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11 John Doe a/k/a "Michael S."

**ENDORSED
FILED**
San Francisco County Superior Court

OCT 25 2010

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 GLEN REIT, D.D.S.,

11 Plaintiff,

12 vs.

13 YELP, INC. and JOHN DOE, aka,
14 "MICHSEL S.",

15 Defendants.

) California Case No.:
)
)

) DISCOVERY
)
)

) (Supreme Court of the State of New York,
) County of New York, Case No.: 10/600555)

) **MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) PETITION TO QUASH OUT-OF-STATE
) SUBPOENA DUCES TECUM**
)

CPE - 10 - 510834

BY FAX

18 Defendant JOHN DOE a/ka/ "Michael S." (hereinafter referred to as Defendant "Doe"),
19 through his counsel, petitions to quash an out-of-state subpoena issued to Yelp! Incorporated
20 ("Yelp!") in case number 10/600555 before the New York Supreme Court for New York
21 County. A true and correct copy of this subpoena is attached hereto as Exhibit A. This motion is
22 brought pursuant to Cal. Code of Civ. Proc. ("CCP") §§ 1985.3, 2029.100 et seq., to prevent the
23 production of documents for the reasons discussed below.

24
25 I. INTRODUCTION

26 Plaintiff Glen Reit, a dentist, accuses Defendant Doe of publishing a defamatory review
27 of the Plaintiff's dental office on Yelp! Under the moniker "Michael S.". Yelp! is a website that
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1 allows consumers to review products and services—anonously, if the reviewer desires—so
2 that others may read the reviews, comment on them, or provide their own. Plaintiff has
3 subpoenaed Yelp! for its records relating to Doe in an effort to learn the true identity of “Michael
4 S.”¹ Plaintiff’s request is improper, and implicated fundamental Constitutional protections.

5 Free speech is a central Constitutional value, and one of great historical significance. *The*
6 *Federalist Papers*, for instance, were all written anonymously while being pointedly critical of
7 the policies and leaders many people championed during America’s move toward adopting a
8 written constitution. The United States Supreme Court has further sanctified anonymous speech
9 in an honest and open society through decisions including *McIntyre v. Ohio Elections*
10 *Commission*, 514 U.S. 334 (1995) and *Talley v. California*, 362 U.S. 60 (1960). *See also City of*
11 *Ladue v. Gilleo*, 512 U.S. 43, 56 (1994) (noting that “the identity of the speaker is an important
12 component of many attempts to persuade”).

13 With these principles as a backdrop, Courts have grappled with the First Amendment
14 significance of subpoenas used to unmask anonymous speakers who speak via the internet on
15 message boards, review services and other forums. In 2008, in *Krinksy v. Doe*, 159 Cal. App.
16 4th 1154 (2008), California established its own test for determining when a party may
17 legitimately be entitled to discover the identity of anonymous internet speakers. As discussed in
18 more detail below, California will not enforce a subpoena to reveal the identity of an anonymous
19 speaker unless the party issuing the subpoena can show actual evidence of defamation. Here,
20 Plaintiff’s Complaint demonstrates no basis upon which a defamation action can proceed, and
21 has not made the required prima facie showing. Therefore, Plaintiff’s subpoena should be
22 quashed.

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¹ Yelp! Had previously been named as a Defendant in this action, but was later dismissed. Yelp! notified Defendant Doe of Plaintiff’s request for his true identity.

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2 **II. LEGAL ARGUMENT**

3 **A. Applicable Legal Standard**

4 In California, a plaintiff must make a prima facie showing of the elements of libel in
5 order to overcome a defendant’s motion to quash a subpoena that would reveal his or her
6 identity. *Krinksy v. Doe*, 159 Cal.App.4th at 1154; *see also Paterno v. Superior Ct.*, 163 Cal.
7 App. 4th 1342, 1349 (Cal. Ct. App. 2008); *Evans v. Evans*, 162 Cal. App. 4th 1157 (Cal. Ct.
8 App. 2008).

9 The plaintiff’s prima facie case must satisfy the standards of defamation in the
10 jurisdiction where the case was filed. *Krinksky*, 159 Cal.App.4th at 1172; *Evans*, 162 Cal.App.4th
11 at 1169 (reaffirming the *Krinksky* decision’s First Amendment protections for online speech); cf.
12 *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 347 (1974) (allowing states to define definition for
13 themselves, subject to constitutional limitations). Because the action underlying this motion was
14 filed in the New York Supreme Court, New York’s law of defamation will govern here.

15 **A. The Statements Attributed to Defendant Doe Are Statements of Opinion, Not Fact,
16 Under New York Law**

17 New York law sets forth four elements in a defamation cause of action: (1) a false
18 statement of fact; (2) published to a third party without privilege or authorization; (3) with fault
19 amounting to at least negligence, and; (4) that caused special harm or defamation per se. *Dillon*
20 *v. City of N.Y.*, 261 A.D.2d 34, 38 (N.Y. Sup. Ct. App. Div. 1st Dept. 1999); *see also Epifani v.*
21 *Johnson*, 65 A.D.3d 224, 233 (N.Y. Sup. Ct. App. Div. 2d Dept. 2009).

22 Statements of opinion, however offensive, unequivocally are not defamatory. *Gertz*, 418
23 U.S. at 339-40 (“Under the First Amendment there is no such thing as a false idea. However
24 pernicious an opinion may seem, we depend for its correction not on the conscience of judges
25 and juries but on the competition of other ideas.”). Thus, the Plaintiff here must establish that the
26 statements attributed to Defendant Doe are statements of fact, rather than of opinion. Whether a
27 statement is one of opinion is a matter for the Court to decide as a matter of applicable law.
28 *Brian v. Richardson*, 660 N.E.2d 1126, 1129 (N.Y. 1995); *Gross v. New York Times Company*,

1 623 N.E.2d 1163, 1167 (N.Y. 1993); *Immuno AG v. Moor-Jankowski*, 567 N.E.2d 1270,1272
2 (N.Y. 1991).

3 In New York, whether a statement is one of fact or opinion is evaluated in light of three
4 factors: (1) whether the specific language in issue has a precise meaning which is readily
5 understood; (2) whether the statements are capable of being proven true or false, and; (3)
6 whether the full context in which the speech appears and the broader social context and
7 surrounding circumstances signal readers that what is being read is opinion, rather than fact. *Id.*

8 ***1. Under New York Law, Stating That a Person is “Unprofessional” (Using That***
9 ***Word or Similar Descriptors) Have Consistently Been Held to Be Statements of***
10 ***Opinion.***

11 Plaintiff claims in his Complaint that it was defamatory for Doe to call his service
12 “unprofessional” and “disgusting,” *inter alia*. (Pl.’s Complaint, attached hereto as Exhibit B, ¶¶
13 18a and 18b.) Under New York’s law, statements that are similar—and nearly identical in the
14 use of “unprofessional” to describe a service or business—previously have been held to not be
15 defamatory as a matter of law. In *Amodei v. New York State Chiropractic Association*, the New
16 York Supreme Court Appellate Division found that a speaker’s claim that a chiropractor was
17 unprofessional constituted an opinion, rather than a statement of fact. 160 A.D.2d 279, 280 (N.Y.
18 Sup. Ct. App. Div. 2d Dept. 1990), *aff’d* 571 N.E.2d 79 (N.Y. 1991); *See also Halegoua v.*
19 *Doyle*, 171 Misc. 2d 986, 991 (N.Y. Sup. Ct. 1997) (finding that a letter in which author
20 recounted his personal experience with a plaintiff doctor, which contained a statement that doctor
21 was “negligent and unprofessional” deemed to be opinions insufficient to support a defamation
22 claim). New York’s Federal Courts have ratified the state’s view of this issue. The Southern
23 District of New York has found that statements describing a plaintiff as “untrustworthy,
24 unethical and unprofessional,” and “incompetent” to be non-actionable opinion. *Tasso v.*
25 *Platinum Guild Int’l*, No. 94 Civ. 8288, 1998 U.S. Dist. LEXIS 18908 at *5-6 (S.D.N.Y. Dec. 3,
26 1998). In *Wait v. Beck’s North America, Incorporated*, the Northern District of New York
27 similarly held that “Statements that someone has acted unprofessionally or unethically generally
28 are constitutionally protected statements of opinion.” 241 F. Supp 2d 172, 183 (N.D.N.Y. 2003).

