meets the  
definition set forth in section 425.17[, subdivision]  
(c)(2) [i.e., an actual or potential buyer or  
customer, or a person likely to repeat the statement  
to, or otherwise influence, an actual or potential  
buyer or customer].'

21 Hawran v. Hixson (2012) 209 Cal.App.4th 256, 270, citing Simpson  
22 Strong-Tie, supra, 49 Cal.4th at 30. "The commercial speech  
23 exemption, like the public interest exemption, 'is a statutory  
24 exception to section 425.16' and 'should be narrowly  
25 construed.'" Simpson Strong-Tie, supra, 49 Cal.4th at 22.



1 Plaintiff failed to show that the commercial speech  
2 exception applies. Even if Plaintiff has met its burden to  
3 establish that Defendant is primarily engaged in the business of  
4 selling advertising, Plaintiff failed to show that the alleged  
5 misrepresentations arise from a statement of fact about that  
6 business's operations, goods, or services. First, the alleged  
7 misrepresentations concern the filtering process for reviews and  
8 do not relate to the selling of advertising. Second, Plaintiff  
9 failed to show that the alleged misrepresentations are  
10 statements of fact instead of opinions and puffery. A review of  
11 the statements<sup>2</sup> shows that these are typical representations made  
12 by a business about its product and are not actionable  
13 representations of fact. Each statement includes subjective  
14 language ("most trusted", "remarkable filtering process", "most  
15 trustworthy", "most established sources", "less trustworthy",  
16 "rest assured", "most unbiased and accurate information you will  
17 be able to find", "always working to do as good a job as  
18 possible"). These statements cannot be considered statements of  
19 fact sufficient to invoke the commercial speech exception  
20 because they are simply not misrepresentations of fact.  
21

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22  
23  
24 <sup>2</sup> The five alleged misrepresentations are discussed in the Opposition at 6:12

25 - 7:14.

1 Plaintiff also argues that the public interest exception of  
2 CCP §425.17(b) applies. That section states:

3 Section 425.16 does not apply to any action brought solely in  
4 the public interest or on behalf of the general public if all of  
5 the following conditions exist:

6 (1) The plaintiff does not seek any relief greater  
7 than or different from the relief sought for the  
8 general public or a class of which the plaintiff is a  
9 member. A claim for attorney's fees, costs, or  
penalties does not constitute greater or different  
relief for purposes of this subdivision.

10 (2) The action, if successful, would enforce an  
11 important right affecting the public interest, and  
12 would confer a significant benefit, whether pecuniary  
or nonpecuniary, on the general public or a large  
class of persons.

13 (3) Private enforcement is necessary and places a  
14 disproportionate financial burden on the plaintiff in  
15 relation to the plaintiff's stake in the matter.

16 "Section 425.17(b)'s exception applies only to actions brought  
17 'solely in the public interest or on behalf of the general  
18 public.' Use of the term 'solely' expressly conveys the  
19 legislative intent that section 425.17(b) not apply to an action  
20 that seeks a more narrow advantage for a particular plaintiff.  
21 Such an action would not be brought 'solely' in the public's  
22 interest. The statutory language of 425.17(b) is unambiguous  
23 and bars a litigant seeking 'any' personal relief from relying  
24 on the section 425.17(b) exception." Club Members For An Honest  
25 Election v. Sierra Club (2008) 45 Cal.4th 309, 316-17. "Suits

1 motivated by personal gain are not exempted from the anti-SLAPP  
2 motion." Blanchard v. DIRECTV, Inc. (2004) 123 Cal.App.4th 903,  
3 916.

4 Plaintiff failed to show that the public interest exception  
5 applies because this action is not brought solely in the public  
6 interest. Plaintiff's own opposition establishes his intense  
7 personal interest in this case because Plaintiff's claims were  
8 spurred in part by negative reviews posted by an anonymous user  
9 and the filtering of allegedly proper reviews. Plaintiff  
10 repeatedly states that he has a significant financial interest  
11 in these same restaurants whose reviews have been negatively  
12 affected by Yelp's filter. Indeed, Plaintiff seeks an  
13 injunction enjoining defendants from "filtering reviews of Users  
14 of the Yelp website while falsely advertising to the public that  
15 the unfiltered reviews posted on the Yelp website are fair,  
16 trustworthy or unbiased." FAC prayer, ¶2b. This prayer shows  
17 that Plaintiff's claims are not based solely on the public  
18 interest because Plaintiff himself has shown that he has an  
19 intensely personal and financial interest in the review  
20 filtering process and its resultant reviews for his own  
21 restaurants. Therefore, the public interest exception does not  
22 apply.  
23

24 As such, for the above reasons, Defendant met its initial  
25 burden in establishing that the protection of CCP §425.16 apply.

