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 24 YELP!, INC.

25 UNITED STATES DISTRICT COURT
 26 NORTHERN DISTRICT OF CALIFORNIA
 27 SAN FRANCISCO DIVISION

28 BORIS Y. LEVITT D/B/A RENAISSANCE
 RESTORATION, CATS AND DOGS ANIMAL
 HOSPITAL, INC., TRACY CHAN D/B/A
 MARINA DENTAL CARE and
 PROFESSIONAL CONSTRUCTION GROUP,
 INC. D/B/A PAVER PRO; on behalf of
 themselves and all others similarly situated,

Plaintiff,

v.

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

Defendants.

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

CLASS ACTION

**DECLARATION OF IAN MACBEAN IN
 SUPPORT OF DEFENDANT YELP! INC.'S
 NOTICE OF MOTION AND MOTION TO
 DISMISS THIRD AMENDED CLASS
 ACTION COMPLAINT [AS TO STANDING
 ONLY]**

Date: September 9, 2011
 Time: 1:30 p.m.
 Place: Courtroom 5, 17th Floor
 450 Golden Gate Avenue
 San Francisco, California
 Judge: The Honorable Edward M. Chen

1 I, Ian MacBean, declare as follows:

2 1. I am a User Operations Manager at Yelp! Inc. (“Yelp”) and, among other
3 responsibilities, I investigate potential Terms of Service violations on Yelp’s website, and enforce
4 those Terms of Service. I also supervise and train other Yelp User Operations employees on Yelp’s
5 internal administrative tools and procedures. I make this declaration based upon my personal
6 knowledge of the facts stated herein.

7 **Analysis of Users Who Posted Reviews For Plaintiffs’ Businesses**

8 2. I personally reviewed the user accounts and related administrative records associated
9 with each user who has posted a review about any of the named Plaintiffs’ businesses on Yelp.com at
10 any point in time. I then took several steps to determine whether any of these users was a current or
11 former employee of Yelp. First, I determined whether the user’s Yelp profile was flagged in the
12 administrative database as being associated with one of Yelp’s current or former employees. Yelp’s
13 practice is to flag user accounts that are associated with any current or former employee, in part to
14 enforce its policy that certain employees (including sales employees) are prohibited from
15 contributing any written content, including reviews, to Yelp.com. I confirmed that none of the users
16 who posted reviews relating to the named Plaintiffs are identified as current or former employees of
17 Yelp in Yelp’s administrative database.

18 3. Second, I reviewed each email address provided by the users who posted these
19 reviews when creating their account at Yelp.com to determine whether any user provided a Yelp
20 email address – i.e. an address with an “@yelp.com” domain. I confirmed that none of the users who
21 posted reviews about the named Plaintiffs provided a Yelp email address when creating their user
22 account, or otherwise have a Yelp email address associated with their user account.

23 4. Third, I ran a search for each user’s first and last name (which are required to create a
24 user account and post reviews on Yelp) in a database of all current and former Yelp employees. I
25 confirmed that none of the users who posted reviews about the named Plaintiffs appeared in the list
26 of all current and former Yelp employees.

1 5. Finally, I reviewed each IP address (i.e. the unique identifier associated with a
2 particular computer) associated with each review posted about the named Plaintiffs and confirmed
3 that none of these IP addresses are associated with any Yelp computer or device.

4 6. Neither Yelp’s sales employees nor its User Operations employees have the technical
5 ability to modify the content of third-party reviews that appear on Yelp’s site.

6 **Yelp Sales and User Operations Employees Do Not Have the Technical Ability to Alter the**
7 **Default Order of Reviews On a Particular Business Page**

8 7. The default order in which reviews appear on a particular business page is governed
9 by an automated software algorithm called “Yelp Sort,” which orders reviews based on a number of
10 factors including recency, user voting, and other review quality factors. As stated on Yelp’s website,
11 Yelp Sort does not consider whether or not a business advertises on Yelp. No Yelp sales or User
12 Operations employee has the technical ability to alter or impact the default order in which reviews
13 appear on Yelp.com. Users, however, are able to revise the defaults established by “Yelp Sort” so as
14 to change the manner in which reviews are sorted when they are viewing Yelp.com, including by
15 sorting reviews chronologically (with most recent review first or last), by star rating (from highest to
16 lowest (or vice versa)), or by showing reviews from their friends on Yelp first.

