

1 LAWRENCE D. MURRAY, State Bar No. 77536
NOAH W. KANTER, State Bar No. 224580
2 MURRAY & ASSOCIATES
1781 Union Street
3 San Francisco, CA 94123
Telephone: (415) 673-0555
4 Facsimile: (415) 928-4084

5 DAVID R. ONGARO, State Bar No. 154698
AMELIA D. WINCHESTER, State Bar No. 257928
6 ONGARO BURTT & LOUDERBACK LLP
595 Market St., Suite 610
7 San Francisco, CA 94105
Telephone: (415) 433-3900
8 Facsimile: (415) 433-3950

9 Attorneys for Plaintiffs
BORIS Y. LEVITT *et al.*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

13 BORIS Y. LEVITT, on behalf of himself and all
14 others similarly situated,

15 Plaintiffs,

16 v.

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

18 Defendants.

Case No. CV 10-01321 EMC
Consolidated with CV 10-02351 EMC

**PLAINTIFF LEVITT'S
EVIDENTIARY OBJECTIONS IN
SUPPORT OF ITS OPPOSITION TO
MOTION TO DISMISS THIRD
AMENDED CLASS ACTION
COMPLAINT AND TO DISMISS OR
STRIKE CLASS ACTION
ALLEGATIONS**

Date: October 14, 2011
Time: 1:30 p.m.
Place: Courtroom 15
Judge: Hon. Edward M. Chen

I. INTRODUCTION

Plaintiffs Boris Y. Levitt, d/b/a Renaissance Restoration, a/k/a Renaissance Furniture Restoration (“Levitt”), Cats and Dogs Animal Hospital, Inc. (“Cats and Dogs”), Tracy Chan, d/b/a Marina Dental Care, a/k/a Marina Dental Care (“Chan”), Professional Construction Group, Inc. d/b/a Paver Pro (“Paver Pro”), and John Mercurio d/b/a Wheel Techniques (“Wheel Techniques”) on behalf of themselves and all others similarly situated, hereby submit evidentiary objections to the evidence submitted by defendant Yelp! Inc. (“Yelp”) in support of Defendant Yelp! Inc.’s Motion to Dismiss Third Amended Class Action Complaint and to Dismiss or Strike Class Action Allegations. Plaintiffs specifically object to the declarations of Ashlie Beringer (Dkt. No. 79) and Ian MacBean (Dkt. No. 80), as set forth below:

II. OBJECTIONS TO THE DECLARATION OF ASHLIE BERINGER

Declaration of Ashlie Beringer		
Cite	Material Objected To:	Grounds for Objection:
Ex. 1	Exhibit 1	Exhibit 1 is not properly authenticated. Fed. R. Evid. (“FRE”) 901. The only attempt at authentication is a statement that it is a “true and correct copy” and a reference to an internet website. Beringer Decl., ¶2. There is no information as to how, why, when, or what basis there is for the assertion that the exhibit is a true and correct copy. <i>Id.</i> Authentication is a “condition precedent to admissibility,” and this condition is satisfied by “evidence sufficient to support a finding that the matter in question is what its proponent claims.” FRE 901(a). The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602.
¶ 2	Attached as Exhibit 1 is a true and correct copy of the “About Us” page from Yelp’s website, http://www.yelp.com/about , which is referenced in Plaintiffs’ Third Amended Complaint at paragraphs 2, 3, 5 and footnote 1.	Exhibit 1 is not authenticated and thus is inadmissible. The statement that Exhibit 1 is “referenced in Plaintiffs’ Third Amended Complaint at paragraphs 2, 3, 5 and footnote 1” lacks foundation, is not based on personal knowledge and is inaccurate. FRE 602. The Third Amended Complaint never references the “About Us” page from Yelp’s website. <i>See generally</i> Third Amended Complaint

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Cite	Material Objected To:	Grounds for Objection:
		(“TAC”). The TAC has no exhibits, let alone the “About Us” page from Yelp’s website. <i>Id.</i> Paragraphs 3, 5 and footnote 1 (but not paragraph 2) do provide short quotes of information taken from Yelp’s website – as do previously filed complaints, including the initial complaint filed on March 12, 2010 in San Francisco Superior Court (“Complaint”). Neither the Complaint nor the TAC could have referenced Exhibit 1 because the print and access date on the face of Exhibit 1 is July 22, 2011 – long after these complaints were filed. <i>See</i> Ex. 1. Equally implausible and objectionable for similar reasons is declarant’s contention that Exhibit 1 as well as Exhibit 2 is referenced in paragraphs 3 and 5 of the TAC (Beringer Decl., ¶¶2-3) and that Exhibit 1 as well as Exhibit 3 is referenced in paragraph 5 of the TAC. Beringer Decl., ¶¶2, 4. Exhibit 1 therefore is irrelevant and should not be considered. FRE 401, 402.
Ex. 2	Exhibit 2	Exhibit 2 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that it is a “true and correct copy” and a reference to an internet website. Beringer Decl. ¶3. There is no information as to how, why, when, or what basis there is for the assertion that the exhibit is a true and correct copy. <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602.
¶ 3	Attached as Exhibit 2 is a true and correct copy of the “FAQ” page from Yelp’s website, http://www.yelp.com/faq , which is referenced in Plaintiffs’ Third Amended Complaint at paragraphs 3 and 5.	Exhibit 2 is not authenticated and thus is inadmissible. The statement that Exhibit 2 is “referenced in Plaintiffs’ Third Amended Complaint at paragraphs 3 and 5” lacks foundation, is not based on personal knowledge and is inaccurate. FRE 602. The TAC never references the “FAQ” page from Yelp’s website. <i>See generally</i> TAC. The TAC has no exhibits, let alone the “FAQ” page from Yelp’s website. <i>Id.</i> Furthermore, the document submitted as Exhibit 2 is 6 pages long, and the declaration does not identify what information, if any, purportedly is referenced in the TAC. Paragraphs 3 and 5 do provide short quotes of information taken from Yelp’s website – as do previously filed complaints, including the Complaint. The

