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~~AMENDED~~ SUMMONS For First amended complaint (CITACION JUDICIAL)

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Superior Court of California County of Los Angeles
DEC 03 2018
Sherri R. Carter, Executive Officer/Clerk of Court
By: Steven Drew, Deputy

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):
YELP, INC., and DOES 1 through 100 inclusive

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):
Kathleen Spiegelman, Gary Gaggosian, and Dudley Danoff, On Behalf of themselves and All Others Similarly Situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.
You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.
There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.
Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.
Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

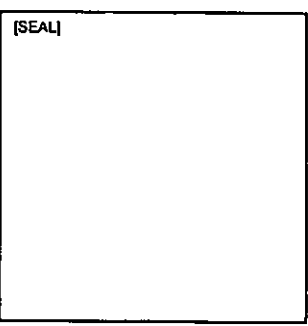
The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California
County of Los Angeles - Central District
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): 18STCV05378

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Talin V. Yacoubian (SBN 169439); 725 S. Figueroa St., Suite 1750, Los Angeles, CA 90017; (213) 955-7145

DATE: DEC 03 2018 Sherri R. Carter, Clerk Clerk, by STEVEN DREW Deputy (Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED: You are served
- 1. as an individual defendant.
 - 2. as the person sued under the fictitious name of (specify):
 - 3. on behalf of (specify): Yelp, Inc.
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
 - 4. by personal delivery on (date): 12.6.18

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14 Attorneys for Plaintiffs

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

13 Kathleen Spiegelman, Gary Gaggosian, and)
14 Dudley Danoff, On Behalf of themselves and)
15 All Others Similarly Situated)

16 Plaintiffs,

17 vs.

18 YELP, INC., and DOES 1 through 100)
19 inclusive.)

20 Defendants.

) CASE NO.: 18STCV05378
)
) [Assigned to Hon. Kenneth R. Freeman]
)
) **FIRST AMENDED COMPLAINT FOR**
) **DAMAGES AND CAUSES OF ACTION**
) **FOR:**
)
) (1) **VIOLATION OF CALIFORNIA**
) **CIVIL CODE § 3344;**
) (2) **MISSAPPROPRIATION OF NAME,**
) **LIKENESS AND IMAGES UNDER**
) **CALIFORNIA COMMON LAW;**
) (3) **VIOLATION OF THE**
) **CALIFORNIA CONSTITUTION**
) **RIGHT TO PRIVACY**
) (4) **VIOLATION OF THE**
) **CALIFORNIA BUSINESS AND**
) **PROFESSIONS CODE § 17200**
)
) **DEMAND FOR JURY TRIAL**

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

DEC 03 2018

Sherri R. Carter, Executive Officer/Clerk of Court
By: Steven Drew, Deputy

1 Plaintiffs Kathleen Spiegelman, ("Spiegelman") Gary Gaggosian, ("Gaggosian") and
2 Dudley Danoff, MD, ("Danoff" and together with Spiegelman and Gaggosian "Plaintiffs"), on
3 behalf of themselves and all others similarly situated allege, the following upon personal
4 knowledge with respect to all facts concerning themselves, their actions, and their counsel and
5 upon information and belief, with respect to all other facts, against Defendant Yelp, Inc.
6 (hereafter "Defendant," "Yelp" or the "Company") and Does 1 through 100, inclusive, for
7 violations of the California Constitutional Rights of Privacy, California Civil Code § 3344 , and
8 California Business and Professions Code §17200 (UCL).

9 **INTRODUCTION**

10 1. This is a nationwide class action (the "Action") brought by Plaintiffs, on behalf of
11 themselves and nationwide class (the "Class") consisting of all persons which Yelp unlawfully
12 used their personal data, including but not limited to, their names, photographs, likenesses and
13 private information for profit, without prior consent, during the period beginning November 19,
14 2014, and ending on the date of the certification of the class in this action.

15 2. Specifically, Plaintiffs allege that Yelp's conduct violates, the California
16 Constitutional Rights of Privacy, California Civil Code § 3344, and California Business &
17 Professions §17200 (the "UCL").

18 3. Plaintiffs allege that Yelp's commercial misappropriation of Plaintiffs' names,
19 photographs, likenesses, and private information is patently illegal and unfair.

