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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 BORIS Y. LEVITT D/B/A RENAISSANCE
21 RESTORATION, CATS AND DOGS ANIMAL
22 HOSPITAL, INC., TRACY CHAN D/B/A
23 MARINA DENTAL CARE and JOHN
24 MERCURIO D/B/A WHEEL TECHNIQUES;
25 on behalf of themselves and all others similarly
26 situated,

24 Plaintiffs,

25 v.

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

28 Defendants.

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

CLASS ACTION

**DEFENDANT YELP INC.'S RESPONSES
TO PLAINTIFFS' 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 5

Judge: The Honorable Edward M. Chen

1 **I. Introduction**

2 Defendant Yelp! Inc. (“Yelp”) hereby responds to Plaintiffs’ objections to the declarations
3 and accompanying evidence submitted by defendant Yelp in support of its Motion to Dismiss Third
4 Amended Class Action Complaint and to Dismiss or Strike Class Action Allegations (Dkt. 77).

5 Yelp notes preliminarily that Plaintiffs’ repeated boilerplate objections to the form of Yelp’s
6 evidence should not impact the Court’s consideration of these materials at this early stage in the case
7 in connection with Yelp’s pending motion. Such objections to the form of evidence—as opposed to
8 the contents of evidence—are not the focus until trial. *E.g., Fraser v. Goodale*, 342 F.3d 1032, 1038
9 (9th Cir. 2003) (Even at summary judgment stage courts “do not focus on the admissibility of the
10 evidence’s form.”); *Hughes v. United States*, 953 F.2d 531, 543 (9th Cir. 1992) (Considering
11 objections based on hearsay and Best Evidence Rule on summary judgment and holding that “[w]hile
12 the facts underlying the affidavit must be of a type that would be admissible as evidence . . . the
13 affidavit itself does not have to be in a form that would be admissible at trial.”). Yelp addresses
14 Plaintiffs’ specific objections below:

15 **II. Responses to Objections to Declaration of Ashlie Beringer (Dkt. No. 79)**

Material	Plaintiffs’ Objections	Yelp’s Response
Exhibit 1 (Beringer Decl. Ex. 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	Rule 901 requires only that “there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence.” <i>Alexander Dawson, Inc. v. NLRB</i> , 586 F.2d 1300, 1302 (9th Cir. 1978). Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit

Material	Plaintiffs' Objections	Yelp's Response
	<p>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.</p>	<p>1 is unreliable.</p> <p>Further, the Court, pursuant to Federal Rule of Evidence 201, may also take judicial notice of the fact that Exhibit 1 is the document which Ms. Beringer declares it to be, namely a copy of a page from Yelp's website available at http://www.yelp.com/about</p>
<p>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. (Beringer Decl. ¶ 2)</p>	<p>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 ("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 Ex. 1.</i> 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.</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 1 is unreliable.</p> <p>Further, the Court, pursuant to Federal Rule of Evidence 201, may also take judicial notice of the mere fact that Exhibit 1 is the document which Ms. Beringer declares it to be, namely a copy of a page from Yelp's website available at http://www.yelp.com/about</p> <p>Plaintiffs misstate the issue by claiming that the TAC does not reference Exhibit 1; however, the TAC does reference the webpage of which Exhibit 1 is a true and correct copy. Plaintiffs concede</p>

Material	Plaintiffs' Objections	Yelp's Response
	<p>Beringer Decl., ¶¶2, 4. Exhibit 1 therefore is irrelevant and should not be considered. FRE 401, 402.</p>	<p>that the TAC contains quotations from Yelp's website, and do not deny that quoted portions from paragraphs 3, 4, and footnote 1 of their TAC come from Yelp's webpage, available at http://www.yelp.com/about. Because Plaintiffs reference this webpage in their complaint, they may not deprive Yelp of the ability to address its full contents and the Court may consider the full contents of this webpage. See <i>United States v. Ritchie</i>, 342 F.3d 903, 908 (9th Cir. 2003).</p> <p>For the same reasons the cited webpage, of which Exhibit 1 is a true and correct copy, is plainly relevant to Plaintiffs' claims. Fed. R. Evid. 401, 402.</p> <p>To the extent that Plaintiffs object to the "access and print" date of Exhibit 1, the Court may rely upon Exhibit 1 to the Declaration of S. Ashlie Beringer in Support of Yelp's Motion to Dismiss the Second Amended Complaint ("SAC") (Dkt. No. 60-1), which is a print out of the "About Us" page from Yelp's website, with an access and print date of December 17, 2010, months before the filing of the TAC. This prior exhibit is part of the record before the Court. Plaintiffs did not object to this prior exhibit and have therefore waived any objections to its admissibility.</p>
<p>Exhibit 2 (Beringer Ex. 2)</p>	<p>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</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is</p>