Declaration of Ashlie Beringer

Cite	Material Objected To:	Grounds for Objection:
		Complaint could not have referenced Exhibit 2 because the print and access date on the face of Exhibit 2 is October 10, 2010 – 7 months after the Complaint was filed. <i>See</i> Ex. 2. Equally implausible and objectionable for similar reasons is declarant’s contention that Exhibit 1 as well as Exhibit 2 is referenced in paragraphs 3 and 5 of the TAC (Beringer Decl., ¶¶2-3) and that Exhibit 2 as well as Exhibit 3 is referenced in paragraph 5 of the TAC. Beringer Decl., ¶¶3-4. Exhibit 2 therefore is irrelevant and should not be considered. FRE 401, 402.
Ex. 3	Exhibit 3	Exhibit 3 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that it is a “true and correct copy” and a reference to an internet website. Beringer Decl. ¶4. There is no information as to how, why, when, or what basis there is for the assertion that the exhibit is a true and correct copy. <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602.
¶ 4	Attached as Exhibit 3 is a true and correct copy of the “Advertising on Yelp” page from Yelp’s website, http://www.yelp.com/business/advertising , which is referenced in Plaintiffs’ Third Amended Complaint at paragraph 5.	Exhibit 3 is not authenticated and thus is inadmissible. The statement that Exhibit 3 is “referenced in Plaintiffs’ Third Amended Complaint at paragraph 5” lacks foundation, is not based on personal knowledge and is inaccurate. FRE 602. The TAC never references the “Advertising on Yelp” page from Yelp’s website. <i>See generally</i> TAC. The TAC has no exhibits, let alone the “Advertising on Yelp” page from Yelp’s website. <i>Id.</i> Paragraph 5 does provide short quotes of information taken from Yelp’s website – as do previously filed complaints, including the Complaint. There is no print or access date on the face of Exhibit 3, nor is that information provided in the declaration. Beringer Decl., ¶4. Therefore, because there is no known date of the document, there is no factual basis to support the assertion that Exhibit 3 was referenced in the TAC or any other complaint filed by Plaintiff in this matter. Equally implausible and objectionable for similar reasons is declarant’s contention that Exhibit 3 as well as Exhibit 1 and Exhibit 2 are referenced in

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Cite	Material Objected To:	Grounds for Objection:
		paragraph 5 of the TAC. Beringer Decl., ¶¶2-4. Exhibit 3 therefore is irrelevant and should not be considered. FRE 401, 402.
Ex. 4	Exhibit 4	Exhibit 4 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that it is a “true and correct copy” and a reference to an internet website. Beringer Decl. ¶5. There is no information as to how, why, when, or what basis there is for the assertion that the exhibit is a true and correct copy. <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602.
¶ 5	Attached as Exhibit 4 is a true and correct copy of the “Terms of Service” from Yelp’s website, http://www.yelp.com/static?p=tos&country=US , which is referenced in Plaintiffs’ Third Amended Complaint at paragraphs 6, 34, 40, and footnote 5. The “Terms of Service” are also incorporated by Plaintiffs into their definition of “Review Terms,” (see TAC ¶ 6) which is referenced throughout the Third Amended Complaint, including at paragraphs 7, 10, 66, 67, 95, 96, 98, 101, 105, 113, 117, 134, and 142.	Exhibit 4 is not authenticated and thus is inadmissible. The statement that Exhibit 4 is “referenced in Plaintiffs’ Third Amended Complaint at paragraphs 6, 34, 40, and footnote 5” lacks foundation, is not based on personal knowledge and is inaccurate. FRE 602. The TAC never references the “Terms of Service” page from Yelp’s website. <i>See generally</i> TAC. The TAC has no exhibits, let alone the “Terms of Service” page from Yelp’s website. <i>Id.</i> The TAC contains no quoted information from Yelp’s website that is defined as “Terms of Service.” Furthermore, although the TAC defines the term “Review Terms,” that definition does not specifically incorporate Exhibit 4 or separately define the phrase “terms of service.” Finally, neither the Complaint nor the TAC could have referenced Exhibit 4 because the print and access date on the face of Exhibit 4 is July 22, 2011 – long after these complaints were filed. <i>See</i> Ex. 4. Furthermore, the references in the TAC to the defined term “Review Terms” is based <i>only</i> on the quoted information in the TAC and thus could not be based or incorporate the 4 page document submitted as Exhibit 4. Equally implausible and objectionable for similar reasons is declarant’s contention that Exhibit 4 as well as Exhibit 5 is referenced in paragraph 6 and footnote 5 of the TAC. Beringer Decl., ¶¶5-6. Exhibit 4 therefore is irrelevant and should not be considered. FRE 401, 402.

Declaration of Ashlie Beringer

Cite	Material Objected To:	Grounds for Objection:
Ex. 5	Exhibit 5	Exhibit 5 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that it is a “true and correct copy” and a reference to an internet website. Beringer Decl. ¶6. There is no information as to how, why, when, or what basis there is for the assertion that the exhibit is a true and correct copy. <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602.
¶ 6	Attached as Exhibit 5 is a true and correct copy of the. “Content Guidelines” page from Yelp’s website, http://www.yelp.com/guidelines , which is referenced in Plaintiffs’ Third Amended Complaint at paragraphs 6 and footnote 5. The “Content Guidelines” are also incorporated by Plaintiffs into their definition of “Review Terms,” (see TAC ¶ 6) which is referenced throughout the Third Amended Complaint, including at paragraphs 7, 10, 66, 67, 95, 96, 98, 101, 105, 113, 117, 134 and 142.	Exhibit 5 is not authenticated and thus is inadmissible. The statement that Exhibit 5 is “referenced in Plaintiffs’ Third Amended Complaint at paragraphs 6 and footnote 5” lacks foundation, is not based on personal knowledge and is inaccurate. FRE 602. The TAC never references the “Content Guidelines” page from Yelp’s website. <i>See generally</i> TAC. The TAC has no exhibits, let alone the “Content Guidelines” page from Yelp’s website. <i>Id.</i> The TAC contains no quoted information from Yelp’s website that is defined as “Content Guidelines.” Furthermore, although the TAC defines the term “Review Terms,” that definition does not specifically incorporate Exhibit 5 or separately define the phrase “content guidelines.” Finally, neither the Complaint nor the TAC could have referenced Exhibit 4 because the print and access date on the face of Exhibit 5 is July 22, 2011 – long after these complaints were filed. <i>See</i> Ex. 5. Furthermore, the references in the TAC to the defined term “Review Terms” is based <i>only</i> on the quoted information in the TAC and thus could not be based or incorporate the 2 page document submitted as Exhibit 5. Equally implausible and objectionable for similar reasons is declarant’s contention that Exhibit 5 as well as Exhibit 4 is referenced in paragraph 6 and footnote 5 of the TAC. Beringer Decl., ¶¶5-6. Exhibit 4 therefore is irrelevant and should not be considered. FRE 401, 402.
Ex. 6	Exhibit 6	Exhibit 6 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that it is a “true and correct copy”

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Declaration of Ashlie Beringer

Cite	Material Objected To:	Grounds for Objection:
		and a reference to red-lined comparison. Beringer Decl. ¶6. There is no information as to who, how, why, when, where or what basis there is for the assertion that the exhibit is a true and correct copy. <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602.
¶ 7	Attached as Exhibit 6 is a true and correct copy of a red-lined comparison of the Third Amended Complaint to the Second Amended [sic] Compliant.	Exhibit 6 is not authenticated and thus is inadmissible. FRE 901.