20 4. Further, as more fully explained below, Spiegelman claims that to the extent Yelp
21 obtained her consent to use her name and other personal information Yelp did so long after it
22 started using Spiegelman's name and likeness, and only while Spiegelman was under duress and
23 without a meaningful option other than to agree to Yelp's onerous terms and conditions.

24 5. Yelp's conduct has injured, tens, if not hundreds of thousands, of persons
25 nationwide and violated common law and numerous California statutory laws and regulations.
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1 6. The State of California maintains a substantial interest in this case because Yelp's
2 primary headquarters is within California and all of the alleged unlawful conduct emanates from
3 California.

4 7. Accordingly, Plaintiffs are entitled to: (a) injunctive relief barring Yelp from
5 continuing to engage in its unlawful and inequitable practices with respect to using personal data
6 for its own financial gain without the consent of the individual or business entity; and (b)
7 restitution and disgorgement pursuant to the UCL; (c) statutory damages and penalties according
8 to proof; and (d) the payment of the costs and attorneys' fees incurred by Plaintiffs in connection
9 with the prosecution of this action pursuant to Cal. Code. Civ. P. § 1021.5.

10 **PARTIES**

11 8. Yelp is the nation's foremost review website. At all relevant times Yelp was and
12 is a corporation organized and existing pursuant to and under the laws of the State of Delaware,
13 with its principal place of business located in San Francisco, California.

14 9. Plaintiffs sue fictitious Defendants DOES 1 through 100, inclusive pursuant to
15 *California Code of Civil Procedure* § 474, because their names and/or capacities are not
16 presently known. Plaintiffs will amend the Complaint when such facts become known. Each of
17 the fictitiously named defendants is responsible in some manner for the occurrences herein
18 alleged and that Plaintiffs' respective damages were legally and/or proximately caused by said
19 defendants' conduct. Moreover, the acts committed by Yelp as described herein were duly
20 authorized, ratified and directed by its officers, directors and managing agents.

21 10. Each of the Defendants sued herein, including DOES 1 through 100 inclusive,
22 were the agents, servants, employers, employees, partners, members, shareholders, officers,
23 directors, joint venturers, co-conspirators, and alter-egos of each other, and in doing or failing to
24 do the things hereinafter mentioned were acting within the purpose and scope of that agency and
25 employment and with the knowledge and consent of each other and with such a unity of interests
26 between each other.
27
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1 11. Plaintiff, Kathleen Spiegelman, is an accomplished furniture and interior designer
2 in Los Angeles, California. Ms. Spiegelman's name, likeness and photos are highly valuable
3 assets.

4 12. Plaintiff Spiegelman claims that Yelp used her name, likeness and images prior to
5 her consent, knowledge, and she was never given any compensation to promote Yelp and
6 generate profit for Yelp.

7 13. Plaintiff Spiegelman further claims that Yelp refused to cease and desist from
8 using her name, website, and images to advertise the goods and services of other furniture
9 designers and generate profits for Yelp and her only option to control the use of her name and
10 images was to "claim" her identity and agree to Yelp's onerous terms and conditions.

11 14. Plaintiff Gary Gaggosian is an accomplished tailor in Beverly Hills. Plaintiff
12 Gaggosian has performed services for a myriad of celebrity clients.

13 15. In addition, Plaintiff Gaggosian has performed services for many influential
14 persons. Mr. Gaggosian's name, likeness and photos are highly valuable assets.

15 16. Plaintiff Gaggosian claims that Yelp used his name, likeness and images without
16 any consent, knowledge, and he was never given any compensation to promote Yelp and
17 generate profit for Yelp.

18 17. Plaintiff Dudley Danoff, MD is a well-known and respected urologist in Los
19 Angeles. In addition, Dr. Danoff is a published author and having authored numerous books
20 within his medical specialty.

21 18. Plaintiff Danoff claims that Yelp uses his name, likeness and images without any
22 consent, knowledge, and he was never given any compensation to promote Yelp and generate
23 profit for Yelp.
24

25 **CLASS ACTION ALLEGATIONS**

26 19. Plaintiffs bring this action as a class action pursuant to Cal. Code Civ. P. § 382
27 and California Rules of Court, Rule, 3.760 et seq.
28

1 20. The Class Plaintiffs seek to represent consists of all persons nationwide who Yelp
2 used their personal data, including but not limited to, names, photographs, likenesses and private
3 information for its own profit, without first obtaining consent, during the period beginning
4 November 19, 2014, and ending on the date of the certification of the class in this action.