Material	Plaintiffs' Objections	Yelp's Response
	<p>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.</p>	<p>admissible in evidence.” <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 2 is unreliable.</p> <p>Further, the Court, pursuant to Federal Rule of Evidence 201, may also take judicial notice of the mere fact that Exhibit 1 is the document which Ms. Beringer declares it to be, namely a copy of a page from Yelp's website available at http://www.yelp.com/faq</p>
<p>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. (Beringer Decl. ¶ 3)</p>	<p>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 Complaint could not have referenced Exhibit 2</p>	<p>Rule 901 requires only that “there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence.” <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 2 is unreliable.</p> <p>Further, the Court, pursuant to Federal Rule of Evidence 201, may also take judicial notice of the</p>

Material	Plaintiffs' Objections	Yelp's Response
	<p>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.</p>	<p>mere fact that Exhibit 2 is the document which Ms. Beringer declares it to be, namely a copy of the "About Us" page from Yelp's website available at http://www.yelp.com/faq</p> <p>Plaintiffs misstate the issue by claiming that the TAC does not reference Exhibit 2; however, the TAC does reference the webpage of which Exhibit 2 is a true and correct copy. Plaintiffs' concede that the TAC contains quotations from Yelp's website, and do not deny that quoted portions from paragraphs 3 and 5 of their TAC come from Yelp's webpage available at http://www.yelp.com/faq. Because Plaintiffs reference this webpage in their complaint, they may not deprive Yelp of the ability to address its full contents and the Court may consider the full contents of this webpage. <i>See Ritchie</i>, 342 F.3d at 908. For the same reasons the cited webpage, of which this Exhibit is a true and correct copy, is plainly relevant to Plaintiffs' claims. Fed. R. Evid. 401, 402.</p> <p>Moreover, this Exhibit is an exact duplicate of Exhibit 2 to the Declaration of S. Ashlie Beringer (Dkt. No. 60-2), which is a print out of the "FAQ" page, with an access and print date of December 17, 2010, months before the filing of the TAC. Plaintiffs did not object to this prior exhibit and have therefore waived any objections to its admissibility. This prior exhibit is part of the record before the Court and has</p>

Material	Plaintiffs' Objections	Yelp's Response
		previously been relied upon by the Court. <i>See</i> Order at 2: 6-16; 17:18-20.
Exhibit 3 (Beringer Ex. 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.	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 1 is unreliable.</p> <p>Further, the Court, pursuant to Federal Rule of Evidence 201, may also take judicial notice of the mere fact that Exhibit 1 is the document which Ms. Beringer declares it to be, namely a copy of a page from Yelp's website available at http://www.yelp.com/business/advertising</p>
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. (Beringer Decl. ¶ 4)	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. See generally TAC. The TAC has no exhibits, let alone the "Advertising on Yelp" page	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its</p>

Material	Plaintiffs' Objections	Yelp's Response
	<p>from Yelp's website. Id. 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 paragraph 5 of the TAC. Beringer Decl., ¶¶2-4. Exhibit 3 therefore is irrelevant and should not be considered. FRE 401, 402.</p>	<p>face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 3 is unreliable.</p> <p>Further, the Court, pursuant to Federal Rule of Evidence 201, may also take judicial notice of the mere fact that Exhibit 3 is the document which Ms. Beringer declares it to be, namely a copy of a page from Yelp's website available at http://www.yelp.com/business/advvertising</p> <p>Plaintiffs misstate the issue by claiming that the TAC does not reference Exhibit 3; however, the TAC does reference the webpage of which Exhibit 3 is a true and correct copy. Plaintiffs' concede that the TAC contains quotations from Yelp's website, and do not deny that quoted portions from paragraph 5 of their TAC come from Yelp's webpage available at http://www.yelp.com/business/advvertising. Because Plaintiffs reference this webpage in their complaint, they may not deprive Yelp of the ability to address its full contents and the Court may consider the full contents of this webpage. <i>See Ritchie</i>, 342 F.3d at. For the same reasons the cited webpage, of which this Exhibit is a true and correct copy, is plainly relevant to Plaintiffs' claims. Fed. R. Evid. 401, 402.</p> <p>To the extent that Plaintiffs object to Exhibit 3, the Court may rely upon Exhibit 3 to the Declaration</p>