17 **Yelp’s Automated Review Filter**

18 8. As described on Yelp’s website, Yelp employs an automated review filter for the
19 purpose of identifying and filtering reviews that may be unreliable and/or violate Yelp’s Terms of
20 Service. This software filter applies a number of factors to identify reviews that are less reliable, and
21 it affects both positive and negative reviews. As stated on Yelp’s website, the filter does not take
22 into account whether a business advertises with Yelp or not. Reviews that are filtered by Yelp’s
23 automated filter are not displayed on a business’s main profile page, and do not factor into a
24 business’s overall Yelp star rating. Filtered reviews may be viewed on a separate page by clicking on
25 the link at the bottom of any business profile page that has received filtered reviews. The filter is
26 running continuously across all reviews on Yelp and operates based on up to date information.
27 Accordingly, reviews that were filtered by the automated filter in the past may reappear on a
28

1 business's main profile page if applicable factors change (such as the reviewer gaining trust over
2 time).

3 9. When the automated filter identifies and filters a review, that review is automatically
4 "shaded" in Yelp's internal administrative database, and is flagged with the notation "Untrustworthy
5 (Filtered)."

6 **Removal of Reviews By Yelp's User Operations Team**

7 10. Attached as Exhibit 1 is a true and correct copy of Yelp's Terms of Service, dated July
8 21, 2010, and available at <http://www.yelp.com/static?p=tos&country=US>. Section 6.A.i. of Yelp's
9 Terms of Service prohibits violations of Yelp's Content Guidelines.

10 11. Attached as Exhibit 2 is a true and correct copy of Yelp's Content Guidelines,
11 available at <http://www.yelp.com/guidelines>.

12 12. Yelp's User Operations team is responsible for investigating potential violations of
13 Yelp's Terms of Service and Content Guidelines and is able to remove reviews for violating Yelp's
14 Terms. Members of Yelp's User Operations team investigate complaints about site content
15 (including reviews), users or businesses that are brought to its attention by users of Yelp's website.
16 Users may contact Yelp about such reviews by email, through the "Contact Yelp" link on Yelp's
17 website, or by flagging specific reviews when logged into Yelp's website.

18 **Analysis of Reviews About the Named Plaintiffs That Have Been Removed From Their**
19 **Business Pages**

20 13. I reviewed Yelp's administrative database and related records for each review that has
21 been posted about the named Plaintiffs' businesses in this action. Specifically, I reviewed the records
22 associated with each of the reviews about Plaintiffs' businesses in Yelp's administrative database to
23 determine if the review appears on the business's main profile page, has been filtered by Yelp's
24 automated review filter, was removed by the reviewer, or was removed by Yelp's User Operations
25 team for a violation of Yelp's Terms of Service (or at the reviewer's request). For reviews removed
26 by User Operations for violations of Yelp's Terms of Service, I further reviewed related records in
27 Yelp's administrative database establishing the date and reason for the removal, as well as the star
28 rating for each review that User Operations removed.

1 **Wheel Techniques**

2 14. As described previously, I reviewed Yelp’s administrative records pertaining to each
3 review posted about Plaintiff Wheel Techniques, of Santa Clara, California. As of July 21, 2011,
4 Wheel Techniques had 31 active, unfiltered reviews (with a 2.5 average star rating), 51 reviews that
5 were filtered by Yelp’s automated review filter, 7 reviews or review updates that Yelp’s User
6 Operations team removed for violations of Yelp’s Terms of Service, and three reviews which were
7 removed by the users themselves.

8 15. Of the 7 Wheel Techniques reviews removed for violations of Yelp’s Terms of
9 Service, 6 were 5-star reviews or review updates posted by the same user, Ellyn M, between
10 November 24, 2008 and April 22, 2010. Copies of each of these reviews and related information
11 from Yelp’s administrative records are attached as Exhibit 3. Each of Ellyn M.’s reviews of Wheel
12 Techniques was removed on March 31, 2011 due to violations of Yelp’s Terms of Service and
13 Content Guidelines, which prohibit reviews that are “conflicts of interest.” Exhibit 2 (“Conflicts of
14 interest: Your reviews should be unbiased and objective. For example, businesses and their
15 employees shouldn't write reviews about themselves or their competitors.”). Each of these removed
16 reviews was also marked as “Untrustworthy (Filtered)” by Yelp’s review filter, meaning that even if
17 they had not been removed by Yelp’s User Operations team, they would be filtered by Yelp’s
18 automated software and would not show up on Wheel Techniques’ main Yelp profile page. A
19 seventh review by Ellyn M. posted to Yelp on May 2, 2011 (after the removal of this user’s other
20 reviews of Wheel Techniques), is currently filtered, although it has not yet been removed by Yelp’s
21 User Operations team.