1 The facts before this court, and controlled by New York law’s interpretation, are virtually
2 indistinguishable from these cases. Using Yelp!, Doe is alleged to have described his experience
3 with Plaintiff in terms that, while upsetting to Plaintiff, were Doe’s opinion. Calling someone
4 “unprofessional,” “negligent,” or even “incompetent” or “unethical” is not defamatory under
5 New York law, as those words represent conclusions reached by the speaker on the basis of his
6 or her own experiences and opinions. As there is no objective measuring stick to verify whether
7 particular conduct is “professional” or “unprofessional,” such a classification cannot be anything
8 but a matter of opinion. Even if the words used by the speaker are incendiary and inflammatory,
9 they still are protected as rhetorical hyperbole, as no objective recipient would interpret the
10 statements as factual. *Greenbelt Coop. Pub. Ass’n v. Bresler*, 893 U.S. 6, 14 (1970); *Gross v.*
11 *N.Y. Times Co.*, 623 N.E.2d 1163, 1167 and 1169 (N.Y. 1993) (holding that rhetorical hyperbole
12 is not actionable as defamation, as taken in context the statements convey other than an objective
13 fact is being asserted).

14 As for Doe’s alleged claim that “I allowed the barely competent xray tech to snap a
15 couple of painful xrays,” (Exh. B ¶ 18k), this is also facially a statement of opinion. “Barely
16 competent” and “painful” (Exh. B ¶ 18k) are subjective terms used to describe Doe’s experience
17 without an objective measurement; moreover, the description of “barely competent” seems to
18 have been earned by the “painful” X-rays Doe received at Plaintiff’s office. (Exh. B ¶ 18k.)
19 Certainly, whether or not Defendant Doe experienced pain is a subjective impression by which
20 he could reasonably form a personal opinion as to the competence of the professional causing the
21 pain. Within the broader context of the review, a reasonable reader would not view these
22 statements as factual representations about all X-rays given by Reit’s office or the competence of
23 its X-ray technicians, but as a grievance raised by a dissatisfied customer.

24 Finally, Doe’s statement that “Dr. Reit introduced himself and failed to ask me any
25 questions about my medical or dental history” (Exh. B ¶ 18l) is not defamatory, even if true, as it
26 would not be damaging to Plaintiff. Regardless, again, this is a statement that speaks to Doe’s
27 personal definition of competency in relation to the services he received.

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1 **2. Under New York Law, Consumer Reviews Are Presumptively Statements of**
2 **Opinion.**

3 Reviews, generally, are not a proper basis for defamation claims. In New York, most of
4 the case law on this is centered on restaurant reviews, as restaurant owners have brought many
5 suits against harsh critics—and lost. *See Mr. Chow of N.Y. v. Ste. Jour Azur S.A.*, 759 F.3d 219,
6 230 (2d Cir. 1985). In *Mr. Chow*, the Second Circuit held that a restaurant review, *no matter*
7 *how incendiary*, is not an appropriate foundation for a defamation lawsuit because it represents
8 only an individual’s subjective opinion about the quality of food, décor and service. 759 F.3d at
9 230. New York’s other courts to consider the question have supported the Second Circuit’s
10 view. *See Kuan Sing Enters. v. T.W. Wang, Inc.*, 86 A.D.2d 549 (N.Y. Sup. Ct. App. Div. 1st
11 Dept. 1982) *aff’d* 444 N.E.2d 1008 (N.Y. 1982); *Twenty-Five E. 40th St. Rest. Corp. v. Forbes,*
12 *Inc.*, 37 A.D.2d 546 (N.Y. Sup. Ct. App. Div. 1st Dept. 1971) *aff’d* 282 N.E.2d 118 (N.Y. 1972);
13 *Penn Warranty Corp. v. DiGiovanni*, 10 Misc. 3d 998, 1005 (N.Y. Sup. Ct. 2005). *Floyd*
14 *Harbor Animal Hospital v. Etzel*, No. 06-18109, 2009 N.Y. Misc LEXIS 5610 at *7 (N.Y. Sup. Ct.
15 Dec. 3 2009).

16 This same logic should apply to reviews of other kinds of professional services and
17 offices. In this case, the statements attributed to Defendant Doe regard only his personal
18 experience in the Plaintiff’s office, and in encountering Plaintiff and his staff. Plaintiff’s bald
19 assertions in his Complaint that Doe’s impressions are “false” are insufficient to overcome any
20 presumption that the Yelp! review attributed to Doe is an opinion that enjoys First Amendment
21 protection. That Plaintiff contends that those statements do not accurately reflect Plaintiff’s
22 practice, offices or staff is similarly a matter of Plaintiff’s opinion—but again, not statements of
23 fact as a matter of law.

24 **B. Plaintiff Cannot Establish the Truth or Falsity of Statements Attributed to**
25 **Defendant Doe in the Yelp! Review**

26 Plaintiff asserts that Doe’s descriptions of the office as “disgusting,” “dark,” “small,”
27 “old,” and “smelly” (Exh. B ¶¶ 18b-18f) are factual, rather than opinion-based, and false. As a
28 retort, Plaintiff asserts that his offices are clean, light filled, and do not smell bad. However,
Plaintiff completely ignores that the statements attributed to Doe are in the nature of personal

1 impressions, based on the speaker’s subjective experience and personal frame of reference. That
2 Plaintiff may find a certain odor to be enjoyable does not diminish the opinion of another that the
3 same smell is objectionable, for example. The same applies to the statements about Plaintiff’s
4 equipment appearing dusty or old, (Exh. B ¶¶ 18i-18j), and about Plaintiff’s offices appearing to
5 be from the 1950s and lack of privacy (Exh. B ¶¶ 18g-18h).