Material	Plaintiffs' Objections	Yelp's Response
		<p>of S. Ashlie Beringer in Support of Yelp's Motion to Dismiss the Second Amended Complaint ("SAC") (Dkt. No. 60-3), which is a print out of the "Advertising on Yelp" page from Yelp's website, with an access and print date of December 17, 2010, months before the filing of the TAC. This prior exhibit is part of the record before the Court. Plaintiffs did not object to this prior exhibit and have therefore waived any objections to its admissibility.</p>
<p>Exhibit 4 (Beringer Ex. 4)</p>	<p>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.</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 4 is unreliable.</p> <p>Further, the Court, pursuant to Federal Rule of Evidence 201, may also take judicial notice of the mere fact that Exhibit 4 is the document which Ms. Beringer declares it to be, namely a copy of a page from Yelp's website available at http://www.yelp.com/business/advertising</p>
<p>Attached as Exhibit 4 is a true and correct copy of the</p>	<p>Exhibit 4 is not authenticated and thus is inadmissible. The</p>	<p>Rule 901 requires only that "there</p>

Material	Plaintiffs' Objections	Yelp's Response
<p>1 "Terms of Service" from 2 Yelp's website, 3 http://www.yelp.com/static 4 ?p=tos&country=US, 5 which is referenced in 6 Plaintiffs' Third Amended 7 Complaint at paragraphs 6, 8 34, 40, and footnote 5. The 9 "Terms of Service" are also 10 incorporated by Plaintiffs 11 into their definition of 12 "Review Terms," (see TAC 13 ¶ 6) which is referenced 14 throughout the Third 15 Amended Complaint, 16 including at paragraphs 7, 17 10, 66, 67, 95, 96, 98, 101, 18 105, 113, 117, 134, and 19 142. (Beringer Decl. ¶ 5)</p>	<p>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. See generally TAC. The TAC has no exhibits, let alone the "Terms of Service" page from Yelp's website. Id. 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. See Ex. 4. Furthermore, the references in the TAC to the defined term "Review Terms" is based only 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.</p>	<p>is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 4 is unreliable.</p> <p>Plaintiffs misstate the issue by claiming that the TAC does not reference Exhibit 4; however, the TAC does reference the webpage of which Exhibit 4 is a true and correct copy. Plaintiffs' concede that the TAC contains quotations from Yelp's website, and do not deny that paragraphs 7, 10, 66, 67, 95, 96, 98, 101, 105, 113, 117, 134, and 142 of their TAC reference Yelp's Terms of Service available at http://www.yelp.com/static?p=tos &country=US</p> <p>As stated in the declaration, Exhibit 4 is a copy of this webpage as of the date of Ms. Beringer's declaration. Because Plaintiffs reference this webpage in their complaint, they may not deprive Yelp of the ability to address its full contents and the Court may consider the full contents of this webpage. See <i>Ritchie</i>, 342 F.3d at 908. For the same reasons the cited webpage, of which this</p>

Material	Plaintiffs' Objections	Yelp's Response
		<p>Exhibit is a true and correct copy, is plainly relevant to Plaintiffs' claims. Fed. R. Evid. 401, 402.</p> <p>Moreover, this Exhibit is a duplicate of Exhibit 1 to the Supplemental Declaration of S. Ashlie Beringer (Dkt. No. 64-1), which is a print out of the "Terms of Service" page of Yelp's website, and states clearly on its face that it was "Last Updated on July 21, 2010," months before the filing of the TAC. Plaintiffs did not object to this prior exhibit and have therefore waived any objections to its admissibility. This prior exhibit is part of the record before the Court.</p>
Exhibit 5 (Beringer Decl. Ex. 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.	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 5 is unreliable.</p>
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	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	Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence."

Material	Plaintiffs' Objections	Yelp's Response
<p>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. (Beringer Decl. ¶ 6)</p>	<p>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 Ex. 5.</i> 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.</p>	<p><i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a specific webpage, and bears on its face the URL of the webpage and the timestamp of the access. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 5 is unreliable.</p> <p>Plaintiffs misstate the issue by claiming that the TAC does not reference Exhibit 5; however, the TAC does reference the webpage of which Exhibit 5 is a true and correct copy. Plaintiffs' concede that the TAC contains quotations from Yelp's website, and do not deny that quoted portions from paragraphs 6 and footnote 5 of their TAC come from Yelp's webpage available at http://www.yelp.com/guidelines</p> <p>As stated in the declaration, Exhibit 5 is a copy of this webpage as of the date of Ms. Beringer's declaration. Because Plaintiffs reference this webpage in their complaint, they may not deprive Yelp of the ability to address its full contents and the Court may consider the full contents of this webpage. <i>See Ritchie</i>, 342 F.3d at 908. For the same reasons the cited webpage, of which this Exhibit is a true and correct copy, is plainly relevant to Plaintiffs' claims. Fed. R. Evid. 401, 402.</p> <p>Moreover, this Exhibit is a duplicate of Exhibit 2 to the</p>