1 C. Probability of Success on the Merits

2 If moving parties successfully have shifted the burden,  
3 then opposing parties must demonstrate a probability of  
4 prevailing on the merits of the complaint. Equilon Ent., supra,  
5 29 Cal.4th at 67; Matson v. Dvorak (1995) 40 Cal.App.4th 539,  
6 548; §425.16(b)(1). To establish such a probability, a  
7 plaintiff must demonstrate that the complaint is both legally  
8 sufficient and supported by a prima facie showing of facts,  
9 which, if credited by the trier of fact, is sufficient to  
10 sustain a favorable judgment. Morrow v. Los Angeles Unified  
11 School Dist. (2007) 149 Cal.App.4th 1424, 1435; Navellier v.  
12 Sletten (2002) 29 Cal.4th 82, 88; Gilbert v. Sykes (2007) 147  
13 Cal.App.4th 13, 31 (complaint must not be vulnerable to a  
14 successful demurrer). Hence, the evaluation includes reviews of  
15 the pleadings and moving and opposing declarations. Equilon  
16 Ent., supra, 29 Cal.4th at 67; CCP §425.16(b)(2). "The prima  
17 facie showing of merit must be made with evidence that is  
18 admissible at trial." Salma v. Capon (2008) 161 Cal.App.4th  
19 1275, 1289.  
20

21 "[A]n action may not be dismissed under this statute if the  
22 plaintiff has presented admissible evidence that, if believed by  
23 the trier of fact, would support a cause of action against the  
24 defendant." Taus v. Loftus (2007) 40 Cal.4th 683, 729. "The  
25 plaintiff need only establish that his or her claim has 'minimal  
26  
27  
28  
29  
30

1 merit'...to avoid being stricken as a SLAPP." Soukup v. Law  
2 Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291. Further, a  
3 plaintiff need not address all alleged theories in order to show  
4 that a cause of action has some merit. A.F. Brown Electrical  
5 Contractor, Inc. v. Rhino Elec. Supply, Inc. (2006) 137  
6 Cal.App.4th 1118, 1124. The opposing parties' burden as to an  
7 anti-SLAPP motion is like that of a party opposing a motion for  
8 summary judgment. See, e.g., DaimlerChrysler Motors Co. v. Lew  
9 Williams, Inc. (2006) 142 Cal.App.4th 344, 352. Additionally,  
10 whether complainants have satisfied their burden is a question  
11 of law. Wilson v. Parker, Covert & Chidester (2002) 28 Cal.4th  
12 811, 821.

14 Plaintiff failed to show that he has a probability of  
15 prevailing on the merits because Plaintiff has failed to show  
16 that he has standing and because the alleged misrepresentations  
17 that form the basis for his claims under the unfair business  
18 practices and unfair advertising statutes are opinions and  
19 puffery. The elements of a cause of action for false  
20 advertising are: (1) defendant intended to dispose of real or  
21 personal property or perform services; and (a) defendant  
22 publicly disseminated advertising containing an untrue or  
23 misleading statement; (b) defendant knew, or should have known,  
24 it was untrue or misleading; and (c) it concerned the real or  
25 personal property or services or their disposition or

1 performance; or defendant publicly disseminated advertising with  
2 the intent not to sell the property or services at the price  
3 stated or as advertised. Bus. & Prof. C. §17500; William L.  
4 Stern, Bus. & Prof. C. §17200 Practice (The Rutter Group 2006)  
5 ¶4:3. The elements of a cause of action for unfair business  
6 practices are: (1) a business practice; (2) that is unfair,  
7 unlawful or fraudulent; and (3) authorized remedy. Bus. & Prof.  
8 Code §17200; Paulus v. Bob Lynch Ford, Inc. (2006) 139  
9 Cal.App.4th 659, 676; Cruz v. PacificCare Health Systems, Inc.  
10 (2003) 30 Cal.4th 303, 317 (damages cannot be recovered, but  
11 instead injunctive relief and restitution compelling defendant  
12 to return money); William L. Stern, Bus. & Prof. C. §17200  
13 Practice (The Rutter Group 2005) ¶7:116 et seq.; 5 Witkin,  
14 California Pro. (4th ed. 1997) Pleading, §§735. See also  
15 Consumer Advocates v. Echostar Satellite Corp. (2003) 113  
16 Cal.App.4th 1351, 1362 (to be actionable unfair business  
17 practices, representations must be likely to deceive a  
18 reasonable consumer, and not akin to puffing).