III. OBJECTIONS TO THE DECLARATION OF IAN MACBEAN

Declaration of Ian Macbean

Cite	Material Objected To:	Grounds for Objection:
¶ 2	I personally reviewed the user accounts and related administrative records associated with each user who has posted a review about any of the named Plaintiffs' businesses on Yelp.com at any point in time. I then took several steps to determine whether any of these users was a current or former employee of Yelp. First, I determined whether the user's Yelp profile was flagged in the administrative database as being associated with one of Yelp's current or former employees. Yelp's practice is to flag user accounts that are associated with any current or former employee, in part to enforce its policy that certain employees (including sales employees) are prohibited	Declarant's assertions that "Yelp's practice is to flag user accounts that are associated with any current or former employee" and that Yelp's has a policy and "enforce[s] its policy that certain employees (including sales employees) are prohibited from contributing any written content, including reviews, to Yelp.com" (MacBean Decl., ¶2) lack foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provided only his position as a "Manager" in "User Operations" and a general description of what appears to be a few of his responsibilities (MacBean Decl., ¶1) but provides no information on his tenure with Yelp, how he would be qualified to provide such information, whether it is part of his job, whether he knows what Yelp's policies are, whether he developed or created policies for Yelp, whether he is authorized to provide

Declaration of Ian Macbean

Cite	Material Objected To:	Grounds for Objection:
	from contributing any written content, including reviews, to Yelp.com. I confirmed that none of the users who posted reviews relating to the named Plaintiffs are identified as current or former employees of Yelp in Yelp's administrative database.	information about Yelp's policies on its behalf and whether he has access to information about Yelp's policies that would have been in effect at the times relevant to the conduct alleged in the Complaint and TAC. FRE 602, 801, 802. To the extent that any of Yelp's policies and practices are in writing, declarant's attempt to speculate about the content or to recount the contents of those documents violates the Best Evidence Rule. FRE 1002. Similarly, declarant's statement that he "confirmed that none of the users . . . are identified as current or former employees of Yelp in Yelp's administrative database" lacks foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. The statement is also untrustworthy and inadmissible hearsay. FRE 801, 802. Declarant provided no foundation or factual basis on how he would be qualified to provide such information, whether it is part of his job, what the source and extent of information is in Yelp's "administrative database," how any search was performed, who performed it, when it was performed, or whether declarant is qualified or authorized to undertake any such searches. FRE 602, 801, 802. Moreover, declarant's contention that he confirmed no current or former Yelp employees were "users" on Yelp that posted reviews about plaintiffs is based upon inadmissible hearsay information purportedly from a third party – the information provided by users to Yelp during the registration process. FRE 801, 802, 805. Any such information is also untrustworthy because declarant provides no information that Yelp in any way verifies or requires verification of any name that a user provides to register at Yelp. <i>Id.</i> Declarant lacks personal knowledge as to each user's true name and identity. FRE 602.
¶ 3	Second, I reviewed each email address provided by the users who posted these reviews when	Declarant's statement that he "confirmed that none of the users . . . provided a Yelp email address when creating their user account, or otherwise have a Yelp email address

Declaration of Ian Macbean

Cite	Material Objected To:	Grounds for Objection:
	<p>creating their account at Yelp.com to determine whether any user provided a Yelp email address – i.e. an address with an “@yelp.com” domain. I confirmed that none of the users who posted reviews about the named Plaintiffs provided a Yelp email address when creating their user account, or otherwise have a Yelp email address associated with their user account.</p>	<p>associated with their user account” lacks foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. The statement is also untrustworthy and inadmissible hearsay. FRE 801, 802. Declarant provided no foundation or factual basis on how he would be qualified to perform such a review, whether it is part of his job, how the review was performed, what steps he took to determine whether an @yelp.com email address was “otherwise associated” with a user account, when the review was performed, or whether declarant is qualified or authorized to undertake any such searches. FRE 602, 801, 802. Moreover, declarant’s contention that he confirmed none of the users provided an @yelp.com email address is based upon inadmissible hearsay, because declarant admits the information was provided by third parties – it was “provided [by users] . . . when creating their user account.” FRE 801, 802, 805. Any such information is also untrustworthy because declarant provides no information that Yelp in any way can verify, does verify or requires verification of any email address that a user provides to register at Yelp. <i>Id.</i> Declarant lacks personal knowledge as to each user’s email address and whether any such email address is associated with a current or former Yelp employee. FRE 602.</p>
¶ 4	<p>Third, I ran a search for each user’s first and last name (which are required to create a user account and post reviews on Yelp) in a database of all current and former Yelp employees. I confirmed that none of the users who posted reviews about the named Plaintiffs appeared in the list of all current and former Yelp employees.</p>	<p>Declarant’s statement that he “confirmed that none of the users . . . appeared in the list of all current or former Yelp employees” lacks foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. The statement is also untrustworthy and inadmissible hearsay. FRE 801, 802. Declarant provided no foundation or factual basis on how he would be qualified to provide such information, whether it is part of his job, what is the source and extent of information in “the list of all current and former Yelp employees,” how any review was performed, when it was performed, or whether declarant is qualified</p>

Declaration of Ian Macbean

Cite	Material Objected To:	Grounds for Objection:
		<p>or authorized to undertake any such reviews. FRE 602, 801, 802. Moreover, declarant’s contention that he confirmed none of the users provided a name that appeared on a list of Yelp employees is based upon inadmissible hearsay, because declarant admits the first and last name information was provided by third parties – the users from whom it is “required to create a user account.” FRE 801, 802, 805. Any such information is also untrustworthy because declarant provides no information that Yelp in any way can verify, does verify or requires verification of any name that a user provides to create a user account at Yelp. <i>Id.</i> Declarant lacks personal knowledge as to each user’s true name and identity. FRE 602.</p>
¶ 5	<p>Finally, I reviewed each IP address (i.e. the unique identifier associated with a particular computer) associated with each review posted about the named Plaintiffs and confirmed that none of these IP addresses are associated with any Yelp computer or device.</p>	<p>Declarant’s statement that he “confirmed none of these IP addresses are associated with any Yelp computer or device” lacks foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. The statement is also untrustworthy and inadmissible hearsay. FRE 801, 802. Declarant provided no foundation or factual basis on how he would be qualified to provide such information, whether it is part of his job, the source of information for the IP address associated with each review, what the source and extent of information is for “any Yelp computer or device,” how any review was performed, when it was performed, or whether declarant is qualified or authorized to undertake any such reviews. FRE 602, 801, 802. Moreover, declarant’s contention that he confirmed none of the IP addresses is associated with a Yelp computer or device is based upon inadmissible hearsay, because the IP address can be changed by the user of a computer or device. FRE 801, 802, 805. Any such information is also untrustworthy because declarant provides no information that Yelp in any way can verify, does verify or requires verification of any IP address that a computer or device provides via its user creating a review on Yelp. <i>Id.</i> Declarant lacks personal knowledge as to each user’s</p>