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Material	Plaintiffs' Objections	Yelp's Response
		<p>Supplemental Declaration of S. Ashlie Beringer (Dkt. No. 64-2), which is a print out of the "Content Guidelines" page of Yelp's website, with an access and print date of January 16, 2011, months before the filing of the TAC. Plaintiffs did not object to this prior exhibit and have therefore waived any objections to its admissibility. This prior exhibit is part of the record before the Court.</p>
<p>Exhibit 6 (Beringer Decl. Ex. 6)</p>	<p>Exhibit 6 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 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.</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a red-lined comparison of the Third Amended Complaint to the Second Amended Complaint, pleadings on file in this action. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 6 is unreliable.</p>

Material	Plaintiffs' Objections	Yelp's Response
<p>Attached as Exhibit 6 is a true and correct copy of a red-lined comparison of the Third Amended Complaint to the Second Amended Complaint. (Beringer Decl. ¶ 7)</p>	<p>Exhibit 6 is not authenticated and thus is inadmissible. FRE 901.</p>	<p>Rule 901 requires only that “there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence.” <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of a red-lined comparison of the Third Amended Complaint to the Second Amended Complaint, documents on file in this action. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 6 is unreliable.</p> <p>Further, the Court, pursuant to Federal Rule of Evidence 201, may also take judicial notice of the mere fact that Exhibit 6 is the document which Ms. Beringer declares it to be, namely a red-lined comparison of the Third Amended Complaint to the Second Amended Complaint, pleadings on file in this action.</p>

III. Responses to Objections to Declaration of Ian MacBean (Dkt. No. 80)

Material	Plaintiffs' Objections	Yelp's Response
<p>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</p>	<p>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</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he “supervise[s]</p>

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<p>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 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. (MacBean Decl. ¶ 2).</p>	<p>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 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.</p> <p>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</p>	<p>and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and that his declaration is "based upon his personal knowledge of the facts stated herein." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's statements describe his personal actions and knowledge based on his position and experience. This includes his findings as to what was not present upon his review of Yelp's business records, namely his finding that users who posted reviews relating to the named Plaintiffs are not identified as current or former employees of Yelp in Yelp's records. Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented</p>

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	<p>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.</p>	<p>sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility of Mr. MacBean's statements, and are inappropriate argument.</p>
<p>Second, I reviewed each email address provided by the users who posted these reviews when 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</p>	<p>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 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</p>	<p>Mr. MacBean provided sufficient foundation and basis for statements about his review of Yelp's administrative records, in his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements describing his actions are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of</p>

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<p>with their user account. (MacBean Decl. ¶ 3).</p>	<p>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. Id. 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>	<p>another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's statements describe his personal actions and knowledge based on his position and experience. This includes his findings as to what was not present upon his review of Yelp's business records, namely his finding that users who posted reviews relating to the named Plaintiffs did not provide an "@yelp.com" email address when creating their user account, or other have a "@yelp.com" email address associated with their user account in Yelp's business records. Moreover, Plaintiffs' meritless hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p>
<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</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</p>	<p>Mr. MacBean provided sufficient foundation and basis for statements about his review of Yelp's administrative records, in his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's</p>

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<p>about the named Plaintiffs appeared in the list of all current and former Yelp employees. (MacBean Decl. ¶ 4).</p>	<p>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 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>	<p>statements describing his actions are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean’s statements describe his personal actions and knowledge based on his position and experience. This includes his findings as to what was not present upon his review of Yelp’s business records, namely his finding that the names provided by users who posted reviews relating to the named Plaintiffs did not correspond to any names “in a database of all current and former Yelp employees.” Moreover, Plaintiffs’ meritless hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean’s sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs’ remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs’ factually baseless disputes with the weight of the evidence do not affect the admissibility of Mr. MacBean’s</p>

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		statements, and are inappropriate argument.
<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. (MacBean Decl. ¶ 5).</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 true IP address. FRE 602.</p>	<p>Mr. MacBean provided sufficient foundation and basis for statements about his review of Yelp's administrative records, in his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements describing his actions are unreliable. Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's statements describe his personal actions and knowledge based on his position and experience. This includes his findings as to what was not present upon his review of Yelp's business records, namely that none of the IP addresses associated with any review of the Plaintiffs are associated with any Yelp computer or device. Moreover, Plaintiffs' meritless hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented</p>