6 But more importantly, Plaintiff’s own Complaint illustrates that he cannot establish that
7 any of the statements of impression attributed to Defendant Doe could even possibly be regarded
8 as false statements of fact—this is because Plaintiff admits that his offices were completely
9 renovated between December 2008 and January 2009, and that new equipment was installed in
10 January 2009. (Exh. B ¶ 13) However, Plaintiff fails to make any allegations regarding when
11 Defendant Doe’s visit actually occurred. In fact, Defendant Doe visited Plaintiff’s offices in the
12 spring months of 2008, before any renovations were made or new equipment installed.² As such,
13 *by Plaintiff’s own admission*, Plaintiff has destroyed the physical environment in which
14 Defendant Doe encountered Plaintiff and his staff and offices. Statements that cannot be proven
15 true or false are not defamatory, as a matter of law. *Clark v. Schuylerville Central School*
16 *District*, 24 A.D.3d 1162, 1164 (N.Y. Sup. Ct. App. Div. 3d Dept. 2005); *Manno v. Hembrooke*,
17 120 A.D.2d 818, 820 (N.Y. Sup. Ct. App. Div. 3d Dept. 1986). Thus, assuming that any
18 statement attributed to Defendant Doe could be properly characterized as a statement of fact,
19 Plaintiff is nonetheless incapable of proving the truth or falsity of such statements because the
20 same conditions that existed when Defendant Doe visited Plaintiff no longer exist.

21 Because plaintiff bears the burden of establishing a prima facie case for libel in order to
22 overcome the instant petition to quash the subpoena, the subpoena should be quashed.

23 **II. CONCLUSION**

24 Reit has failed to establish a prima facie case of defamation as required by law, and thus
25 the Court should quash his subpoena *duces tecum*. As a consumer, Doe’s review of Plaintiff’s
26 office and services are subjects of his personal opinion. More broadly, all reviews are matters of

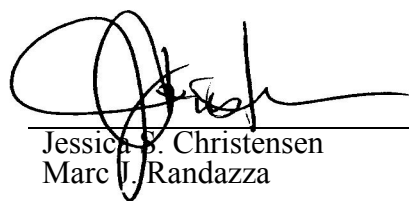
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28 ² If it is deemed necessary, Defendant will submit a declaration to the Court under a protective order stating when he visited Plaintiff’s offices.

1 subjective opinion, and cannot contain the factual representations necessary to sustain a
2 defamation action. However, even to the extent that any of the statements attributed to Defendant
3 Doe can properly be deemed statements of fact, Plaintiff cannot establish the truth or falsity of
4 those statements, and therefore the statements cannot be defamatory as a matter of law.

5 For all of these reasons, Defendant Doe’s Petition to Quash Plaintiff’s subpoena to Yelp!
6 should be granted.

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8 Dated: October 22, 2010

Respectfully Submitted,
RANDAZZA LEGAL GROUP

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14 Jessica S. Christensen
15 Marc J. Randazza

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28 Attorneys for Defendant John
Doe a/k/a “Michael S.”

EXHIBIT A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Tianjing Zhang (SBN 256759) Holland & Knight LLP 50 California Street, 28th Floor San Francisco, CA 94111 TELEPHONE NO.: (415) 743-6900 FAX NO. (Optional): (415) 743-6910 E-MAIL ADDRESS (Optional): tianjing.zhang@hklaw.com ATTORNEY FOR (Name): GLENN REIT, D.D.S., Plaintiff	FOR COURT USE ONLY
Court for county in which discovery is to be conducted: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY STATE, AND ZIP CODE: San Francisco, CA 94111 BRANCH NAME: Civic Center Courthouse - Unlimited Civil Jurisdiction	
Court in which action is pending: Name of Court: Supreme Court of the State of New York, County of NY STREET ADDRESS: 60 Center Street MAILING ADDRESS: CITY, STATE, AND ZIP CODE: New York, NY 10007 COUNTRY: U.S.A.	
PLAINTIFF/PETITIONER: GLENN REIT, D.D.S. DEFENDANT/RESPONDENT: John Doe, aka "MICHAEL S."	CALIFORNIA CASE NUMBER (if any assigned by court):
SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California): 10/600555

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Custodian of Records, Yelp! Inc. c/o Aaron Schur, Yelp! Inc., 706 Mission St., 8th Fl., San Francisco, CA 94103;
 Tel: (415) 230-6527

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Holland & Knight LLP On (date): October 29, 2010 Location (address): 31 West 52 nd Street, New York, NY 10019	At (time): 9:00 a.m.
Do not release the requested records to the deposition officer prior to the date and time stated above.	

- a. by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b. by delivering a true, legible, and durable copy of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. by making the original business records described in item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records must be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows:
 The records sought are set forth with particularity in the Subpoena Duces Tecum attached hereto as Exhibit A.
 Continued on Attachment 3 (use form MC-025).
4. Attorneys of record in this action or parties without attorneys are (name, address, telephone number, and name of party represented): Richard Raysman, Esq., Holland & Knight LLP, 31 West 52nd St., New York, NY 10019
 John Doe, aka "MICHAEL S.", contact information unknown.
 Continued on Attachment 4 (use form MC-025).

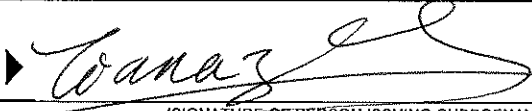
PLAINTIFF/PETITIONER: GLENN REIT, D.D.S.	CASE NUMBER (of action pending outside California): 10/600555
DEFENDANT/RESPONDENT: John Doe, aka "MICHAEL S."	

5. If you have been served with this subpoena as a custodian of consumer or employee records under Code of Civil Procedure section 1985.6 and a motion to quash or an objection has been served on you, a court order or agreement of the parties, witnesses, and consumer or employee affected must be obtained before you are required to produce consumer or employee records.
6. Other terms or provisions from out-of-state subpoena, if any (specify):
Counsel of record and the deponent corporation have stipulated that service may be effectuated by Federal Express Overnight Delivery, rather than by personal service.
- Continued on Attachment 6 (use form MC-025).

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: October 7, 2010

Tianjing Zhang
(TYPE OR PRINT NAME)


(SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorneys for Plaintiff Glenn Reit, D.D.S.
(TITLE)

PROOF OF SERVICE OF SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

1. I served this *Subpoena for Production of Business Records In Action Pending Outside California* by personally delivering a copy to the person served as follows:
- a. Person served (name): Aaron Schur
- b. Address where served: 706 Mission Street, 8th Floor, San Francisco, CA 94103
- c. Date of delivery: October 8, 2010
- d. Time of delivery: by 10:00 a.m. PST
- e. Witness fees and mileage both ways (check one):
- (1) were paid. Amount: \$ 350.00
- (2) were not paid.
- (3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ _____
- f. Fee for service: \$ _____
- overnight Fed Ex per stipulation*

2. I received this subpoena for service on (date): October 7, 2010

3. I also served a completed *Proof of Service of Notice to Consumer or Employee and Objection* (form SUBP-025) by personally delivering a copy to the person served as described in 1 above.

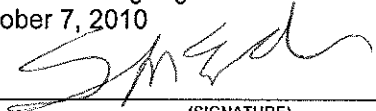
4. Person serving:


- a. Not a registered California process server
- b. California sheriff or marshal
- c. Registered California process server
- d. Employee or independent contractor of a registered California process server
- e. Exempt from registration under Business and Professions Code section 22350(b)
- f. Registered professional photocopier
- g. Exempt from registration under Business and Professions Code section 22451
- h. Name, address, telephone number, and, if applicable, county of registration and number:

Sharon Edwards, Paralegal, Holland & Knight LLP, 50 California St., 28th Fl., San Francisco, CA 94111

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: October 7, 2010

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.
Date:


(SIGNATURE)


(SIGNATURE)

Sharon Edwards

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GLENN REIT, D.D.S.,

Plaintiff,

- against -

YELP! INC. and JOHN DOE, aka
"MICHAEL S.",

Defendants.