5 21. The Class consists of tens, if not hundreds of thousands of Class members. As a
6 result, the Class is so numerous that joinder of all members is impracticable.

7 22. Yelp is the nation's largest review website.

8 23. There are questions of law and fact common to the members of the Class that
9 predominate over any questions affecting only individual Class members.

10 24. Those common questions include, but are not limited to, the following:

- 11 a. whether Yelp has improperly utilized names, likenesses and images;
- 12 b. whether Yelp's practices violated California law;
- 13 c. whether Yelp has improperly profited as a result of the misconduct alleged
14 by Plaintiff with respect to the Company's unauthorized use of names,
15 likenesses and images;
- 16 d. whether the members of the Class are entitled to restitution and
17 disgorgement as a result of Yelp's violations of the UCL;
- 18 e. the proper method for calculating the damages and restitution to which the
19 members of the Class are entitled;
- 20 f. whether Plaintiffs and the members of the Class are entitled to statutory
21 damages; and
- 22 g. whether Plaintiffs and the members of the Class are entitled to the
23 attorneys' fees and costs incurred in connection with the prosecution of
24 this action.

25 25. Plaintiffs' claims are typical of the claims of Class members in that Plaintiffs
26 were subjected to the same conduct that has injured all members of the Class and continues to be
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1 subject to the unlawful and misleading practices employed by Yelp with respect to utilizing
2 Plaintiffs' personal data without prior consent.

3 26. Plaintiffs will fairly and adequately protect the interests of the members of the
4 Class in that they possess no interests antagonistic to the interests of Class members and have
5 retained counsel experienced and competent in the prosecution of consumer and class action
6 litigation.

7 27. A class action is superior to other available methods for the fair and efficient
8 adjudication of this controversy for the following reasons, among others:

- 9 a. given the size of the claims of individual Class members, few, if any,
10 could afford to seek legal redress individually for the wrongs alleged
11 herein;
- 12 b. once the liability of Yelp to Plaintiffs is established, the claims of all Class
13 members can be determined by the Court and a jury;
- 14 c. this action will permit an orderly and expeditious administration of the
15 claims of all Class members, will foster economies of time, effort and
16 expense and will ensure uniformity of decision;
- 17 d. without a class action, Yelp's violations of law will proceed without
18 remedy and the Company will continue to reap and retain the substantial
19 proceeds of its wrongful conduct; and
- 20 e. this action presents no difficulties that would impede its management by
21 the parties and the Court as a class action.
22

23 28. Certification of the Class with respect to the injunctive relief that Plaintiffs seeks
24 is also appropriate because:

- 25 a. the prosecution of separate actions by individual Class members would
26 create a risk of inconsistent or varying adjudications which would
27 establish incompatible standards of conduct for Yelp;
28

- 1 b. adjudications with respect to individual Class members would, as a
2 practical matter, be dispositive of the interests of non-party Class members
3 and would substantially impair their ability to protect their interests; and
4 c. Yelp has acted and refused to act on grounds generally applicable to all
5 members of the Class.

6 **JURISDICTION AND VENUE**

7 29. This Court has jurisdiction over all causes of action asserted herein pursuant to
8 the California Constitution, Article VI, §10, and California Civil Code § 3344.

9 30. This Court has jurisdiction over the claims asserted and each of the Defendants
10 because each are individuals, associations or corporations that are either based in, authorized or
11 registered to conduct, or in fact do conduct, substantial business in the State of California. Each
12 of the defendants has sufficient minimum contacts with California, or otherwise intentionally
13 avail themselves of the markets within California, through collecting monies, entering into
14 contracts and/or distributing their products or services in California to render the exercise of
15 jurisdiction by the California courts permissible under traditional notions of fair play and
16 substantial justice. No state or federal regulatory agency has primary, exclusive or any
17 jurisdiction over the claims at issue herein and/or is able to provide the complete relief prayed for
18 in this matter.

19 31. Venue is proper in this County as the acts upon which this action is based
20 occurred in part in this County. Plaintiffs reside and/or work in this County, and one or more of
21 the Defendants received substantial compensation and profits from entering into agreements
22 and/or the sale of their products or services to persons located in this County, caused
23 misrepresentations to be disseminated, entered into transactions and/or provided services in this
24 County. Defendants' liability arose in part in this County.