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		<p>sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility of Mr. MacBean's statements, and are inappropriate argument.</p>
<p>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. (MacBean Decl. ¶ 6).</p>	<p>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</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and that his declaration is "based upon his personal knowledge of the facts stated herein." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's statements describe his personal actions and knowledge based on his position and experience. This includes his knowledge that Yelp's sales employees and user operations employees lack any technical ability to modify the content of reviews on Yelp.</p>

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	<p>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.</p>	<p>Moreover, Plaintiffs' meritless hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility of Mr. MacBean's statements, and are inappropriate argument.</p>
<p>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 ability to alter or impact the default order in which reviews appear on Yelp.com. Users, however, are able to revise</p>	<p>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</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and that his declaration is "based upon his personal knowledge of the facts stated herein." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p>

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<p>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. (MacBean Decl. ¶ 7).</p>	<p>factors are – not just 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</p>	<p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's statements describe his personal actions and knowledge based on his position and experience. This includes his knowledge that the Yelp Sort feature of Yelp's website does not consider whether a business advertises on Yelp, and his statements that Yelp sales and user operations employees do not have the technical ability to alter or impact the default order in which reviews appear on Yelp.com. Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' objections citing the Best Evidence Rule are also speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is unsupported by Mr. MacBean's statement.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his</p>

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	<p>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 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</p>	<p>personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility of Mr. MacBean's statements, and are inappropriate argument.</p>

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	<p>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>	
<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 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</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 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</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and that his declaration is "based upon his personal knowledge of the facts stated herein." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable. Mr. MacBean's statements are supported by Plaintiffs' own allegations in their Third Amended Complaint. <i>See, e.g.</i>, TAC ¶5.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's statements describe his personal actions and knowledge based on his position and experience. This includes his knowledge regarding Yelp's automated review filter. Moreover, Plaintiffs' meritless</p>

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<p>time). (MacBean Decl. ¶ 8).</p>	<p>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.</p>	<p>hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is unsupported by Mr. MacBean's statement.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility of Mr. MacBean's statements, and are inappropriate argument.</p>

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<p>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)." (MacBean Decl. ¶ 9).</p>	<p>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.</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and that his declaration is "based upon his personal knowledge of the facts stated herein." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's statements describe his personal actions and knowledge based on his position and experience. This includes his knowledge that when Yelp's automated filter identifies and filters a review, that review is automatically shaded in Yelp's internal administrative database and flagged with the notation "Untrustworthy (Filtered)." Moreover, Plaintiffs' meritless hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p>

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		<p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is unsupported by Mr. MacBean's statement.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility of Mr. MacBean's statements, and are inappropriate argument.</p>
Exhibit 1 (MacBean Ex. 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. Id. The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602.	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of Yelp's Terms of Service. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's Terms of Service, stating for example, that his position requires him to "investigate potential Terms of</p>

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		<p>Service violations on Yelp's website, and enforce those Terms of Service." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 1 is unreliable.</p> <p>Moreover, this Exhibit is a duplicate of Exhibit 1 to the Supplemental Declaration of S. Ashlie Beringer (Dkt. No. 64-1), which is a print out of the "Terms of Service" page of Yelp's website, and states clearly on its face that it was "Last Updated on July 21, 2010," months before the filing of the TAC. Plaintiffs did not object to this prior exhibit and have therefore waived any objections to its admissibility. This prior exhibit is part of the record before the Court.</p>
<p>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&country=US. Section 6.A.i. of Yelp's Terms of Service prohibits violations of Yelp's Content Guidelines. (MacBean Decl. ¶ 10).</p>	<p>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 times relevant to the conduct alleged in the TAC. FRE 401, 402.</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of Yelp's Terms of Service. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's Terms of Service, stating for example, that his position requires him to "investigate potential Terms of Service violations on Yelp's website, and enforce those Terms of Service."</p>

Material	Plaintiffs' Objections	Yelp's Response
		<p>Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 1 is unreliable.</p> <p>Plaintiffs' relevancy objection is also without basis, as Yelp's Terms of Service is plainly relevant to Plaintiffs' claims in this action.</p>
Exhibit 2 (MacBean Ex. 2).	<p>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.</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of Yelp's Content Guidelines. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's Terms of Service and Content Guidelines, stating for example, that his position requires him to "investigate potential Terms of Service violations on Yelp's website, and enforce those Terms of Service," and his statement that "Section 6.A.i. of Yelp's Terms of Service prohibits violations of Yelp's Content Guidelines." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 2 is unreliable.</p> <p>Moreover, this Exhibit is a duplicate of Exhibit 2 to the Supplemental Declaration of S. Ashlie Beringer</p>