Declaration of Ian Macbean

Cite	Material Objected To:	Grounds for Objection:
¶ 6	Neither Yelp’s sales employees nor its User Operations employees have the technical ability to modify the content of third-party reviews that appear on Yelp’s site.	true IP address. FRE 602. Declarant’s statement that “[n]either Yelp’s sales employees nor its User Operations employees have the technical ability to modify the content of third-party reviews that appear on Yelp’s site” lacks foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. The statement is also untrustworthy and inadmissible hearsay. FRE 801, 802. Declarant provided no foundation or factual basis on how he would be qualified to provide such information (he purports to have information about sales employees yet is not even a sales employee), how he knows the “technical ability” of each sales and User Operations employee, whether making such determinations is part of his job, what it means to modify the content of reviews, the timeframe to which this statement pertains, or whether declarant is qualified or authorized to provide this statement. FRE 602, 801, 802. Declarant lacks personal knowledge as to each member of the sales and User Operation’s technical ability to modify reviews. FRE 602. The statement is also irrelevant because sales and Users Operations employees are only two groups of Yelp employees – there are other Yelp employees who could be modifying reviews and declarant does not eliminate this possibility. FRE 401, 402.
¶ 7	The default order in which reviews appear on a particular business page is governed by an automated software algorithm called “Yelp Sort,” which orders reviews based on a number of factors including recency, user voting, and other review quality factors. As stated on Yelp’s website, Yelp Sort does not consider whether or not a business advertises on Yelp. No Yelp sales or User Operations employee has the technical	Declarant’s assertions that a “Yelp Sort” algorithm, which “orders reviews based on a number of factors including recency, user voting, and other review quality factors” lack foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, how he would be qualified to provide such information, whether the algorithm is part of his job, whether he knows about Yelp’s algorithm, what all the factors are – not just

Declaration of Ian Macbean

Cite	Material Objected To:	Grounds for Objection:
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	<p>ability to alter or impact the default order in which reviews appear on Yelp.com. Users, however, are able to revise the defaults established by “Yelp Sort” so as to change the manner in which reviews are sorted when they are viewing Yelp.com, including by sorting reviews chronologically (with most recent review first or last), by star rating (from highest to lowest (or vice versa)), or by showing reviews from their friends on Yelp first.</p>	<p>some of the factors, whether he developed or created algorithms for Yelp, whether he is qualified or authorized to provide information about Yelp’s algorithm on its behalf and whether he has access to information about Yelp’s algorithm that would have been in effect at the times relevant to the conduct alleged in the Complaint and TAC. FRE 602, 801, 802. To the extent that Yelp’s algorithm is written and its effect or function is documented in writing, declarant’s attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.</p> <p>Declarant’s assertion that “[a]s stated on Yelp’s website, Yelp Sort does not consider whether or not a business advertises on Yelp” lacks foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, how he would be qualified to provide such information, whether it is part of his job, whether he knows what Yelp’s policies are, whether he developed or created policies for Yelp, whether he is authorized to provide information about Yelp’s policies on its behalf and whether he has access to information about Yelp’s policies that would have been in effect at the times relevant to the conduct alleged in the Complaint and TAC. FRE 602, 801, 802. To the extent Yelp’s policies are set forth on its website, declarant’s attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.</p> <p>Declarant’s statement that “[n]either Yelp’s sales employees nor its User Operations employees have the technical ability to alter or impact the default order in which reviews appear on Yelp.com” lacks foundation because declarant provides no foundation or factual basis to support his</p>

Declaration of Ian Macbean

Cite	Material Objected To:	Grounds for Objection:
		<p>speculation and declarant lacks personal knowledge. FRE 602. The statement is also untrustworthy and inadmissible hearsay. FRE 801, 802. Declarant provided no foundation or factual basis on how he would be qualified to provide such information (he purports to have information about sales employees yet is not even a sales employee), how he knows the “technical ability” of each sales and User Operations employee, whether making such determinations is part of his job, what it means to alter or impact the order of reviews, the timeframe to which this statement pertains, or whether declarant is qualified or authorized to provide this statement. FRE 602, 801, 802. Declarant lacks personal knowledge as to each member of the sales and User Operation’s technical ability to modify sort orders. FRE 602. The statement is also irrelevant because sales and Users Operations employees are only two groups of Yelp employees – there are other Yelp employees who could be modifying the order of reviews and declarant does not eliminate this possibility. FRE 401, 402.</p> <p>The remainder of declarant’s statements regarding a user’s ability to manipulate the sort order of reviews is irrelevant to the issues presented in the motion to dismiss. FRE 401, 402.</p>
¶ 8	<p>As described on Yelp’s website, Yelp employs an automated review filter for the purpose of identifying and filtering reviews that may be unreliable and/or violate Yelp’s Terms of Service. This software filter applies a number of factors to identify reviews that are less reliable, and it affects both positive and negative reviews. As stated on Yelp’s website, the filter does not take into account whether a business advertises with Yelp or not. Reviews that are filtered by Yelp’s automated filter are not</p>	<p>Declarant’s assertions that “[a]s described on Yelp’s website, Yelp employs an automated review filter for the purpose of identifying and filtering reviews that may be unreliable and/or violate Yelp’s Terms of Service” and “[a]s stated on Yelp’s website, the filter does not take into account whether a business advertises with Yelp or not” lack foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, how he would be qualified to provide such information about the filter, whether it is part of his job, whether he knows how Yelp’s</p>

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	<p>displayed on a business’s main profile page, and do not factor into a business’s overall Yelp star rating. Filtered reviews may be viewed on a separate page by clicking on the link at the bottom of any business profile page that has received filtered reviews. The filter is running continuously across all reviews on Yelp and operates based on up to date information. Accordingly, reviews that were filtered by the automated filter in the past may reappear on a business’s main profile page if applicable factors change (such as the reviewer gaining trust over time).</p>	<p>filter functions, whether he developed or created the filter for Yelp, whether he is authorized or qualified to provide information about Yelp’s filter on its behalf and whether he has access to information about Yelp’s filter that would have been in effect at the times relevant to the conduct alleged in the Complaint and TAC. FRE 602, 801, 802. To the extent information about the function of Yelp’s filter is set forth on its website, declarant’s attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.</p> <p>Declarant’s assertions about the filter “running continuously” and that “reviews that were filtered by the automated filter in the past may reappear on a business’s main profile page if applicable factors change (such as the reviewer gaining trust over time)” lack foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, how he would be qualified to provide such information about the filter, whether it is part of his job, whether he knows how Yelp’s filter functions, whether he developed or created the filter for Yelp, whether he is authorized or qualified to provide information about Yelp’s filter on its behalf and whether he has access to information about Yelp’s filter that would have been in effect at the times relevant to the conduct alleged in the Complaint and TAC. FRE 602, 801, 802. The information is also of questionable reliability because it refers to the reappearance of a filtered review “if applicable factors change” but only purports to provide one such factor. <i>Id.</i> To the extent information about the function of Yelp’s filter is set forth in writing or on its website, declarant’s attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.</p>

Declaration of Ian Macbean

Cite	Material Objected To:	Grounds for Objection:
¶ 9	When the automated filter identifies and filters a review, that review is automatically “shaded” in Yelp’s internal administrative database, and is flagged with the notation “Untrustworthy (Filtered).”	Declarant’s assertion about the filter shading a review and flagging it in “Yelp’s internal administrative database” lacks foundation because declarant provides no foundation or factual basis to support his speculation and declarant lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, how he would be qualified to provide such information about the filter and administrative database, whether it is part of his job, whether he knows how Yelp’s filter and the administrative database functions, whether he developed or created the filter or administrative database for Yelp, whether he is authorized or qualified to provide information about Yelp’s filter and administrative database on its behalf and whether he has access to information about Yelp’s filter and administrative database that would have been in effect at the times relevant to the conduct alleged in the Complaint and TAC. FRE 602, 801, 802. To the extent information about the function of Yelp’s filter and administrative database is set forth in writing or on its website, declarant’s attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.
Ex. 1	Exhibit 1	Exhibit 1 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that it is a “true and correct copy” and a reference to an internet website. MacBean Decl., ¶10. There is no information as to how, why, or when to support the assertion that the exhibit is a true and correct copy. <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602.
¶ 10	Attached as Exhibit 1 is a true and correct copy of Yelp’s Terms of Service, dated July 21, 2010, and available at http://www.yelp.com/static?p=tos	Exhibit 1 is not authenticated and thus is inadmissible. Exhibit 1 is also irrelevant because there is no foundation or factual basis to establish whether the purported terms of service would have been in effect at the