22 16. On February 23, 2010, Yelp received a complaint from a user about communications
23 he had received from Ellyn M. through Yelp’s messaging systems. A true and correct copy of the
24 user’s complaint to Yelp, which includes the communication from Ellyn M. that prompted the user’s
25 complaint, is attached as Exhibit 4 (an internal Yelp administrative email address has been redacted
26 from this document). Ellyn M.’s communication to the user states in part: “Dear Vincent, We here
27 at Wheel Tech really feel put down by your recent review and want to let you know that legally you
28 cannot put such input out on the net. If you read your invoice we can legally sue you for any positive

1 OR negative reviews . . . Please remove your negative comments or we have no choice to seek legal
2 actions against you . . . Hope to hear from you soon. John Mercurio owner.”

3 17. A true and correct copy of the publicly available Yelp profile page for Ellyn M.,
4 available at http://www.yelp.com/user_details?userid=dcuTyUmp5K4WuQma3fkNZQ, is attached as
5 Exhibit 5. On this page, Ellyn M. states that users can “find me on facebook under ellyn mercurio.”

6 18. A true and correct copy of the Facebook page for “Ellen Mercurio,” available at
7 <https://www.facebook.com/people/Ellen-Mercurio/100000163710129>, is attached as Exhibit 6. On
8 this page, Ms. Mercurio identifies herself as an owner of Wheel Techniques.

9 19. The seventh Wheel Techniques review removed for violations of Yelp’s Terms of
10 Service was a 5-star review from a user that identified itself as Axiom Auto Group. This review
11 (along with all other reviews posted by that user) was removed by Yelp’s User Operations team when
12 the user’s account was closed on October 7, 2009, due to unauthorized promotional conduct on
13 Yelp’s website that violated Yelp’s Terms of Service, which provide that a user cannot “[p]romote a
14 business or other commercial venture or event, or otherwise use the Service for commercial purposes,
15 except in connection with a Business Account and as expressly permitted by Yelp.” Exhibit 1 at
16 Section 6.A.iv. and Exhibit 2 (“Promotional content: Unless you’re using your Business Owners
17 Account to add content to your business’s profile page, we generally frown upon promotional
18 content. Let’s keep the site useful for consumers and not overrun with commercial noise from every
19 user.”).

20 **Renaissance Furniture**

21 20. I have reviewed Yelp’s records pertaining to Plaintiff Renaissance Furniture
22 Restoration, of San Francisco, California. As of July 21, 2011, Renaissance Furniture Restoration
23 had 14 active, unfiltered reviews (with a 5 star rating), 14 reviews that were filtered by Yelp’s
24 automated review filter, three reviews that Yelp’s User Operations team removed for violations of
25 Yelp’s Terms of Service, and two reviews which were removed by the users themselves .

26 21. Of the three Renaissance Furniture Restoration reviews removed for violations of
27 Yelp’s Terms of Service, one was a 5-star review submitted by user Boris L., one was a 5-star review
28 submitted by user Zhopik b., and one was a 5-star review submitted by user Dan H. Boris L.’s 5-star

1 review of Renaissance Furniture Restoration was removed on October 14, 2009 for violating Yelp's
2 Terms of Service and Content Guidelines which prohibit reviews that are "conflicts of interest."
3 Exhibit 2 ("Conflicts of interest: Your reviews should be unbiased and objective. For example,
4 businesses and their employees shouldn't write reviews about themselves or their competitors.").
5 Boris L. had identified himself to Yelp during his account creation as Boris Levitt, who is the owner
6 of Renaissance Furniture Restoration. This removed review was also marked as "Untrustworthy
7 (Filtered)" by Yelp's review filter, meaning that even if it had not been removed by Yelp's User
8 Operations team, it would be filtered by Yelp's automated software and would not show up on
9 Renaissance Furniture Restoration's main Yelp profile page.

10 22. A true and correct copy of the Yelp profile page for Boris L. available at
11 http://www.yelp.com/user_details?userid=EQ0Ln_QuAPKFXwFp6TmgOw, is attached as Exhibit 7.
12 On this page, Boris L. states that his blog or website is <http://www.renarest.com>.