Index No.: 10/600555

Date Purchased: 3/4/2010

SUBPOENA DUCES TECUM

TO: Yelp! Inc.
706 Mission Street
San Francisco, California 94103

WE COMMAND YOU to produce for examination at the offices of Holland & Knight LLP, 31 West 52nd Street, New York, New York 10019 on the 4th day of May, 2010, or earlier, the documents in your possession, custody or control described in Schedule A hereto in accordance with the definitions and instructions contained therein.

The circumstances or reasons such disclosure is sought or required is because the witness has information and documents that are material and necessary to the prosecution of Plaintiffs' claims in this action.

Failure to comply with this Subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this Subpoena was issued for a penalty not to exceed fifty dollars and for all damages sustained by reason of your failure to comply.

Dated: New York, New York
April 12, 2010

HOLLAND & KNIGHT LLP

By: 
Richard Raysman

31 West 52nd Street
New York, New York 10019
(212) 513-3200

*Attorneys for Plaintiff
Glenn Reit, D.D.S.*

SCHEDULE A TO SUBPOENA *DUCES TECUM*

DEFINITIONS

As used herein:

A. The term "document" or "documents" is used herein in the broadest possible sense and means any written, graphic or other recorded (whether visually, electronically, magnetically or otherwise) matter of whatever kind or nature or any other means of preserving thought or expression and all tangible things from which information can be processed, transcribed or retrieved, whether originals, copies or drafts (including, without limitation, non-identical copies), however produced or reproduced, within the possession, custody or control of Defendant, or the possession, custody or control of any agent, employee, representative or other person acting or purporting to act on their behalf, including, but not limited to: contracts, agreements, correspondence, telegrams, facsimiles, memoranda, records, books, E-mail, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, statistical statements, work papers, charts, analytical records, minutes or records of meetings or conferences, records, reports or summaries of negotiations, drafts, notes, marginal notations, bills, invoices, checks, lists, journals, diaries, matrices for and all other written, printed, recorded or photographic matter or sound reproductions. A document with handwritten, typewritten or other recorded notes, editing marks, etc., is not and shall not be deemed identical to one without such modifications, additions or deletions. The term "original" includes the file copy or copies of any document if there is no actual original or ribbon copy.

B. The term "communication" means the transmittal of information (in the form of facts, inquiries, ideas or otherwise).

C. The term "concern" or "concerning" means relating to, referring to, describing, evidencing or constituting.

D. The term "relating" or "referring" means relating to, referring to or in any way relevant within the meaning of Section 3101 of the Civil Practice Law and Rules.

E. "And" or "or" shall mean and/or.

F. "Yelp" shall mean Yelp! Inc.

G. "Dr. Reit" shall mean Plaintiff Dr. Glenn Reit, DDS.

H. "Michael S." shall mean the John Doe Defendant named in the Complaint in this action, the owner of the Yelp website reviewer profile whose profile posted the May 6, 2009 review of Dr. Reit on the Yelp website.

INSTRUCTIONS

A. If any document within the scope of this request has been destroyed, you shall in its response hereto describe in detail the circumstances of such destruction, and shall produce any documents relating to such destruction.

B. If a claim of privilege is asserted with respect to any documents, state with respect to each such document the date thereof, the author, the recipient(s), the subject, the privilege claimed and a description of the document sufficient to demonstrate the applicability of the privilege claimed.

DOCUMENTS REQUESTED

1. Documents identifying the owner of the Michael S. Yelp reviewer profile, including but not limited to this anonymous poster's name, address, telephone and facsimile numbers, email address, and website.

2. Documents relating to or concerning communications between Yelp and Michael S., or any person logged into the Michael S. Yelp reviewer profile.

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Holland & Knight LLP
50 California Street, 28th Floor
San Francisco, CA 94111
Tel: (415) 743-6900
Fax: (415) 743-6910

PROOF OF SERVICE

I, the undersigned, hereby declare that I am over the age of 18 years and not a party to the above-captioned action; that my business address is Holland & Knight LLP 50 California Street, 28th Floor, San Francisco, California 94111-4624. On October 7, 2010, the following document was served:

DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

on the following persons or entities and in the following manner:

Andrew I. Mandelbaum, Esq.,
Ford Marrin, et al.,
Wall Street Plaza, 23rd Floor
New York, NY 10005-1875

(BY FACSIMILE) At approximately 4:45 p.m. I caused true and correct copies of each document(s) to be transmitted by fax to the addressee(s) fax machine number specifically identified on the attached service list. No error was reported and a copy(ies) of the transmission report(s) is/are attached as properly issued by the sending fax machine, the fax number being (415) 743-6910, in compliance with California Rules of Court §2.306(g).

(BY MESSENGER) I caused a true copy of each document(s) to be delivered by hand to the office(s) of each addressee.

(BY MAIL) I caused a true copy of each document(s) to be placed in a sealed envelope with first-class postage affixed and placed the envelope for collection. Mail is collected daily at my office and placed in a United States Postal Service collection box for pickup and delivery that same day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this document on October 7, 2010, at San Francisco, California.



Sharon Edwards

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GLENN REIT, D.D.S.,

Plaintiff,

- against -

YELP! INC. and JOHN DOE, aka
"MICHAEL S.",

Defendants.

Index No.:

Date Purchased:

SUMMON
FILED

10600555

MAR 04 2010

COUNTY CLERK'S OFFICE
NEW YORK


To the above named defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on Plaintiff's attorneys, Holland & Knight LLP, within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and, in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates New York County as the place of trial. The basis of venue is that Plaintiff resides in and has his principal place of business in New York County. This action is not based on a consumer credit transaction.

Dated: New York, New York
March 3, 2010

HOLLAND & KNIGHT LLP

By: 
Richard Raysman

31 W. 52nd Street
New York, New York 10019
(212) 513-3200

Attorneys for Plaintiff
Dr. Glenn Reit, D.D.S.

9216253_v2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GLENN REIT, D.D.S.,

Plaintiff,

- against -

YELP! INC. and JOHN DOE, aka
"MICHAEL S.",

Defendants.

Index No.:

Date Filed:

10600555

COMPLAINT

Plaintiff, Dr. Glenn Reit, D.D.S. ("Dr. Reit"), by and through his attorneys, Holland & Knight LLP, respectfully complains against Defendants Yelp! Inc. ("Yelp") and Michael S. as follows:

FILED

MAR 04 2010

NATURE OF THE ACTION

COUNTY CLERK'S OFFICE

NEW YORK

1. Plaintiff seeks preliminary and permanent injunctions ordering Yelp to delete all references to Dr. Reit on its website in order to prevent the continuing defamation of Dr. Reit and damage to his dental practice.

2. Dr. Reit seeks monetary damages from Yelp and Michael S. in the form of compensatory damages for defamation to Dr. Reit and to Dr. Reit's dental practice, together with punitive damages for Yelp's purposeful and self-serving acts of complicity.

THE PARTIES

3. Dr. Reit is a dentist with the principal place of business for his dental practice located at 1498 Third Avenue, New York, NY 10028. Dr. Reit is a resident of the State of New York, City of New York, residing at 389 East 89th Street, New York, NY 10128.