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	&country=US. Section 6.A.i. of Yelp's Terms of Service prohibits violations of Yelp's Content Guidelines.	times relevant to the conduct alleged in the TAC. FRE 401, 402.
Ex. 2	Exhibit 2	Exhibit 2 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that it is a "true and correct copy" and a reference to an internet website. MacBean Decl., ¶11. There is no information as to how, why, or when to support the assertion that the exhibit is a true and correct copy. <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602.
¶ 11	Attached as Exhibit 2 is a true and correct copy of Yelp's Content Guidelines, available at http://www.yelp.com/guidelines .	Exhibit 2 is not authenticated and thus is inadmissible. Exhibit 2 is also irrelevant because there is no foundation or factual basis to establish whether the purported terms of service would have been in effect at the times relevant to the conduct alleged in the TAC, particularly since the access or print date on Exhibit 2 is July 22, 2011, which is well after the filing of the Complaint and the TAC. FRE 401, 402.
¶ 14	As described previously, I reviewed Yelp's administrative records pertaining to each review posted about Plaintiff Wheel Techniques, of Santa Clara, California. As of July 21, 2011, Wheel Techniques had 31 active, unfiltered reviews (with a 2.5 average star rating), 51 reviews that were filtered by Yelp's automated review filter, 7 reviews or review updates that Yelp's User Operations team removed for violations of Yelp's Terms of Service, and three reviews which were removed by the users themselves.	Declarant's assertion about the results of his review of Wheel Techniques' reviews, including which reviews were purportedly filtered or removed by the User Operations team or by reviewers lacks foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed, how the information was obtained, how he would be qualified to provide such information about the filter and how particular reviews were removed, whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp's behalf and whether this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Wheel Techniques.

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		<p>FRE 602, 801, 802. The information is particularly unreliable because declarant states that whether a review is filtered or not is moving target because “[t]he filter is running continuously across all reviews on Yelp and operates based on up to date information” which means that previously filtered reviews “may reappear on a business’s main profile page.” MacBean Decl., ¶8. Therefore, declarant’s information is irrelevant because it could only be accurate as to the point in time it was examined– July 21, 2011 – and could not address the relevant conduct and timeframes alleged in the TAC. FRE 401, 402.</p> <p>Declarant claims to have “reviewed Yelp’s administrative records” but no such records are provided. Thus, declarant’s attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.</p>
Ex. 3	Exhibit 3	<p>Exhibit 3 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that “[c]opies of each of these reviews <i>and related information</i> from Yelp’s administrative records are attached as Exhibit 3” and a reference to an internet website. MacBean Decl., ¶15 (emphasis added). There is no information as to how, why, when or where to support the assertion that the exhibit is a copy of “related information.” <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602. The document attached as Exhibit 3 on its face gives rise to questions of reliability and trustworthiness because much of the so-called “related information” declarant relies upon from the administrative records for his assertions, is not contained in the document. For example, declarant states that 6 of the reviews listed in Exhibit 3 were removed for violations of the Terms of Service, but that information appears nowhere in Exhibit 3. Nor does Exhibit 3 contain the alleged specific violation of the Terms of Service which declarant asserts. <i>See</i> MacBean Decl.,</p>

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		¶¶14-15. Similarly, nowhere on Exhibit 3 is there any information about when a review was purportedly filtered as “Untrustworthy.” Without proper authentication and foundation, the document is inadmissible hearsay. FRE 801, 802.
¶ 15	Of the 7 Wheel Techniques reviews removed for violations of Yelp’s Terms of Service, 6 were 5-star reviews or review updates posted by the same user, Ellyn M, between November 24, 2008 and April 22, 2010. Copies of each of these reviews and related information from Yelp’s administrative records are attached as Exhibit 3. Each of Ellyn M.’s reviews of Wheel Techniques was removed on March 31, 2011 due to violations of Yelp’s Terms of Service and Content Guidelines, which prohibit reviews that are “conflicts of interest.” Exhibit 2 (“Conflicts of interest: Your reviews should be unbiased and objective. For example, businesses and their employees shouldn’t write reviews about themselves or their competitors.”). Each of these removed reviews was also marked as “Untrustworthy (Filtered)” by Yelp’s review filter, meaning that even if they had not been removed by Yelp’s User Operations team, they would be filtered by Yelp’s automated software and would not show up on Wheel Techniques’ main Yelp profile page. A seventh review by Ellyn M. posted to Yelp on May 2, 2011 (after the removal of this user’s other reviews of Wheel Techniques), is currently filtered,	Declarant’s assertion that reviews were removed for “violations of Yelp’s Terms of Service” and “Content Guidelines” lacks foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed which would possibly indicate the reason a review was removed, he provides no information on how the information was obtained, how he would be qualified to provide such information about the filter and how particular reviews were removed, whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp’s behalf and whether this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Wheel Techniques. FRE 602, 801, 802. The information is particularly unreliable because declarant states that whether a review is filtered or not is moving target because “[t]he filter is running continuously across all reviews on Yelp and operates based on up to date information” which means that previously filtered reviews “may reappear on a business’s main profile page.” MacBean Decl., ¶8. It is also unreliable because nowhere in the alleged “administrative records” attached as Exhibit 3 is there any information about why any particular review was removed and who removed it. Therefore, declarant’s information is irrelevant because it could only be accurate as to the point in time it was examined– July 21, 2011 – and could not address the relevant conduct and timeframes alleged

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	although it has not yet been removed by Yelp’s User Operations team.	in the TAC. FRE 401, 402. Declarant claims to base his statements on his “review[] [of] Yelp’s administrative records” but the purported records do not contain the information declarant is asserting – such as why a particular review was removed and who removed it and declarant lacks personal knowledge. FRE 602. Declarant’s attempt to speculate about the content or to recount the contents of writings (particularly any records not provided that would show why a review was removed) violates the Best Evidence Rule. FRE 1002.
Ex. 4	Exhibit 4	Exhibit 4 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that a “true and correct copy” of a February 23, 2010 “message” is attached as Exhibit 4. MacBean Decl., ¶16. There is no information as to how, why, when or where to support the assertion that the exhibit is a copy of this message. <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents, without knowing facts establishing declarant’s tenure at Yelp (was he even employed in February 2010) and/or whether reviewing or obtaining this message falls within his job purview, there is no basis for either authentication or personal knowledge, and the exhibit is inadmissible. FRE 602, 901. Furthermore, the February 2010 document is not identified as a review posted on Yelp and thus has no relevance to the claims asserted in the TAC. FRE 401, 402.
¶ 16	On February 23, 2010, Yelp received a complaint from a user about communications he had received from Ellyn M. through Yelp’s messaging systems. A true and correct copy of the user’s complaint to Yelp, which includes the communication from Ellyn M. that prompted the user’s complaint, is attached as Exhibit	Declarant’s assertion that Yelp received a complaint about a user in February 2010 lacks foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp (whether he was even employed by Yelp at the time), whether reviewing complaints of this sort was part of