19  
20 "Proposition 64, which amended Business and Professions  
21 Code section 17204 to provide that a private individual has  
22 standing to assert a claim under the UCL only if he or she 'has  
23 suffered injury in fact and has lost money or property as a  
24 result of such unfair competition.'" Buckland v. Threshold  
25 Enterprises, Ltd. (2007) 155 Cal.App.4th 798, 812. "Proposition

1 64 amended the unfair competition law to provide that a private  
2 plaintiff may bring a representative action under this law only  
3 if the plaintiff has 'suffered injury in fact and has lost money  
4 or property as a result of such unfair competition...' Arias v.  
5 Superior Court (2009) 46 Cal. 4th 969, 978. Under the UCL, an  
6 "'injury in fact' [is a]...'distinct and palpable injury' suffered  
7 'as a result of the defendant's actions.' Alternatively,...another  
8 definition of 'injury in fact' [is] as 'an invasion of a legally  
9 protected interest which is (a) concrete and particularized; and  
10 (b) 'actual or imminent, not conjectural or hypothetical."  
11 Peterson v. Cellco Partnership (2008) 164 Cal.App.4th 1583,  
12 1590. See also Hall v. Time Inc. (2008) 158 Cal.App.4th 847,  
13 854-55 ("[A] plaintiff suffers an injury in fact for purposes of  
14 standing under the UCL when he or she has: (1) expended money  
15 due to the defendant's acts of unfair competition; (2) lost  
16 money or property; or (3) been denied money to which he or she  
17 has a cognizable claim.") [citations omitted].  
18

19 Similarly, Plaintiff must also allege that she has lost  
20 money or property as a result of such unfair competition. As  
21 stated recently by the Supreme Court:

22 There are innumerable ways in which economic injury  
23 from unfair competition may be shown. A plaintiff may  
24 (1) surrender in a transaction more, or acquire in a  
25 transaction less, than he or she otherwise would have;  
26 (2) have a present or future property interest  
27 diminished; (3) be deprived of money or property to  
28 which he or she has a cognizable claim; or (4) be

1 required to enter into a transaction, costing money or  
2 property, that would otherwise have been unnecessary.  
3 Kwikset Corp. v. Superior Court (2011) 51 Cal.4th 310, 323.

4 "Every action must be prosecuted in the name of the real  
5 party in interest, except as otherwise provided by statute."

6 CCP §367. Plaintiff filed this lawsuit in his own name.

7 However, as established in Plaintiff's own opposition, the costs  
8 incurred in advertising with Defendant were incurred by

9 Multiversal, LLC, which owns Rafters and Red Lantern, the two  
10 restaurants in question. Plaintiff attempts to argue that,

11 because he is the sole owner of Multiversal, LLC, he has  
12 sufficient standing because he lost money because the LLC lost

13 money. However, Plaintiff's argument essentially seeks to

14 ignore the separate corporate identity of the LLC. "'A limited

15 liability company is a hybrid business entity formed under the

16 Corporations Code and consisting of at least two 'members'

17 [citation] who own membership interests [citation]. The company

18 has a legal existence separate from its members. Its form

19 provides members with limited liability to the same extent

20 enjoyed by corporate shareholders [citation], but permits the

21 members to actively participate in the management and control of

22 the company [citation]." PacLink Communications Intern., Inc.

23 v. Superior Court (2001) 90 Cal.App.4th 958, 963, citing 9

24 Witkin, Summary of Cal. Law (2001 supp.) Corporations, §43A, p.

25 346. "[T]he principles of derivative lawsuits applicable to



1 corporations likewise apply to a limited liability company."  
2 PacLink Communications Intern., Inc., supra, 90 Cal.App.4th at  
3 963. See also California Corporations C. §17300.