1 **THE FACTS AND CIRCUMSTANCES THAT SUPPORT A RECOVERY BY**
2 **PLAINTIFFS AND THE CLASS**

3 32. Yelp markets itself as a “tool” which connects people with great local businesses
4 by bringing "word of mouth" online and providing a platform for businesses and consumers to
5 engage and transact.

6 33. Yelp claims that its platform is transforming the way consumers discover local
7 businesses and the way local businesses communicate with consumers. Specifically, Yelp states
8 that every day, millions of consumers visit its website or use its mobile application to find great
9 local businesses to meet their everyday needs.

10 34. Likewise, Yelp claims that entities of all sizes use the Yelp platform to engage
11 with consumers at the critical moment when they are deciding where to spend their money. In
12 fact, Yelp is one of the most frequented websites in the U.S. with more than 140 million unique
13 “users” or “Yelpers” (hereafter “Yelpers”) visiting the site per month.

14 35. Much of that phenomenal success can be attributed to the Yelpers trust and faith
15 in Yelp. Yelpers are led to believe that the access to the data they have is obtained by Yelp in a
16 legal manner, free of coercion, and that Yelp complies with California state law. However, that
17 is not the case.

18 36. In fact, Yelp’s business model exploits professionals nationwide by utilizing their
19 private information, such as their, names, likenesses and images for Yelp’s profit prior to Yelp
20 obtaining consent to use such information.

21 37. Thereafter when an individual discovers that Yelp is using his/her name for profit
22 Yelp refuses to cease and desist. And instead, demands that the person agree to Yelp’s terms and
23 conditions which specifically allows Yelp to advertise utilizing such persons’ name.

24 38. In fact, a significant portion of Yelp’s business model relies on utilizing persons
25 names and private information, without consent, to promote its web traffic and advertising from
26 which Yelp receives substantial monetary benefit.
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1 39. Even worse, Yelp also offers the option for a person to pay a monthly fee for Yelp
2 to cease and desist its unlawful conduct. It is blatant extortion.

3 40. Just about every business professional now has a page on Yelp. This includes, but
4 is not limited to, designers, architects, doctors, lawyers, accountants, musicians etc.

5 41. With over 140 million unique views per month, Yelp is one of the hottest
6 marketing spaces online and competes with the likes of Google and Facebook.

7 42. Tens, if not, hundreds of thousands of professionals are completely unaware that
8 they have a presence on Yelp and that Yelp utilizes their name to advertise and promote itself
9 and other businesses.

10 43. Other business professionals submit to Yelp's extortion tactics and claim their
11 name and pay \$70-\$80 dollars per month for Yelp to stop advertising using their names.

12 **Facts and Circumstances Related to Kathleen Spiegelman**

13 44. Plaintiff, Spiegelman, is an accomplished furniture and interior designer in Los
14 Angeles. Plaintiff Spiegelman has designed furniture for many top celebrities. Plaintiff
15 Spiegelman's work has been seen in tens of magazines including, but not limited to,
16 Architectural Digest, and Vanity Fair amongst others.

17 45. Plaintiff Spiegelman's name, likeness and photos are highly valuable assets.
18 Plaintiff Spiegelman utilizes her name to market herself.

19 46. When a Yelper types in the name Spiegelman, on the Yelp website search engine
20 two Yelp webpages are found. Ms. Spiegelman did not authorize or create either page.

21 47. The first page is "Spiegelman K Interiors." This is an unclaimed webpage which
22 until very recently Ms. Spiegelman had no idea existed on Yelp.

23 48. When a Yelper goes to this page, which Ms. Spiegelman never authorized, no less
24 than two, and many times four or more alternative interior designers are displayed. Each of these
25 listings are paid advertisements from which YELP receives financial compensation. Without
26 question Yelp uses Ms. Spiegelman's name and reputation to generate a profit for itself without
27 Ms. Spiegelman's consent.
28

1 49. Further a link on the page entitled "Request Quotes" directs a Yelper to at least 10
2 "similar providers" of interior design services. Each of these 10 providers pays Yelp
3 compensation. Ms. Spiegelman never authorized the use of her name in this manner.

4 50. In addition, to the "Spiegelman K Interiors" webpage described above a second
5 webpage using Ms. Spiegelman's name was also established on Yelp. The second webpage is
6 entitled "K Spiegelman Interiors."