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	<p>4 (an internal Yelp administrative email address has been redacted from this document). Ellyn M.'s communication to the user states in part: "Dear Vincent, We here at Wheel Tech really feel put down by your recent review and want to let you know that legally you cannot put such input out on the net. If you read your invoice we can legally sue you for any positive OR negative reviews . . . Please remove your negative comments or we have no choice to seek legal actions against you . . . Hope to hear from you soon. John Mercurio owner."</p>	<p>his job responsibilities in 2010 (if he was even employed by Yelp then), he does not describe how the information was obtained other than a vague reference to unidentified Yelp "messaging systems," how he would be qualified to provide such information about a complaint and whether he is authorized or qualified to provide this information on Yelp's behalf. FRE 602, 801, 802.</p> <p>Declarant's assertions of the purported content of the complaint (apparently from a third party) as a true statement is inadmissible hearsay. FRE 801, 802.</p> <p>Declarant's excerpts of the complaint omit the purported comment or response to the complaint which asks "[i]s Yelp going to allow this?" Based on Exhibit 4 and declarant's statements, Yelp made no response to this request from early 2010 which further calls into question the reliability or trustworthiness of the hearsay document. FRE 801, 802.</p> <p>Finally, the document attached as Exhibit 4 relates to a message or conversation on Yelp and not a posted review. Accordingly, it is not relevant to any of the claims asserted in the TAC. FRE 401, 402.</p>
Ex. 5	Exhibit 5	<p>Exhibit 5 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that a "true and correct copy" of the profile of Ellyn M is attached as Exhibit 5. MacBean Decl., ¶17. A review of the document attached as Exhibit 5 demonstrates on its face that is <i>not</i> a true and correct copy because there are pages which are not included in Exhibit 5. In particular, the profile references 34 reviews by the user but only 11 reviews are contained in Exhibit 5. Likewise, the last page of the document has the text "More<<" at the bottom of the page.</p> <p>To the extent declarant relies upon or asserts any statements from Exhibit 5 as true, they are inadmissible hearsay. FRE 801, 802.</p>
¶ 17	A true and correct copy of the publicly available Yelp profile	Exhibit 4 is not properly authenticated and thus is inadmissible. FRE 901. Declarant

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	page for Ellyn M., available at http://www.yelp.com/user_details?userid=dcuTyUmp5K4WuQma3fkNZQ , is attached as Exhibit 5. On this page, Ellyn M. states that users can “find me on facebook under ellyn mercurio.”	relies upon and asserts that a statement contained in Exhibit 4 (from a third party) that Ellyn M. can be found “on facebook under ellyn mercurio” is inadmissible hearsay. FRE 801, 802.
Ex. 6	Exhibit 6	Exhibit 6 is not properly authenticated and thus is inadmissible. FRE 901. Declarant provides no factual basis for the exhibit other than asserting it is a “true and correct copy” and provides an internet address. <i>Id.</i> Moreover, a document from the Facebook website – which has nothing to do with Yelp or Yelp reviews – is irrelevant to Plaintiffs’ claims in the TAC. FRE 410, 402.
¶ 18	A true and correct copy of the Facebook page for “Ellen Mercurio,” available at https://www.facebook.com/people/Ellen-Mercurio/100000163710129 , is attached as Exhibit 6. On this page, Ms. Mercurio identifies herself as an owner of Wheel Techniques.	Exhibit 6 is not properly authenticated and thus is inadmissible. FRE 901. Declarant relies upon and asserts as true that a statement contained in Exhibit 6 (pages from the Facebook website) that the person’s Facebook page identifies them as “an owner of Wheel Techniques” is inadmissible hearsay and is not based on declarant’s personal knowledge. FRE 602, 801, 802. Declarant appears to be relying in part on inadmissible hearsay contained in Exhibit 5 as well as inadmissible hearsay contained in Exhibit 6. <i>Id.</i> Declarant takes as true the statement (in Exhibit 5) that “ellyn m” can be found on Facebook as “ellyn mercurio.” This information is untrustworthy and unreliable because as Exhibit 6 makes plain, the Facebook page submitted is <i>not</i> “ellyn mercurio” but instead is “Ellen Mercurio (Ellen Millet Mercurio).” There is no correlation between the information in Exhibit 5 and Exhibit 6. This confirms that the inadmissible hearsay statements in both exhibits are untrustworthy and unreliable. FRE 801, 802.
¶ 19	The seventh Wheel Techniques review removed for violations of Yelp’s Terms of Service was a 5-star review from a user that identified itself as Axiom Auto	Declarant’s assertion that a Wheel Techniques review from a user known as Axiom Auto Group was removed when the user’s account was closed because it “violated Yelp’s Terms of Service” lacks foundation because declarant provides no

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	<p>Group. This review (along with all other reviews posted by that user) was removed by Yelp’s User Operations team when the user’s account was closed on October 7, 2009, due to unauthorized promotional conduct on Yelp’s website that violated Yelp’s Terms of Service, which provide that a user cannot “[p]romote a business or other commercial venture or event, or otherwise use the Service for commercial purposes, except in connection with a Business Account and as expressly permitted by Yelp.” Exhibit 1 at Section 6.A.iv. and Exhibit 2 (“Promotional content: Unless you’re using your Business Owners Account to add content to your business’s profile page, we generally frown upon promotional content. Let’s keep the site useful for consumers and not overrun with commercial noise from every user.”).</p>	<p>foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed which would possibly indicate the reason a review was removed, he provides no information on how the information was obtained, how he would be qualified to provide such information about why a particular review was removed, whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp’s behalf and whether this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Wheel Techniques. FRE 602, 801, 802.</p> <p>Declarant claims to base his statements on his review of Yelp’s administrative records, none of which are provided. Therefore, declarant’s attempt to speculate about the content or to recount the contents of writings violates the Best Evidence Rule. FRE 1002.</p>
¶ 20	<p>I have reviewed Yelp’s records pertaining to Plaintiff Renaissance Furniture Restoration, of San Francisco, California. As of July 21, 2011, Renaissance Furniture Restoration had 14 active, unfiltered reviews (with a 5 star rating), 14 reviews that were filtered by Yelp’s automated review filter, three reviews that Yelp’s User Operations team removed for violations of Yelp’s Terms of Service, and two reviews which were removed by the users themselves.</p>	<p>Declarant’s assertion about the results of his review of Renaissance Furniture Restoration’s reviews, including which reviews were purportedly filtered or removed by the User Operations team or by reviewers lacks foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed, how the information was obtained, how he would be qualified to provide such information about the filter and how particular reviews were removed, whether it is part of his regular job, whether</p>