4. Upon information and belief, Yelp! Inc. is a corporation existing under the laws of Delaware with a principal place of business at 706 Mission Street, San Francisco, California 94103.

5. Upon information and belief, Yelp conducts business in the City of New York, State of New York and is registered as a foreign corporation in New York.

6. Michael S. is an anonymous poster on Yelp. Dr. Reit does not know his (or her) identity.

7. Yelp and Michael S. have committed tortious acts against Dr. Reit causing injury to Dr. Reit and his dental practice.

8. At all times material to this action, Yelp, itself and through its agents, regularly solicited and transacted business in the State of New York and this County, by, among other things, Yelp's interactive website, including but not limited to the domain name www.yelp.com (the "Interactive Website"). Upon information and belief, Yelp is the registered owner of the Internet domain name www.yelp.com.

9. The Interactive Website allows consumers and businesses in the State of New York and this County to post and view reviews and complaints about professionals and other businesses to its website.

10. Upon information and belief, Yelp solicits and sells advertising to businesses via the said Interactive Website and through individual sales representatives.

FACTUAL BACKGROUND

11. The Plaintiff, Dr. Glenn Reit, D.D.S is a dentist with a general practice of dentistry on the East side of New York. He is a 1976 graduate of George Washington University and a 1980 graduate of Georgetown Dental School and has been a practicing dentist for over 30

years. Reit's general dental practice consists of performing oral examinations, taking x-rays, filling cavities, installing implants and crowns, gum surgery, extractions, root canals, reconstruction, cosmetic procedures and general dentistry. He has never had a malpractice claim filed against him and has a clean record with the National Practitioner Data Bank.

12. After graduating from dental school, Reit spent 25 years practicing dentistry in California. On October 21, 2007 Reit purchased a dental practice on the upper East side of Manhattan which is currently his primary dental practice.

13. Between December, 2008 and January, 2009 Reit fully renovated his office. He purchased over \$100,000 of new dental equipment. He also spent over \$50,000 on construction including installing new floors and ceilings, installing new electrical lines, and installing new plumbing.

14. Defendant Yelp operates a website which encourages the general public to write and post reviews, comments and opinions about their experiences with various businesses such as restaurants, stores, professional practices and local tradesmen.

15. Defendant "Michael S." is an anonymous poster who wrote and posted a defamatory review about Reit.

THE DEFAMATION CLAIM

16. Defamation of a person in his or her profession is such a serious offense as to be recognized in the law as one of the four "per se" defamatory violations.

17. On May 6, 2009 the following false and defamatory statement was published on the website of the defendant Yelp by the anonymous poster "Michael S." under the name of "Glen [sic] Reit":

" 5/6/2009

So - just to start off - one of the reviews under this heading refers to Dr. Reitman, whom I have heard is a decent dentist; however, this entry is truly for Dr. Glen Reit on 3rd avenue.

Beware of this dentist and this office!

I have never experienced such unprofessional service in such a disgusting office as I had in the office of Dr. Glen Reit. I went there in some amount of urgency after having broken a tooth. I had an Empire Blue EPO (another term for HMO), so my dental provider options were limited. Dr. Reit had just purchased the practice from retired dentist and was just settling in.

I walked into the office and was in shock regarding the appearance. I am not from New York, but have adjusted fairly well to encountering dark, small, old, smelly offices as the norm, but I always thought this would not be tolerated in medical offices - apparently I was wrong! It looked like it was from the 50s - bright blue pleather couch, brass furnishings, dingy carpet. But that was just the reception area! The examination rooms are not at all better, in fact, they aren't rooms at all. There is one main exam room with several chairs separated by half walls similar to cubicles, so you can hear everything that is being said about every patient - so much for privacy or confidentiality. The equipment is old and dirty. There was dust on the instruments that were supposed to be gong [sic] into my mouth! I am considering reporting the office to OSHA.

I allowed the barely competent xray tech to snap a couple of painful xrays, but refused to have the hygienist put any of the instruments in my mouth. Dr. Reit introduced himself and failed to ask me any questions about my medical or dental history, but felt completely comfortable to criticize the work my NC dentist had performed. He demanded payment before performing any work, so I walked out.

As a health care professional myself, I was shocked to think that somebody could behave this way and conduct health care services in that condition.

As for my tooth, I flew to Florida to have my cousin fix it for free. (the "Michael S." Posting)"

18. The statements in the Michael S. Posting are false and defamatory as follows:

a. the posting states that there is "unprofessional service". This is a false statement. Dr. Reit has always given and continues to give highly professional service.

b. the posting states that the office is a "disgusting office". This is a false statement. Dr. Reit's office is ultra clean, sanitary and has never received any health code violations from New York State regulatory authorities.

c. the posting states that the office is "dark". This is a false statement. Dr. Reit's office is bright with glass windows present in the dental operatories measuring twenty-one feet in length by twelve feet in height overlooking Third Avenue on the second floor of a five story brownstone.

d. the posting states that the office is "small". This is a false statement. Dr. Reit's office is spacious with four dental operatories.

e. the posting states that the office is "old". This is a false statement. Dr. Reit's office is newly renovated.

f. the posting states that the office is "smelly". This is a false statement. Dr. Reit's office is not "smelly", it has no smell at all.

g. the posting states that the office "looked like it was from the 50s – bright blue pleather couch, brass furnishings, dingy carpet." This is a false statement. Dr. Reit does not have a bright blue pleather couch, brass furnishings or a dingy carpet. Dr. Reit's office was completely renovated in January, 2009 and all furnishings are new and bright.

h. The posting states that "you can hear everything that is being said about every patient – so much for privacy and confidentiality". This is a false statement. Dr. Reit's office keeps the utmost privacy and confidentiality of all patients.

i. The posting states that "the equipment is old and dirty". This is a false statement. In January, 2009, Dr. Reit purchased and installed all new equipment which is kept in immaculate condition.

j. The posting states "there was dust on the instruments that were gong (sic) into my mouth". This is a false statement. There is no dust on Dr. Reit's instruments which are completely sterilized, sealed in dated sterilization packets which meet all state and federal OSHA regulations for dental sterilization. In addition weekly sterilization monitors regulated by outside sterilization monitoring companies are used to insure continued sterility of all dental instruments.

k. The posting states that "I allowed the barely competent xray tech to snap a couple of painful xrays". This is a false statement. Dr. Reit's x-ray technicians are fully trained in x-ray technology and in working with Reit's patients in a professional manner.

l. The posting states that "Dr. Reit introduced himself and failed to ask me any questions about my medical or dental history". This is a false statement. When examining any new or existing patient, Dr. Reit always inquires about the patient's medical and dental history.

19. Dr. Reit does not know who "Michael S." is.

20. Dr. Reit has always worked diligently and extensively to maintain the highest professional standards and to develop a professional reputation for himself and his dental practice. That reputation is currently being threatened by the false and defamatory Michael S. Posting.

21. Since the Michael S. Posting, Dr. Reit has lost a considerable amount of business. Prior to the Michael S. Posting, Reit received 10 to 15 calls a day for appointments. Since the Michael S. Posting, Dr. Reit is receiving only 4 to 5 calls a day for appointments.

YELP'S MANAGEMENT OF THE REIT REVIEWS

22. Under his name on the Yelp website, Dr. Reit also had 10 positive reviews.

23. After the Michael S. Posting went up under Dr. Reit's name, Dr. Reit contacted Yelp by e-mail and by telephone in an effort to get the posting deleted. Yelp refused to take down the posting.