Material	Plaintiffs' Objections	Yelp's Response
		(Dkt. No. 64-2), which is a print out of the "Content Guidelines" page of Yelp's website, with an access and print date of January 16, 2011, months before the filing of the TAC. Plaintiffs did not object to this prior exhibit and have therefore waived any objections to its admissibility. This prior exhibit is part of the record before the Court.
Attached as Exhibit 2 is a true and correct copy of Yelp's Content Guidelines, available at http://www.yelp.com/guidelines . (MacBean Decl. ¶ 11).	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.	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of Yelp's Terms of Service. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's Terms of Service, stating for example, that his position requires him to "investigate potential Terms of Service violations on Yelp's website, and enforce those Terms of Service." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 1 is unreliable.</p> <p>Plaintiffs' relevancy objection is also without basis, as Yelp's Content Guidelines are plainly relevant to Plaintiffs' claims in this action.</p>
As described previously, I reviewed Yelp's administrative records	Declarant's assertion about the results of his review of Wheel Techniques' reviews, including	Mr. MacBean provided sufficient foundation and basis for his

Material	Plaintiffs' Objections	Yelp's Response
<p>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 28</p> <p>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. (MacBean Decl. ¶ 14).</p>	<p>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. 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</p>	<p>knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p>

Material	Plaintiffs' Objections	Yelp's Response
	<p>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>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they incorrectly assume Mr. MacBean is merely testifying to prove the contents of a writing, which is not supported by his statement.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility of Mr. MacBean's statements, and are inappropriate argument.</p>
<p>Exhibit 3 (MacBean Decl. Ex. 3).</p>	<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 and related information 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." Id. 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</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of information located in Yelp's administrative records. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's administrative records, stating for example, that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 3 is unreliable.</p>

Material	Plaintiffs' Objections	Yelp's Response
	<p>violation of the Terms of Service which declarant asserts. See MacBean Decl., ¶¶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.</p>	<p>Plaintiffs' speculative and improper arguments that Exhibit 3 should contain certain details is unwarranted and incorrect, and has no impact on the admissibility of Exhibit 3.</p> <p>Because Exhibit 3 also contains the admissions of Plaintiff Wheel Techniques—a fact Plaintiffs' do not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2). Moreover, Plaintiffs' meritless hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Exhibit 3. <i>Fraser</i>, 342 F.3d at 1038.</p>
<p>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</p>	<p>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</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the</p>

Material	Plaintiffs' Objections	Yelp's Response
<p>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, although it has not yet been removed by Yelp’s User Operations team. (MacBean Decl. ¶ 15).</p>	<p>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 in the TAC. FRE 401, 402.</p> <p>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.</p>	<p>matter asserted. Fed. R. Evid. 801(c). Moreover, Plaintiffs’ meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean’s sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs’ remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters. stated in his declaration. Fed. R. Evid. 602</p> <p>Plaintiffs’ objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is unsupported by Mr. MacBean’s statements.</p> <p>Plaintiffs’ factually baseless disputes with the weight of the evidence do not affect the admissibility of Mr. MacBean’s statements, and are inappropriate argument.</p>
<p>Exhibit 4 (MacBean Ex. 4).</p>	<p>Exhibit 4 is not properly authenticated. FRE 901. The only attempt at authentication is</p>	<p>Rule 901 requires only that “there is prima facie evidence, circumstantial or direct, that the</p>

Material	Plaintiffs' Objections	Yelp's Response
	<p>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. Id. 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.</p> <p>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.</p>	<p>document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of information located in Yelp's administrative records. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's administrative records, stating for example, that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 4 is unreliable or does not reflect a communication from Plaintiff Wheel Techniques.</p> <p>Plaintiffs' arguments about the relevance of Exhibit 4 are incorrect. Plainly, evidence showing that Plaintiffs have threatened actual users of Yelp's services who left reviews of Plaintiffs' business is relevant to show that such negative reviews are the legitimate opinions of Plaintiffs' customers, and are not the result of any conduct by Yelp.</p>
<p>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</p>	<p>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</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User</p>

Material	Plaintiffs' Objections	Yelp's Response
<p>includes the communication from Ellyn M. that prompted the user's complaint, is attached as Exhibit 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." (MacBean Decl. ¶ 16).</p>	<p>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 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>	<p>Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Because Exhibit 4 also contains the admissions of Plaintiff Wheel Techniques—a fact Plaintiffs' do not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2). Moreover, Plaintiffs' meritless hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless</p>