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		<p>he is authorized or qualified to provide this information on Yelp’s behalf and whether this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Renaissance Furniture Restoration. FRE 602, 801, 802. The information is particularly unreliable because declarant states that whether a review is filtered or not is moving target because “[t]he filter is running continuously across all reviews on Yelp and operates based on up to date information” which means that previously filtered reviews “may reappear on a business’s main profile page.” MacBean Decl., ¶8. Therefore, declarant’s information is irrelevant because it could only be accurate as to the point in time it was examined– July 21, 2011 – and could not address the relevant conduct and timeframes alleged in the TAC. FRE 401, 402.</p> <p>Declarant claims to have “reviewed Yelp’s administrative records” but no such records are provided. Thus, declarant’s attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.</p>
¶ 21	<p>Of the three Renaissance Furniture Restoration reviews removed for violations of Yelp’s Terms of Service, one was a 5-star review submitted by user Boris L., one was a 5-star review submitted by user Zhopik b., and one was a 5-star review submitted by user Dan H. Boris L.’s 5-star review of Renaissance Furniture Restoration was removed on October 14, 2009 for violating Yelp’s Terms of Service and Content Guidelines which prohibit reviews that are “conflicts of interest.” Exhibit 2 (“Conflicts of interest: Your reviews should be unbiased and objective. For</p>	<p>Declarant’s assertion that Renaissance Furniture Restoration reviews were removed for “violating Yelp’s Terms of Service and Content Guidelines” for a review submitted by Boris L. lacks foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed which would possibly indicate the reason a review was removed, he provides no information on how the information was obtained, how he would be qualified to provide such information about why a particular review was removed, whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp’s behalf and whether</p>

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Cite	Material Objected To:	Grounds for Objection:
	example, businesses and their employees shouldn't write reviews about themselves or their competitors.”). Boris L. had identified himself to Yelp during his account creation as Boris Levitt, who is the owner of Renaissance Furniture Restoration. This removed review was also marked as “Untrustworthy(Filtered)” by Yelp’s review filter, meaning that even if it had not been removed by Yelp’s User Operations team, it would be filtered by Yelp’s automated software and would not show up on Renaissance Furniture Restoration’s main Yelp profile page.	this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Renaissance Furniture Restoration. FRE 602, 801, 802. Declarant’s statements are based on inadmissible hearsay because he takes as true third party statements in Exhibits 7 and 8 that Boris L. is in fact the owner of Renaissance Furniture Restoration. FRE 801, 802. Declarant claims to base his statements on his review of Yelp’s administrative records, none of which are provided. Therefore, declarant’s attempt to speculate about the content or to recount the contents of writings violates the Best Evidence Rule. FRE 1002.
Ex. 7	Exhibit 7	Exhibit 7 is not properly authenticated. FRE 901. The only attempt at authentication is a statement that a “true and correct copy” of the Yelp profile of Boris L.” and an internet address for the document attached as Exhibit 7. MacBean Decl., ¶22. A review of the document attached as Exhibit 7 demonstrates on its face that is <i>not</i> a true and correct copy because there are pages which are not included in Exhibit 7. In particular, the profile references 11 reviews by the user but only 10 reviews are contained in Exhibit 7. Likewise, the last page of the document has the text “More<<” at the bottom of the page. To the extent declarant relies upon or asserts any statements from Exhibit 7 as true, they are inadmissible hearsay. FRE 801, 802.
¶ 22	A true and correct copy of the Yelp profile page for Boris L. available at http://www.yelp.com/user_details?userid=EQOLn_QuAPKFXwFp6TmgOw , is attached as Exhibit 7.	Exhibit 7 is not properly authenticated and thus is inadmissible. FRE 901. Declarant relies upon and asserts as true that a statement contained in Exhibit 7 that the user’s profile page identifies the user’s “blog or website” as www.renarest.com is inadmissible hearsay and is not based on

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	On this page, Boris L. states that his blog or website is http://www.renarest.com .	declarant’s personal knowledge. FRE 602, 801, 802. A reference in a user profile to an external (non-Yelp) website is irrelevant to Plaintiffs’ claims regarding conduct on Yelp’s site. FRE 401, 402.
Ex. 8	Exhibit 8	Exhibit 8 is not properly authenticated and thus is inadmissible. FRE 901. Declarant provides no factual basis for the exhibit other than asserting it is a “true and correct copy” and provides an internet address. <i>Id.</i> Moreover, a document from an external, non-Yelp website is irrelevant to Plaintiffs’ claims in the TAC. FRE 410, 402.
¶ 23	A true and correct copy of the webpage available at http://www.renarest.com is attached as Exhibit 8. This webpage is the website for Renaissance Furniture Restoration.	Exhibit 8 is not properly authenticated and thus is inadmissible. FRE 901. Declarant relies upon and asserts as true that a statement contained in Exhibit 7 that the user’s profile page identifies the user’s “blog or website” as www.renarest.com and that the specific internet address in fact is “the website for Renaissance Furniture Restoration” is inadmissible hearsay and is not based on declarant’s personal knowledge. FRE 602, 801, 802. A reference in a user profile to an external (non-Yelp) website is irrelevant to Plaintiffs’ claims regarding conduct on Yelp’s site. FRE 401, 402.
¶ 24	Zhopik b.’s 5-star review of Renaissance Furniture Restoration was removed on October 8, 2009 for violating Yelp’s Terms of Service and Content Guidelines, which prohibit reviews that do not reflect “firsthand consumer experience.” Exhibit 2 (“Personal experience: We want to hear about your firsthand consumer experience, not what you heard from your co-worker or significant other.”). Zhopik b.’s review violated these prohibitions.	Declarant’s assertion that a Renaissance Furniture Restoration review from a user known as Zhopik b. was removed for “violating Yelp’s Terms of Service” lacks foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed which would possibly indicate the reason a review was removed, he provides no information on how the information was obtained, how he would be qualified to provide such information about why a particular review was removed, whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp’s behalf and whether

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		<p>this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Renaissance Furniture Restoration. FRE 602, 801, 802.</p> <p>Declarant claims to base his statements on his review of Yelp’s administrative records, none of which are provided. Therefore, declarant’s attempt to speculate about the content or to recount the contents of writings violates the Best Evidence Rule. FRE 1002.</p>
¶ 25	<p>Dan H.’s 5-star review of Renaissance Furniture Restoration was removed (along with all other reviews posted by that user) by Yelp’s User Operations team when the user’s account was closed on March 23, 2010 due to his posting of inappropriate content on Yelp. Exhibit 2 (“Inappropriate content: Colorful language and imagery is fine, but there’s no need for threats, harassment, lewdness, hate speech, and other displays of bigotry.”).</p>	<p>Declarant’s assertion that a Renaissance Furniture Restoration review from a user known as Dan H. was removed when the user’s account was closed “due to his posting of inappropriate content” lacks foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed which would possibly indicate the reason a review was removed, he provides no information on how the information was obtained, how he would be qualified to provide such information about why a particular review was removed, whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp’s behalf and whether this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Renaissance Furniture Restoration. FRE 602, 801, 802.</p> <p>Declarant claims to base his statements on his review of Yelp’s administrative records, none of which are provided. Therefore, declarant’s attempt to speculate about the content or to recount the contents of writings violates the Best Evidence Rule. FRE 1002.</p>
¶ 26	<p>I have reviewed Yelp’s records pertaining to Cats and Dogs Animal Hospital of Long Beach, California. As of July 21, 2011, Cats and Dogs Animal Hospital</p>	<p>Declarant’s assertion about the results of his review of Cats and Dogs’ reviews, including which reviews were purportedly filtered or removed by the User Operations team lacks foundation because declarant provides no foundation or factual basis to support his</p>