24. By on or about November 5, 2009 Yelp removed all of the positive postings under Dr. Reit's name and retained only the Michael S. Posting.

25. Ultimately, Yelp removed all of the postings from Dr. Reit's professional profile on Yelp, yet even today, the Michael S. Posting appears on the Yelp website under "Michael S.'s Reviews" and comes up as a search engine's result for users searching for Dr. Reit online.

26. Dr. Reit's first name is misspelled on Yelp as "Glen" Reit. Currently, whenever "Glen Reit" is entered into the Google search engine, the Michael S. Posting with the false and defamatory statement comes up as the second listing on the Google search stating "May 6, 2009 ... I have never experienced such unprofessional service in such a disgusting office as I had in the office of Dr. Glen Reit."

27. Currently, whenever "dr glenn reit ny" is entered into the Google search engine, the Michael S. Posting with the false and defamatory statement comes up as the third listing on the Google search.

28. Upon information and belief, the Michael S. Posting is somehow optimized, or linked to outside web-content, so that the review always comes up as a second or third listing in a Glenn Reit search using the Google search engine.

29. Upon information and belief, based upon Yelp's business model as set out below, Reit believes that the Michael S. Posting is being retained on the Yelp site to encourage Reit to sign up for Yelp advertising.

EFFECT OF MICHAEL S.'s REVIEWS ON DR. REIT'S DENTAL PRACTICE

30. Reit is on the approved list of many insurance companies including Aetna, Cigna, Delta, Guardian, MetLife, Twenty First Century, United Concordia and United Health Care.

31. Upon information and belief, potential patients whose companies provide dental insurance and who desire a dentist on the upper East side look at the insurance company websites and may have several dentists to choose from. Upon information and belief, these potential patients "Google" Reit's name before calling him. Upon information and belief, when the potential patients "Google" Reit's name, and the Michael S. Posting appears, they do not call Dr. Reit but simply call the next dentist on the recommended list. In addition on many occasions new patients who have called the office to schedule an appointment, subsequently call back the office prior to their appointment to cancel and fail to reschedule presumably after stumbling on the Michael S. review.

32. Upon information and belief, if Dr. Reit's review on the Michael S's Reviews Yelp site is not removed, it will ultimately drive Dr. Reit out of business. Online reviews are so ubiquitous that no marketing strategy Dr. Reit could follow would repair the damage to his professional reputation and practice.

YELP'S BUSINESS MODEL

33. Upon information and belief, Yelp engages in a business practice of deleting positive reviews and retaining negative reviews in order to encourage business owners to advertise on Yelp.

34. Upon information and belief, Yelp solicits advertising from businesses listed on the Yelp website at a cost of \$300 a month or more. As noted on Yelp's website, "Sponsors can highlight a single review at the top of their page, which is clearly marked with a heading denoting their sponsorship...Following that, review order is determined by a combination of recency and user voting, and this methodology is applied to all businesses, sponsors or not." Without further inquiry, there is no way of determining what is meant by a "combination of recency and user voting" and whether Yelp employees have a decision input into review order and on what criteria.

35. Upon information and belief, Yelp's sales force uses negative reviews on the Yelp website as leads for new advertising business.

36. Upon information and belief, Yelp sales representatives orally tell business owners that if the business owner commits to pay for advertising, the Yelp sales representative will assist in deleting a number of troubling negative reviews, even though Yelp denies this in the frequently asked questions on the website. Upon information and belief, if a business owner

does not sign up for advertising, Yelp deletes positive reviews and retains negative reviews of that business owner.

37. Upon information and belief, by managing the content on the Yelp website so that negative reviews remain and positive reviews are deleted for the purpose of generating advertising revenues, Yelp is "responsible in part for development of information" which makes it an information content provider under the Communications Decency Act ("CDA") §230 and thus no longer eligible for the CDA §230 immunity afforded to an Interactive Computer Service.

38. On Yelp's "Business Owner's Guide", under the heading "Common Questions and Tricky Situations", Yelp states that " We remove some of the guesswork by screening out reviews that are written by less established users. The process is entirely automated to avoid human bias, and it affects both positive and negative reviews... Please note that our support team cannot manually restore reviews." Yelp has also stated in an e-mail to Dr. Reit that "We do have, as I believe you know, an automated software system that scans our listing for potentially untrustworthy users, and may elect to suppress this review in time." Upon information and belief the foregoing statement is false. Upon information and belief, the system is not "entirely automated" and Yelp manipulates the reviews so that the negative reviews become more prominent and the positive reviews become less prominent or disappear entirely from the website. In addition, Yelp's "automated system" completely removed ten positive reviews on the Yelp website of Dr. Glen Reit which implies human intervention by Yelp.

39. Upon information and belief, Yelp's self described "entirely automated" process is completely undefined and not available to the public. Without further inquiry, there is no way for Dr. Reit to determine how this "automated" process works or whether Yelp employees

actually make decisions about which reviews are retained, which reviews are deleted and the listing order of the reviews.

40. Upon information and belief, Yelp has engaged in a conspiracy to injure Dr. Reit in his trade, business and reputation including without limitation Dr. Reit's dental practice.

FIRST CAUSE OF ACTION
(Defamation Against Michael S.)

41. Dr. Reit repeats and realleges the allegations set forth in paragraphs 1 through 40 hereof as if fully set forth herein.

42. The Michael S. Posting is false and defamatory.

43. Michael S. (i) made a false and defamatory statement concerning Dr. Reit, (ii) Michael S. published the statement without privilege to a third party, (iii) Michael S.'s fault in publishing the statement amounted to negligence at a minimum, and likely to malicious intent, and (iv) either the statement is actionable as a matter of law irrespective of special harm or the statement's publication caused Dr. Reit special harm.

44. The Michael S. Posting injures Reit in his profession and thus is a per se defamatory statement.

45. Michael S.'s defamatory acts have been committed with the intent to cause damage to Dr. Reit.

46. Dr. Reit has been and continues to be damaged by Michael S.'s activities and conduct, and unless Michael S.'s conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

47. Michael S.'s continued misconduct is causing irreparable harm to Dr. Reit in his profession so as to severely and negatively impact Dr. Reit's ability to conduct his dental practice.

48. Dr. Reit has been and continues to be injured by Michael S.'s activities and conduct, and unless his conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

49. Dr. Reit has no adequate remedy at law.

50. Dr. Reit should be awarded injunctive relief and damages in an amount to be determined at trial for injuries sustained by Dr. Reit in consequence of Michael S.'s acts complained of herein.

SECOND CAUSE OF ACTION
(Defamation Against Yelp)

51. Dr. Reit repeats and realleges the allegations set forth in paragraphs 1 through 50 hereof as if fully set forth herein.

52. The Michael S. Posting is false and defamatory.

53. The Michael S. Posting on Yelp (i) is a false and defamatory statement concerning Dr. Reit, (ii) Yelp published the statement without privilege to a third party, (iii) Yelp's fault in publishing the statement amounted to a minimum of negligence, and (iv) either the statement is actionable as a matter of law irrespective of special harm or the statement's publication caused Dr. Reit special harm.