Material	Plaintiffs' Objections	Yelp's Response
		disputes with the weight of the evidence do not affect the admissibility or relevance of Mr. MacBean's statements or Exhibit 4, and are inappropriate argument.
Exhibit 5 (MacBean Ex. 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 not 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>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of public information located on Yelp's website. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's administrative records, stating for example, that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 5 is unreliable.</p> <p>Plaintiffs' speculative and improper arguments that Exhibit 5 should contain certain details is unwarranted and incorrect, and has no impact on the admissibility of Exhibit 5.</p> <p>Because Exhibit 5 also contains the admissions of Plaintiff Wheel Techniques—a fact Plaintiffs' do not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2). Moreover, Plaintiffs' meritless</p>

Material	Plaintiffs' Objections	Yelp's Response
		<p>hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p>
<p>A true and correct copy of the publicly available Yelp profile 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."</p>	<p>Exhibit 4 [SIC] is not properly authenticated and thus is inadmissible. FRE 901. Declarant relies upon and asserts that a statement contained in Exhibit 4 [SIC] (from a third party) that Ellyn M. can be found "on facebook under ellyn mercurio" is inadmissible hearsay. FRE 801, 802.</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of public information located on Yelp's website. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's administrative records, stating for example, that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 5 is unreliable.</p> <p>Because Exhibit 5 also contains the admissions of Plaintiff Wheel Techniques—a fact Plaintiffs' do not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2). Moreover, Plaintiffs' meritless hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p>

Material	Plaintiffs' Objections	Yelp's Response
		<p>Plaintiffs' fail to present any evidence to support their assertion that Ellyn M. is the account of a "third party," instead of the owners of Plaintiff Wheel Techniques as indicated on the face of Exhibit 4 to Mr. MacBean's declaration.</p>
<p>Exhibit 6</p>	<p>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. Id. 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.</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of public information located on Facebook's website. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 6 is unreliable.</p> <p>Moreover, because Ellen Mercurio identifies herself as an owner of Plaintiff Wheel Techniques on Facebook, this evidence is plainly relevant to this action in that it supports Yelp's statements that Plaintiffs in this action have improperly written positive reviews about their own businesses.</p>
<p>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</p>	<p>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</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p>

Material	Plaintiffs' Objections	Yelp's Response
Techniques.	<p>inadmissible hearsay and is not based on declarant's personal knowledge. FRE 602, 801, 802.</p> <p>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.</p>	<p>Here, the exhibit is declared to be a true and correct copy of public information located on Facebook's website. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 6 is unreliable.</p> <p>Because Exhibits 5 and 6 also contain the admissions of Plaintiff Wheel Techniques— facts Plaintiffs' do not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2). Moreover, Plaintiffs' meritless hearsay objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p>
<p>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 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</p>	<p>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 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</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are</p>

Material	Plaintiffs' Objections	Yelp's Response
<p>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>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>	<p>incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is not support by his statements.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility or relevance of Mr. MacBean's statements, and are inappropriate argument.</p>
<p>I have reviewed Yelp's records pertaining to Plaintiff Renaissance Furniture Restoration, of San Francisco, California. As of July 21, 2011,</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</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his</p>

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<p>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>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 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</p>	<p>declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is not support by his statements.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented</p>

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	<p>attempt to speculate about the content or to recount the contents of those writings violates the Best Evidence Rule. FRE 1002.</p>	<p>sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility or relevance of Mr. MacBean's statements, and are inappropriate argument.</p>
<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 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</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 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's statements are based on inadmissible hearsay because</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c). Because Exhibits 7 and 8 also contains the admissions of Plaintiff Boris Levitt—a fact Plaintiffs' do not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2). Plaintiffs' statement that Exhibits 7 and 8 contain "third</p>

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<p>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.</p>	<p>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.</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>	<p>party statements" are unsupported.</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is not support by his statements.</p> <p>Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility or relevance of Mr. MacBean's statements, and are inappropriate argument.</p>
<p>Exhibit 7</p>	<p>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</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d</p>