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	<p>had 49 active, unfiltered reviews (with a 4 star average rating), 24 reviews that were filtered by Yelp’s automated review filter, five reviews or review updates that Yelp’s User Operations team removed for violations of Yelp’s Terms of Service, and 4 reviews which were removed by the users themselves.</p>	<p>assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed, how the information was obtained, how he would be qualified to provide such information about the filter and how particular reviews were removed, whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp’s behalf and whether this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Cats and Dogs. FRE 602, 801, 802. The information is particularly unreliable because declarant states that whether a review is filtered or not is moving target because “[t]he filter is running continuously across all reviews on Yelp and operates based on up to date information” which means that previously filtered reviews “may reappear on a business’s main profile page.” MacBean Decl., ¶8. Therefore, declarant’s information is irrelevant because it could only be accurate as to the point in time it was examined– July 21, 2011 – and could not address the relevant conduct and timeframes alleged in the TAC. FRE 401, 402.</p> <p>Declarant claims to have “reviewed Yelp’s administrative records” but no such records are provided. Thus, declarant’s attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.</p>
¶ 27	<p>Of the five Cats and Dogs Animal Hospital reviews or review updates removed for violations of Yelp’s Terms of Service (three of which were 1-star reviews), three (one 5-star review, one 3-star review and one 1-star review) were removed on February 26, 2010, March 4, 2010, and March</p>	<p>Declarant’s assertions that Cats and Dogs reviews or review updates were removed because the reviews were “violations of Yelp’s Terms of Service” in that “they did not reflect ‘firsthand consumer experience’” or they also violated “Content Guidelines” for private information or the review “did not reflect any new consumer experience” lack foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge.</p>

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Cite	Material Objected To:	Grounds for Objection:
	<p>19, 2010 because they did not reflect “firsthand consumer experience.” Exhibit 2 (“Personal experience: We want to hear about your firsthand consumer experience, not what you heard from your co-worker or significant other.”). The fourth review (a 1-star review) was removed on May 13, 2009 because it revealed the license plate of a veterinarian at Cats and Dogs Animal Hospital, and therefore violated Yelp’s Terms of Service and Content Guidelines, which provide “[d]on’t publicize other people’s private information” and prohibit users from disclosing others’ private information in reviews. Exhibit 2. Finally, a 1-star review update was removed on January 13, 2010 because it did not reflect any new consumer experience. Exhibit 2 (“Review updates: Review updates should reflect a new experience or interaction with the business. Don’t tell the same old story you’ve already told.”).</p>	<p>FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed which would possibly indicate the reason a review was removed, he provides no information on how the information was obtained, how he would be qualified to provide such information about why a particular review was removed, whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp’s behalf and whether this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Cats and Dogs. FRE 602, 801, 802.</p> <p>Declarant claims to base his statements on his review of Yelp’s administrative records, none of which are provided. Therefore, declarant’s attempt to speculate about the content or to recount the contents of writings violates the Best Evidence Rule. FRE 1002.</p>
¶ 28	<p>I have reviewed Yelp’s records pertaining to Marina Dental, formerly Marina Dental Care, of San Francisco, California. As of July 21, 2011, Marina Dental had 16 active, unfiltered reviews (with a 3.5 star average rating), 86 reviews that were filtered by Yelp’s automated review filter, nine reviews or review updates that Yelp’s User Operations team removed for violations of Yelp’s Terms of Service, three reviews that Yelp’s User Operations team</p>	<p>Declarant’s assertion about the results of his review of Marina Dental’s reviews, including which reviews were purportedly filtered, removed by users or removed by the User Operations team lacks foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed, how the information was obtained, how he would be qualified to provide such information about the filter and how particular reviews were removed,</p>

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	<p>removed (along with all other reviews of the users) when the users accounts were closed at their request, and two reviews which were removed by the users themselves.</p>	<p>whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp’s behalf and whether this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Marina Dental. FRE 602, 801, 802. The information is particularly unreliable because declarant states that whether a review is filtered or not is moving target because “[t]he filter is running continuously across all reviews on Yelp and operates based on up to date information” which means that previously filtered reviews “may reappear on a business’s main profile page.” MacBean Decl., ¶8. Therefore, declarant’s information is irrelevant because it could only be accurate as to the point in time it was examined– July 21, 2011 – and could not address the relevant conduct and timeframes alleged in the TAC. FRE 401, 402.</p> <p>Declarant claims to have “reviewed Yelp’s administrative records” but no such records are provided. Thus, declarant’s attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.</p>
<p>¶ 29</p>	<p>Of the nine Marina Dental reviews removed for violations of Yelp’s Terms of Service, eight were removed on November 30, 2010 (along with all other reviews by the users) because the users’ accounts were closed by Yelp for creating multiple accounts in violation of Yelp’s Terms of Service and Content Guidelines, which state that “[y]ou may not . . . create multiple Personal Accounts.” Exhibit 1 at 4.D.1. The ninth review, a one star review, was removed on December 23, 2010 because it was a review update which violated Yelp’s Terms of Service</p>	<p>Declarant’s assertions that Marina Dental’s reviews or review updates were removed “for violations of Yelp’s Terms of Service” because “the users’ accounts were closed for . . . violat[ing] Yelp’s Terms of Service and Content Guidelines” or that a review update “violated Yelp’s Terms of Service and Content Guidelines” because it did not reflect “a new experience or interaction” lack foundation because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he reviewed which would possibly indicate the reason a review was removed, he provides no information on how the information was obtained, how he would be qualified to</p>

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	and Content Guidelines, which state “[r]eview updates should reflect a new experience or interaction with the business. Don’t tell the same old story you’ve already told.” Exhibit 2.	provide such information about why a particular review was removed, whether it is part of his regular job, whether he is authorized or qualified to provide this information on Yelp’s behalf and whether this information would be accurate or applicable at the times relevant to the conduct alleged in the TAC as to Marina Dental. FRE 602, 801, 802. Declarant claims to base his statements on his review of Yelp’s administrative records, none of which are provided. Therefore, declarant’s attempt to speculate about the content or to recount the contents of writings violates the Best Evidence Rule. FRE 1002.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that their evidentiary objections be sustained, the evidence be stricken from the record and not be considered.

DATED: September 2, 2011

ONGARO BURTT & LOUDERBACK LLP

By: /s/ David R. Ongaro
David R. Ongaro

Attorneys for Plaintiffs
BORIS Y. LEVITT *et al.*