54. The Michael S. Posting injures Dr. Reit in his profession and thus is a per se defamatory statement.

55. On information and belief, Yelp's defamatory acts were committed with the intent to cause damage to Dr. Reit.

56. Dr. Reit has been and continues to be injured by Yelp's actions, and unless Yelp's conduct is enjoined, Dr. Reit will suffer irreparable injury to his profession.

57. Yelp's continued misconduct is causing irreparable harm to Dr. Reit in his profession so as to severely and negatively impact Dr. Reit's ability to conduct his dental practice.

58. Dr. Reit has been and continues to be injured by Yelp's activities and conduct, and unless their conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

59. Dr. Reit has no adequate remedy at law.

60. Dr. Reit should be awarded injunctive relief and damages in an amount to be determined at trial for injuries sustained by Dr. Reit in consequence of Yelp's acts complained of herein.

THIRD CAUSE OF ACTION

(Injury to Reputation, Trade, Business and Profession Against Yelp)

61. Dr. Reit repeats and realleges the allegations set forth in paragraphs 1 through 61 hereof as if fully set forth herein.

62. The Michael S. Posting is false and defamatory.

63. On information and belief, Yelp, by its aforesaid business practices, has engaged in a conspiracy with Michael S. to defame Dr. Reit and has defamed Dr. Reit with Yelp as a content provider.

64. The Michael S. Posting on Yelp (i) is a false and defamatory statement concerning Dr. Reit, (ii) Yelp published the statement without privilege to a third party, (iii) Yelp's fault in publishing the statement amounted to at least negligence, and (iv) either the statement is actionable as a matter of law irrespective of special harm or the statement's publication caused Reit special harm.

65. The Michael S. Posting injures Dr. Reit in his profession and thus is a per se defamatory statement.

66. On information and belief, Yelp's defamatory acts have been committed with the intent to cause damage to Dr. Reit, in order to compel Dr. Reit to purchase advertising from Yelp.

67. Dr. Reit has been and continues to be damaged by Yelp's activities and conduct, and unless Yelp's conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

68. Yelp's continued misconduct is causing irreparable harm to Dr. Reit in his profession so as to severely and negatively impact Dr. Reit's ability to conduct his dental practice.

69. Dr. Reit has been and continues to be injured by Yelp's activities and conduct, and unless their conduct is enjoined, Dr. Reit will suffer irreparable injury in his profession.

70. Dr. Reit has no adequate remedy at law.

71. Reit should be awarded injunctive relief and damages in an amount to be determined at trial for injuries sustained by Reit in consequence of Yelp's acts complained of herein.

FOURTH CAUSE OF ACTION
(Deceptive Acts and Practices Against Yelp)

72. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 71 hereof, as if fully set forth herein.

73. Yelp's acts constitute deceptive acts and practices, in violation of N.Y. General Business Law §§ 349-350 and other laws, in the conduct of business, trade and commerce, by virtue of their: (a) providing deceptive terms on their website that encourage both business consumers/users and individual consumers/users of the site to believe that the reviews they consume are not manipulated by Yelp, and (b) deleting positive postings and highlighting negative postings, creating false and damaging profiles, for the purpose of selling advertising.

74. Yelp's deceptive practices prey particularly on small practices or businesses, like Dr. Reit's dentistry practice.

75. As a result of defendants' deceptive acts and practices, Dr. Reit has incurred substantial costs and expenses which would not have been incurred but for the aforesaid deceptive acts and practices.

76. Under the current circumstances, in which Yelp has not removed the Michael S. Posting, damages cannot be calculated with any certainty at this time and are demanded in an amount to be proven at trial.

77. Plaintiff also demands attorneys' fees.

78. Dr. Reit has no adequate remedy at law.

WHEREFORE, plaintiff Dr. Reit demands judgment against the Defendants as follows:

1. Preliminarily and permanently enjoining Defendants, their officers, directors, agents, servants, employees, attorneys and all persons and entities in active concert and participation with them, from:

a. in any manner using, referencing, stating or mentioning the names "Glen Reit" or "Glenn Reit" on the Yelp website or any other website controlled by Yelp, and specifically removing the "Glen Reit" entry from the Michael S. Posting location;

b. doing any other acts or things calculated or likely to cause harm to Dr. Reit in his profession;

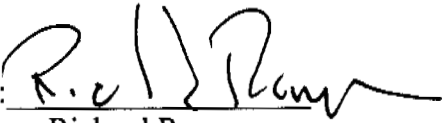
2. Preliminarily ordering Yelp to furnish the identity and contact information of Michael S.;

3. Awarding Dr. Reit damages against the Defendants in an amount to be determined at trial for injuries sustained by Dr. Reit in consequence of the Defendants' acts complained of herein, such damages to be in an amount of no less than \$3,000,000 of compensatory damages and \$7,000,000 of punitive damages; and

4. Awarding Dr. Reit such other and further relief as the Court deems just, equitable and proper.

Dated: New York, New York
March 3, 2010

HOLLAND & KNIGHT LLP

By: 
Richard Raysman
Katherine A. Skeele

31 West 52nd Street
New York, NY 10019
212-513-3200
richard.raysman@hklaw.com
katherine.skeele@hklaw.com

Attorneys for Plaintiff
Dr. Glenn Reit, D.D.S.

9135115_v6

Index No.

Year 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GLENN REIT, D.D.S.,

Plaintiff,

- against -

YELP! INC. and JOHN DOE, aka "MICHAEL S.",

Defendants.

COMPLAINT

HOLLAND & KNIGHT LLP

Attorneys for

Plaintiff

31 West 52nd Street
New York, N.Y. 10019
(212) 513-3200

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: Signature

Print Signer's Name.....

Service of a copy of the within is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within-named Court on

20

NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. _____, one of the judges of the within-named Court,
at _____
on _____ 20 _____, at _____ M.

Dated:

EXHIBIT C



Real People. Real Reviews.®

Glenn Reit, DDS

★★★★☆ 6 reviews

Category: Dentists

1498 Third Avenue
Manhattan, NY 10028
Neighborhoods: Upper East Side, Yorkville

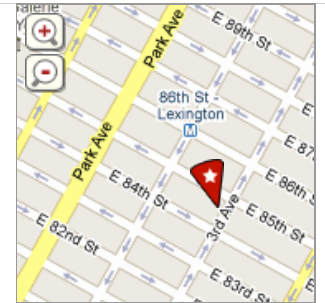
(212) 517-9000
drglennreit.com

Nearest Transit:
86th St (4, 5, 6)

By Appointment Only: Yes



Add Photos



Magic Smile - NYC Teeth Whitening Service



Category: Cosmetic Dentists
Neighborhood: Upper West Side

\$129 Express Laser Teeth Whitening
instead off \$299. Most Advanced, Painless, No... [read more »](#)

Sponsored Result

Related Special Offers



Preferred Dental Care
New Patient Exam Special \$230...
Neighborhood: Chelsea



Zarabi David DDS
Invisalign Special- Free...
Neighborhood: Midtown East

6 reviews for Glenn Reit, DDS

All Reviews



2
3

Brian C.
New York, NY

★★★★☆ 9/10/2010

I have been using Dr. Reit for the last 3 years. As a "professional patient" I must say he is one of the best Dentist I have ever worked with.

The facilities are clean, the staff is extremely friendly, and the service is right up my alley. Dr. Reit is strait and to the point. If there's anything wrong with your mouth he will know even before an X-Ray and take care of the problem immediately.