4 "Ignoring a corporation's separate existence is a rare  
5 occurrence, particularly where it is the shareholders who seek  
6 to pierce its veil, and the courts will do so only 'to prevent a  
7 grave injustice. [Citations.]'" Seretti v. Superior Nat. Ins.  
8 Co. (1999) 71 Cal.App.4th 920, 931. "Individuals are free to  
9 operate their business in their own names and accept all its  
10 debts and liabilities as their own. Having elected to avail  
11 themselves of the benefits of the corporate structure.. they  
12 cannot be heard to complain of their inability to take personal  
13 advantage of a right belonging to the corporation alone." Id.  
14 "[T]he individual shareholder may not bring an action for  
15 indirect personal losses (i.e., decrease in stock value)  
16 sustained as a result of the overall harm to the entity." Bader  
17 v. Anderson (2009) 179 Cal.App.4th 775, 788. This prohibition  
18 also extends to claims for damages resulting from lost corporate  
19 profits:  
20

21 Because corporate profits belong to the corporation,  
22 and not to its shareholders individually, lost profits  
23 are an "'injury to the corporation, or to the whole  
24 body of its stock'" (Jones v. H.F. Ahmanson & Co.,  
25 [(1969) 1 Cal.3d 93, 106]) and therefore are  
26 derivative in nature. When corporate lost profits are  
27 sought as damages, the gravamen of the complaint is  
28 injury to the corporation, not injury to an individual  
29 shareholder.

1 Sole Energy Co. v. Petrominerals Corp. (2005) 128 Cal.App.4th  
2 212, 232.

3  
4 The injury allegedly suffered in this case - expending  
5 money to advertise on Yelp's website due to Defendant's false  
6 and misleading advertising - are injuries to the LLC, not to  
7 Plaintiff. "Because members of the LLC hold no direct ownership  
8 interest in the company's assets (Corp. Code, §17300), the  
9 members cannot be directly injured when the company is  
10 improperly deprived of those assets." PacLink Communications  
11 Intern., Inc., supra, 90 Cal.App.4th at 964. The injury is  
12 therefore derivative in nature and was only to the LLC. As  
13 such, Plaintiff has no standing as an individual because he has  
14 suffered no separate and individual injury in fact or lost  
15 money. Therefore, his claims fail.

16  
17 Second, the claims fail because the allegations do not  
18 include misrepresentations of fact. To be actionable unfair  
19 business practices, representations must be likely to deceive a  
20 reasonable consumer, and not akin to puffing. Consumer  
21 Advocates, supra, 113 Cal.App.4th at 1362. As discussed above,  
22 the alleged misrepresentations are puffery and opinions about  
23 the filter and its results and not representations of fact.  
24 They are "boasts, all-but-meaningless superlatives," and  
25 "claim[s] which no reasonable consumer would take as anything

1 more weighty than an advertising slogan." Id. at 1361. As  
2 such, the statements cannot be actionable because the statements  
3 were not likely to deceive a reasonable consumer.

4 Therefore, for the above reasons, Plaintiff failed to show  
5 that he has a probability of prevailing on the merits.

6 III.

7 CONCLUSION

8 Based upon the foregoing, the court orders that:

9 1) Defendant's Special Motions to Strike are GRANTED.

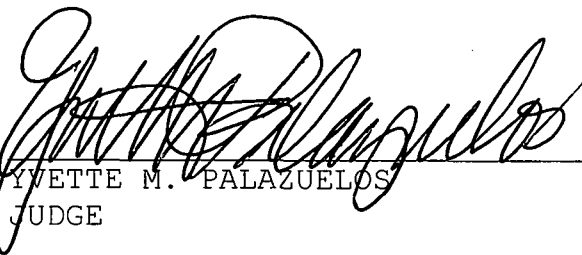
10 2) Defendant's Demurrers are OFF CALENDAR.

11 MOVING PARTY TO GIVE NOTICE TO ALL PARTIES.

12 NON-COMPLIANCE WITH ANY ORDER HEREIN SHALL EXPOSE THE NON-  
13 COMPLIANT PARTY AND/OR COUNSEL TO ANY SANCTIONS AUTHORIZED BY  
14 LAW.

15 IT IS SO ORDERED.

16 DATED: January 24, 2013

17   
18 YVETTE M. PALAZUELOS  
19 JUDGE  
20  
21  
22  
23  
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25