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	<p>Decl., ¶22. A review of the document attached as Exhibit 7 demonstrates on its face that is not 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.</p> <p>To the extent declarant relies upon or asserts any statements from Exhibit 7 as true, they are inadmissible hearsay. FRE 801, 802.</p>	<p>at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of public information located on Yelp's website. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's administrative records, stating for example, that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 7 is unreliable.</p> <p>Plaintiffs' speculative and improper arguments that Exhibit 7 should contain certain details is unwarranted and incorrect, and has no impact on the admissibility of Exhibit 7.</p> <p>Because Exhibit 7 also contains the admissions of Boris Levitt—a fact Plaintiffs' do not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2).</p>
<p>A true and correct copy of the Yelp profile page for Boris L. available at http://www.yelp.com/user_details?userid=EQ0Ln_QuAPKF XwFp6 TmgOw, is attached as Exhibit 7.</p> <p>On this page, Boris L. states that his blog or website is http://www.rearest.com.</p>	<p>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.rearest.com 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</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of public information located on Yelp's</p>

Material	Plaintiffs' Objections	Yelp's Response
	<p>irrelevant to Plaintiffs' claims regarding conduct on Yelp's site. FRE 401, 402.</p>	<p>website. Mr. MacBean has also provided sufficient evidence regarding his personal knowledge of Yelp's administrative records, stating for example, that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures." Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Exhibit 7 is unreliable.</p> <p>Because Exhibit 7 also contains the admissions of Boris Levitt—a fact Plaintiffs' do not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2). Further the citation of Boris L.'s statement regarding his blog or website, www.renarest.com, is relevant to further show that Boris L. Is indeed Plaintiff Boris Levitt, the owner of Renaissance Furniture Restoration, a fact Plaintiffs do not dispute.</p>
<p>Exhibit 8</p>	<p>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.</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of public information located on Mr. Levitt's website, www.renarest.com. This website, and therefore Exhibit 8 which is a copy of this website, is relevant because it shows that Yelp user</p>

Material	Plaintiffs' Objections	Yelp's Response
		Boris L. is Plaintiff Boris Levitt, the owner of Renaissance Furniture Restoration, a fact Plaintiffs do not dispute.
<p>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.</p>	<p>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.</p>	<p>Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." <i>Alexander Dawson, Inc.</i>, 586 F.2d at 1302.</p> <p>Here, the exhibit is declared to be a true and correct copy of public information located on Mr. Levitt's website, www.renarest.com. This website, and therefore Exhibit 8 which is a copy of this website, is relevant because it shows that Yelp user Boris L. is Boris Levitt, the owner of Renaissance Furniture Restoration, a fact Plaintiffs do not dispute.</p> <p>Because Exhibit 8 also contains the admissions of Plaintiff Boris Levitt—a fact Plaintiffs' do not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2).</p>
<p>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</p>	<p>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</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations</p>

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<p>heard from your co-worker or significant other.”). Zhopik b.’s review violated these prohibitions.</p>	<p>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>	<p>team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean’s statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c).</p> <p>Plaintiffs’ objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is not support by his statements.</p> <p>Moreover, Plaintiffs’ meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean’s sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs’ remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p>

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		Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility or relevance of Mr. MacBean's statements, and are inappropriate argument.
<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.</p>	<p>Mr. Macbean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c).</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is not supported by his statements.</p> <p>Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the</p>

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	FRE 1002.	<p>evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility or relevance of Mr. MacBean's statements, and are inappropriate argument.</p>
<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 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>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 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</p>	<p>Mr. Macbean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p>

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	<p>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>	<p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c).</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is not supported by his statements.</p> <p>Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility or relevance of Mr. MacBean's statements, and are inappropriate argument.</p>

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<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 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>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. 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>	<p>Mr. Macbean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c).</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is not supported by his statements.</p> <p>Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p>

Material	Plaintiffs' Objections	Yelp's Response
		<p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility or relevance of Mr. MacBean's statements, and are inappropriate argument.</p>
<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 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>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, 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</p>	<p>Mr. Macbean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid.</p>

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	<p>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>801(c).</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is not supported by his statements.</p> <p>Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented sufficient testimony regarding his personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.</p> <p>Plaintiffs' factually baseless disputes with the weight of the evidence do not affect the admissibility or relevance of Mr. MacBean's statements, and are inappropriate argument.</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</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"</p>	<p>Mr. MacBean provided sufficient foundation and basis for his knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his declaration, including his statements that he "supervise[s]</p>

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<p>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 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.</p>	<p>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 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.</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>	<p>and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.</p> <p>Plaintiffs fail to explain their hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid. 801(c).</p> <p>Plaintiffs' objections citing the Best Evidence Rule are speculative and irrelevant because they assume Mr. MacBean is merely testifying as to the contents of a writing, which is not supported by his statements.</p> <p>Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule objections to the form of the evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i>, 342 F.3d at 1038.</p> <p>Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are unsupported by authority showing such additional statements are somehow necessary for Mr. MacBean to have presented</p>