7 51. Yelp began using Ms. Spiegelman's name and reputation for this webpage in this
8 exact manner described above long before it received any consent from Ms. Spiegelman.

9 52. As stated, a Yelper, unbeknownst to Spiegelman created a webpage and a review
10 utilizing Ms. Spiegelman's name.

11 53. Upon finding out that the page was created and that Yelp was using her name and
12 reputation to advertise the services of others Ms. Spiegelman demanded that Yelp cease and
13 desist. Yelp refused.

14 54. Instead, Yelp advised and required Ms. Spiegelman to "claim" her name if she
15 wanted to post on the Company's website and contribute to the data on her page of Company's
16 website. In addition, Yelp has repeatedly informed Ms. Spiegelman that if she pays a monthly
17 fee it will stop using her name to advertise.

18 55. Further, Yelp blatantly told her that if she didn't claim her name, strangers would
19 end up writing her profile and there was nothing she could do about it.

20 56. Thus, with little choice Ms. Spiegelman "claimed" her name for this webpage.

21 **Facts and Circumstances Related to Plaintiff Gaggosian**

22 57. Plaintiff, Gaggosian, is a well-known tailor to the "stars." Plaintiff Gaggosian's
23 client list includes celebrities and many of the most influential people in Beverly Hills.

24 58. Plaintiff Gaggosian's name, likeness and photos are highly valuable assets.
25 Plaintiff Gaggosian utilizes his name to market himself.

26 59. When a Yelper types in the name Gaggosian, on the Yelp website search engine a
27 Yelp webpage is found. Mr. Gaggosian did not authorize or create this page.
28

1 60. The page is entitled "Gary Gaggosian." This is an unclaimed webpage.

2 61. When a Yelper goes to this page, which Plaintiff Gaggosian never authorized, no
3 less than four, and many times six or more alternative tailors are displayed. Each of these
4 listings are paid advertisements from which YELP receives financial compensation. Without
5 question Yelp uses Mr. Gaggosian's name and reputation to generate a profit for itself without
6 Mr. Gaggosian's consent.

7 62. Further links on the page can direct a Yelper to other "similar providers" of
8 tailoring services. Each of these providers pays Yelp compensation. Plaintiff Gaggosian never
9 authorized the use of his name, photos, etc. in this manner.

10 63. Upon finding out that the webpage was created, and that Yelp was using his name
11 and reputation to advertise the services of others Plaintiff Gaggosian demanded that Yelp cease
12 and desist. Yelp refused.

13 64. Instead, Yelp advised Plaintiff Gaggosian to "claim" his name if he wanted to
14 post on the Company's website and contribute to the data on the page. In addition, Yelp has
15 repeatedly informed Mr. Gaggosian that if he pays a monthly fee equal to \$70-\$80 it will stop
16 using his name to advertise the services of others—but without a fee it will continue.

17 65. Further, Yelp blatantly told Plaintiff Gaggosian that if he didn't claim his name,
18 strangers would end up writing his profile and there was nothing he could do about it.

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20 **Facts and Circumstances Related to Dudley Danoff**

21 66. Plaintiff, Danoff, is an accomplished medical doctor (urologist) in Los Angeles.
22 Plaintiff Danoff has also authored numerous books. The books are available on Amazon.Com as
23 well as other outlets. Plaintiff Danoff's name, likeness and photos are valuable assets.

24 67. When a Yelper types in the name Danoff, on the Yelp website search engine a
25 Yelp webpage is found. Dr. Danoff did not authorize or create this page. Dr. Danoff never
26 authorized Yelp to use his name to advertise.

27 68. The page is "Dudley S Danoff, MD." This is an unclaimed webpage.

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1 69. When a Yelper goes to this page, which Plaintiff Danoff never authorized, no less
2 than four, and many times 10 or more alternative doctors are displayed. Each of these listings
3 are paid advertisements from which YELP receives financial compensation. Without question
4 Yelp uses Dr. Danoff's name and reputation to generate a profit for itself without Dr. Danoff's
5 consent.

6 70. Further, links on the "Danoff" web-page can direct a Yelper to other "similar
7 providers" of medical services. Each of these providers pays Yelp compensation. Plaintiff
8 Danoff never authorized the use of his name, photos, etc. in this manner.

9 **The Members of the Class Were Also Victimized**

10 71. Plaintiffs further allege that Yelp has ignored or failed to comply with thousands,
11 if not, tens of thousands, of requests to cease and desist by Class members from using their
12 personal and/or private information without consent.