13 23. A true and correct copy of the webpage available at <http://www.renarest.com> is
14 attached as Exhibit 8. This webpage is the website for Renaissance Furniture Restoration.

15 24. Zhopik b.'s 5-star review of Renaissance Furniture Restoration was removed on
16 October 8, 2009 for violating Yelp's Terms of Service and Content Guidelines, which prohibit
17 reviews that do not reflect "firsthand consumer experience." Exhibit 2 ("Personal experience: We
18 want to hear about your firsthand consumer experience, not what you heard from your co-worker or
19 significant other."). Zhopik b.'s review violated these prohibitions.

20 25. Dan H.'s 5-star review of Renaissance Furniture Restoration was removed (along with
21 all other reviews posted by that user) by Yelp's User Operations team when the user's account was
22 closed on March 23, 2010 due to his posting of inappropriate content on Yelp. Exhibit 2
23 ("Inappropriate content: Colorful language and imagery is fine, but there's no need for threats,
24 harassment, lewdness, hate speech, and other displays of bigotry.").

25 **Cats & Dogs Animal Hospital**

26 26. I have reviewed Yelp's records pertaining to Cats and Dogs Animal Hospital of Long
27 Beach, California. As of July 21, 2011, Cats and Dogs Animal Hospital had 49 active, unfiltered
28 reviews (with a 4 star average rating), 24 reviews that were filtered by Yelp's automated review

1 filter, five reviews or review updates that Yelp’s User Operations team removed for violations of
2 Yelp’s Terms of Service, and 4 reviews which were removed by the users themselves.

3 27. Of the five Cats and Dogs Animal Hospital reviews or review updates removed for
4 violations of Yelp’s Terms of Service (three of which were 1-star reviews), three (one 5-star review,
5 one 3-star review and one 1-star review) were removed on February 26, 2010, March 4, 2010, and
6 March 19, 2010 because they did not reflect “firsthand consumer experience.” Exhibit 2 (“Personal
7 experience: We want to hear about your firsthand consumer experience, not what you heard from
8 your co-worker or significant other.”). The fourth review (a 1-star review) was removed on May 13,
9 2009 because it revealed the license plate of a veterinarian at Cats and Dogs Animal Hospital, and
10 therefore violated Yelp’s Terms of Service and Content Guidelines, which provide “[d]on’t publicize
11 other people’s private information” and prohibit users from disclosing others’ private information in
12 reviews. Exhibit 2. Finally, a 1-star review update was removed on January 13, 2010 because it did
13 not reflect any new consumer experience. Exhibit 2 (“Review updates: Review updates should
14 reflect a new experience or interaction with the business. Don’t tell the same old story you’ve already
15 told.”).

16 **Marina Dental Care**

17 28. I have reviewed Yelp’s records pertaining to Marina Dental, formerly Marina Dental
18 Care, of San Francisco, California. As of July 21, 2011, Marina Dental had 16 active, unfiltered
19 reviews (with a 3.5 star average rating), 86 reviews that were filtered by Yelp’s automated review
20 filter, nine reviews or review updates that Yelp’s User Operations team removed for violations of
21 Yelp’s Terms of Service, three reviews that Yelp’s User Operations team removed (along with all
22 other reviews of the users) when the users accounts were closed at their request, and two reviews
23 which were removed by the users themselves.

24 29. Of the nine Marina Dental reviews removed for violations of Yelp’s Terms of Service,
25 eight were removed on November 30, 2010 (along with all other reviews by the users) because the
26 users’ accounts were closed by Yelp for creating multiple accounts in violation of Yelp’s Terms of
27 Service and Content Guidelines, which state that “[y]ou may not . . . create multiple Personal
28 Accounts.” Exhibit 1 at 4.D.1. The ninth review, a one star review, was removed on December 23,

1 2010 because it was a review update which violated Yelp's Terms of Service and Content
2 Guidelines, which state "[r]eview updates should reflect a new experience or interaction with the
3 business. Don't tell the same old story you've already told." Exhibit 2.

4 30. I declare under penalty of perjury under the laws of the United States that the
5 foregoing is true and correct.

6 Executed on July 22, 2011 at San Francisco, California

7
8 _____ /s/
9 Ian MacBean

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11 101120849.1