If you want a fast and effective Dentist this is the DDS for you.

Was this review ...? Useful Funny Cool



165
43

Jonathan N.
New York, NY

★★★★☆ 9/15/2010

I was forced to change dentists when I got a new job and my new insurance wouldn't cover the place I've gone for the last five years. I found Dr. Reit simply by looking on my insurance company's website for dentists in the area and figured I'd take a chance.

In short, I'll say that Dr. Reit seemed adequate, if not spectacular. The office wasn't as modern or high-tech as that of my previous dentist, but he did come to many of the same conclusions about my teeth that my previous provider had shared with me. So he seems competent enough.

He does talk a bit too much and kind of annoyed me, but I can handle that for one visit every six months. I didn't have to wait a long time, had no problems with the insurance company covering his services, and he didn't try to upsell me, like what apparently happened to Matt R.

I'll be back again in six months.

Was this review ...? Useful (2) Funny (1) Cool (1)



0
2

Matt R.
New York, NY

★★★★☆ 5/28/2010

Short version:

1. I was deliberately charged for a panoramic x-ray that my insurance covered (because the insurance reimbursement to him was "not enough")

People Viewed This After Searching For...

Dr Glenn Reit Manhattan

2. I was tricked into getting an optional treatment because he said it was "required."
3. He told my insurance company that I did not fulfill my financial obligations to him.
4. He filled two teeth that likely did not have cavities (although I have no proof).
5. He said I had two other cavities which needed filling, but my new dentist said that they are not cavities.

Long version:

I found Glenn Reit through my insurance website and went for a regular exam and cleaning. Things seemed okay at first, but the first clue that something was up dealt with x-rays. Previously, my insurance plans had always covered x-rays in full, but Dr. Reit said that I needed a panoramic x-ray which was NOT covered by my insurance. He said this x-ray was required by NYS law and that it would cost me \$45. I thought this was peculiar because I had never paid for x-rays before, but I did not have any evidence for arguing this point at the time.

After a quick exam, he said I had four cavities, one in each wisdom tooth. Wow! This was surprising because, although I've had plenty of cavities as a child, I don't remember the last time I had one.

I chose to get two of the cavities filled that day, and would make another appointment to get the other two filled. He gave the choice of white or silver fillings, silver being covered by insurance and white not covered. I chose silver, but there was a catch. The silver filling IS fully covered by insurance, but the REQUIRED glass ionomer cement was not. This costs \$79 per tooth. I stress the word "required" because that is how I was sold on it. He said that this is a necessary part of these fillings because it creates a strong bond and lets out fluoride to protect the tooth. Now, he did have me sign a form indicating that I agreed to this part and when I asked him again what this material was, he was very curt. He stated the long verbose name of the material rapidly and kept on saying how it was necessary. I signed reluctantly, again trusting this person with a professional degree to not steer me wrong.

So, he filled two teeth, drilling fairly deep and showing me how deep the "cavities" went. After this was over, I paid my bill (\$203 total, \$79 per tooth and \$45 for the x-ray) and left. He gave me a credit card receipt but not an itemized bill of the work done.

After I got home, I was unsettled by the experience, so the next day I called my insurance company. They clearly stated to me that a panoramic x-ray is FULLY COVERED every 3 years under my plan. I didn't remember the name of the ionomer cement at the time, so they couldn't give me information on that. But, they said that silver fillings are FULLY COVERED by my plan. I called his office, but he wasn't there so I voiced my concern to the secretary and she left a message. About an hour later, I received a call from Glenn Reit. He said that the extra treatment I got was the OPTIONAL ionomer resin that I signed for and that my insurance didn't cover. I told him how he stated that this was a required part of the silver filling. His rebuttal was that this is a required part of HIS practice because that is "his standard of care" and he only treats patients in the best manner possible. This story was different than the way he had sold me on it the day before. This is a breach of informed consent and utter dishonesty.

Now, the panoramic x-ray. I told him what the insurance company said. His rebuttal dealt with the fact that I had an HMO plan, which doesn't reimburse him well. He said "well, they say that it's covered but I don't think it is." So, he is committing insurance FRAUD by charging his patients for a service that is covered under insurance because that plan does not reimburse him well.

In the end, I received my money back, except for a \$25 x-ray copy fee, which was fine. A few weeks later, I called my insurance company to change my primary dentist to a new one. To my surprise, it had already been changed. After that, I got a letter from my insurer stating that it had been changed "due to purported failure to fulfill your financial obligations to the office." What?!?! Now, I took my x-rays to my new dentist. He said he'd be happy to fill the remaining two cavities for me, and that they are fully covered under my plan. So I gave him the x-rays, which he looked at, but didn't see any cavities. He said there are some cavities that can't be seen on x-ray, so he looked at my teeth. And he looked and looked, and as you can guess, NO CAVITIES. He looked again and again and told me honestly that he does not see cavities, but normal staining of the teeth. Now, I can never know if the original cavities that Glenn Reit filled were actually cavities, but I seriously doubt that I had cavities in those two teeth and he mistakenly thought the other stained teeth had cavities.

Was this review ...? Useful (17) Funny (3) Cool (4)



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3

Colter R.
New York, NY

★★★★★ 5/11/2009

Dr. Reit is an experienced, competent professional. He has done two crowns for me in the last year.They were done on time and for a lot less money than my wifes dentist(she was amazed)..... Most important,THEY FIT PERFECTLY!Dr Reit always does follow up calls to check that things are OK, just in case...I never heard of that before..... He is a truly caring gentleman and a superb dentist.His staff is congenial, polite and professional...

The bright office was just renovated at great cost and looks lovely....All the equipment is brand

new.....

Whoever is besmirching him here has clearly got other unrelated and unresolved emotional issues...They should STOP IT!!....It is TOTALLY UNWARRANTED!..

I trust Dr Reit.....I joke with hm, sometimes...."You are the REIT dentist.", I say.....he laughs(like he's never heard that before) !!....He's a great dentist and a great guy.

Thanks, Dr. Reit!

Was this review ...? Useful (1) Funny Cool



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1

Gail V.
New York, NY

★★★★★ Updated - 3/27/2009

My entire family has been seeing Dr. Reit since he took over the practice from the previous dentist. We are extremely happy with the way he has treated us, both professionally and personally. We've had emergencies and he accommodated us immediately.

For example, my crown cracked at work and although Dr. Reit was completely booked, his staff was very sympathetic and squeezed me in. The work he did was amazing. I haven't had a problem since.

My husband has numerous dental problems and he has been treated extremely well by Dr. Reit and his staff - and he is very satisfied with the work Dr. Reit has done.

I have recommended Dr. Reit to my co-workers and they, too, have been pleased with his work and have thanked me for the recommendation.

Was this review ...? Useful (1) Funny Cool

1 Previous Review: [Show all](#) »

★★★★★ 2/21/2009 [First to Review](#)

My entire family has been seeing Dr. Reit since he took over the practice from the previous dentist.... [Read more](#) »



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6

Josh H.
New York, NY

★☆☆☆☆ Updated - 10/30/2009

not satisfied

Was this review ...? Useful Funny Cool

1 Previous Review: [Show all](#) »

★☆☆☆☆ 10/30/2009

Was rude to my 9 mos pregnant wife at first appointment. Blamed her for clerical errors by his... [Read more](#) »

(9 Filtered)

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