13 72. The use of Class members' names without prior consent violates California law.

14 73. Yelp engages in this conduct by creating webpages using Class members names
15 and then advertng on those webpages to generate profits for itself.

16 74. Specifically, Yelp creates "unclaimed" webpages utilizing Class members' names
17 to advertise upon and generate profits for itself. Yelp has no authority to do this.

18 75. If a Class member demands Yelp to cease and desist from using her/his name to
19 advertise the services of his/her competitor Yelp refuses and instead advises the person to
20 "claim" the business, which requires the person to agree to allow Yelp to engage the exact
21 conduct complained of herein.

22 76. Thus, Class members are given a Hobson's choice. Either allow Yelp to continue
23 to use their name for profit without any control or "claim" the name to exercise some control,
24 which purportedly authorizes Yelp to continue advertising.

25 77. Yelp is well aware that Class members do not want to have personal and private
26 information disseminated without consent. Plaintiffs assert that Yelp has received hundreds, if
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1 not thousands, of complaints from persons complaining about the unauthorized publication and
2 use of information.

3 78. Based upon the obligations imposed upon Defendants and their experience in the
4 industry, Defendants either knew, recklessly disregarded, reasonably should have known or were
5 obligated under the law to understand that their systemic collection, harvesting, manipulation,
6 distribution, and commercialization activities violated state privacy, and right of publicity laws.

7 79. Such conduct is of a continuing nature and requires prompt relief in order to
8 prevent further undisclosed or unauthorized harvesting, warehousing, dissemination, and
9 commercialization of private and personal data.

10 80. Yelp users face irreparable harm in terms of, *inter alia*, not being fully informed
11 of the true facts, not having the full value of any monies wrongfully received by Yelp as a result
12 of the unauthorized commercial use of their identity or likeness, having their personal and
13 private of data distributed or reproduced without their informed consent, and having the
14 offending materials still publicly available, accessible and usable.

15 81. Damages and equitable relief are appropriate and required to protect consumer,
16 privacy, and publicity rights of tens, if not hundreds of thousands of Class members.

17 82. Equitable relief is appropriate to ensure adequate and effective policies,
18 technologies, and controls are in place to ensure the wrongful acts, including concealment and
19 misrepresentation, infringement of privacy rights, and misappropriation of publicity rights that
20 occurred are remedied and do not recur, and that the true facts are revealed to the public.

21
22 **FIRST CAUSE OF ACTION**

23 **Violation of California Civil Code §3344**

24 **(Plaintiffs against All Defendants)**

25 83. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the
26 allegations in paragraphs 1- 82 above.

27 84. California Civil Code § 3344(a) provides:

28 "Any person who knowingly uses another's name, voice, signature,
photograph, or likeness, in any manner on or in products, merchandise, or

1 goods, or for purposes of advertising or selling, or soliciting purchases of
2 products, merchandise, goods or services, without such person's prior
3 consent, or, in the case of a minor, the prior consent of her parent or legal
4 guardian, shall be liable for any damages sustained by the person or
5 persons injured as a result thereof. In addition, in any action brought under
6 this section, the person who violated the section shall be liable to the
7 injured party or parties in an amount equal to the greater of seven hundred
8 fifty dollars (\$750) or the actual damages suffered by him or her as a
9 result of the unauthorized use, and any profits from the unauthorized use
10 that are attributable to the use and are not taken into account in computing
11 the actual damages. In establishing such profits, the injured party or
12 parties are required to prove her or her deductible expenses. Punitive
13 damages may also be awarded to the injured party or parties. The
14 prevailing party in any action under this section shall also be entitled to
15 attorney's fees and costs."

16 85. Yelp used Plaintiffs' names, photographs, and likenesses knowingly and
17 deliberately, without the prior consent of the Plaintiffs, and each such use was unequivocally and
18 directly for purposes of advertising or selling, or soliciting purchases of products, merchandise,
19 goods or services by Yelp, such that prior consent was required.

20 86. Plaintiffs have suffered actual damages as a result of Defendants' deliberate use
21 of their name, photographs, and likeness on advertisements and other types of solicitations for
22 goods or services.

23 87. Defendants engaged in outrageous conduct, carried on with willful and conscious
24 disregard of the rights of Plaintiffs.

25 88. Plaintiffs are entitled to statutory, compensatory and punitive damages.

26 89. Plaintiffs are entitled to attorney fees and costs.

27 **SECOND CAUSE OF ACTION**

28 **Misappropriation of Name and Likeness Under California Common Law**

(Plaintiffs against All Defendants)

90. Plaintiffs realleges and incorporates by reference, as if fully set forth herein, the
allegations in paragraphs 1- 89 above.

1 91. Defendants have and are using Plaintiffs' name, identity, likeness, and personal
2 information for commercial advantage without Plaintiffs' consent.

3 92. Defendants' misappropriation of Plaintiffs' name, identities, photographs,
4 likenesses, and personal information has resulted in injury to Plaintiffs and each of them.

5 93. Plaintiffs are entitled to compensatory damages.

6 **THIRD CAUSE OF ACTION**

7 **Violations of Business and Professions Code § 17200**

8 **(All Plaintiffs Against All Defendants)**

9 94. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the
10 allegations in paragraphs 1-93 above.

11 95. California Business and Professions Code § 17200 prohibits acts of unfair
12 competition, which include any "unlawful, unfair or fraudulent business practice..."

13 96. Defendant violated Business and Professions Code § 17200's prohibition against
14 engaging in unlawful, unfair or fraudulent business practices by violating California Civil Code §
15 3344, by utilizing Plaintiffs' names and likenesses without consent.

16 97. Plaintiffs has suffered injury in fact and lost money or property as a result of such
17 unfair business practices.

18 98. Plaintiffs seeks an order of this Court awarding, restitution, disgorgement,
19 injunctive relief and all other relief allowed under §17200, et seq.

20 **FOURTH CAUSE OF ACTION**

21 **Violation of California Constitutional Right to Privacy**

22 **(All Plaintiffs Against All Defendants)**

23 99. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the
24 allegations in paragraphs 1-98 above.

25 100. Plaintiffs had and continues to have privacy rights in her personal information,
26 identity, data, photographs, and communications pursuant to Article One, Section One of the
27 California Constitution Defendants, through unlawful means, violated the California
28

1 constitutional privacy rights of Plaintiffs by Defendants' unauthorized access, copying,
2 distribution, use, commercialization, and/or sale of Plaintiffs' private and personal information,
3 identities, data, photographs, and communication

4 101. Defendants had no authorization or privilege to gain access, copy, distribute, use,
5 commercialize, and/or sell Plaintiffs' private and personal information, identity, data,
6 photographs, and communications.

7 102. As a consequence, Plaintiffs has suffered and will continue to suffer damages.

8 103. Plaintiffs are entitled to compensatory damages, restitution, disgorgement, and
9 injunctive relief.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiffs prays for the following relief:

- 12 A. For injunctive relief, as follows: An order enjoining Yelp from uploading,
13 downloading, disseminating, or selling identifiable information or photographs of without
14 consent;
- 15 B. An order enjoining Yelp from uploading, downloading, disseminating, or selling
16 identifiable information or photographs or work of without their consent;
- 17 C. An order enjoining Yelp from permitting the unauthorized downloading of
18 copyrighted images (photographs);
- 19 D. An order enjoining Yelp from retaining, disseminating, and selling private and
20 personal information of Yelp Users who terminate their service;
- 21 E. For judgment in favor of Plaintiffs, and against the Defendants, for damages in
22 such amounts as may be proven at trial;
- 23 G. Pursuant to California Civil Code § 3344, for compensatory damages in an
24 amount equal to or greater of seven hundred fifty dollars (\$750) for each unauthorized
25 use Plaintiffs' names or photographs, or actual damages suffered by Plaintiffs. Cal. Civ.
26 Code § 3344(a);
- 27 H. Punitive damages;
- 28

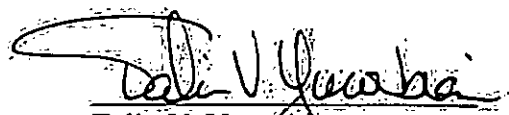
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- I. For attorneys' fees and costs;
- J. For such other relief as the Court may deem just and proper;

Dated: December 3, 2018

Respectfully submitted,

Yacoubian & Powell LLP



Talin V. Yacoubian
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

Dated: December 3, 2018

Respectfully submitted,

Yacoubian & Powell LLP


Talin V. Yacoubian
Attorneys for Plaintiffs