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16	YELP! INC.	
17	UNITED STATES	DISTRICT COURT
1 /		
18	NORTHERN DISTRI	CT OF CALIFORNIA
19	SAN FRANCIS	SCO DIVISION
20	BORIS Y. LEVITT D/B/A RENAISSANCE	Case No. CV 10-01321 EMC
20	RESTORATION, CATS AND DOGS ANIMAL	Consolidated with CV 10-02351 EMC
21	HOSPITAL, INC., TRACY CHAN D/B/A	CLASS ACTION
22	MARINA DENTAL CARE and JOHN	<u>CLASS ACTION</u>
	MERCURIO D/B/A WHEEL TECHNIQUES;	DEFENDANT YELP INC.'S RESPONSES
23	on behalf of themselves and all others similarly situated,	TO PLAINTIFFS' EVIDENTIARY OBJECTIONS IN SUPPORT OF ITS
24	Plaintiffs,	OPPOSITION TO MOTION TO DISMISS
25	2 2441141110,	THIRD AMENDED CLASS ACTION
25	V.	COMPLAINT AND TO DISMISS OR STRIKE CLASS ACTION ALLEGATIONS
26	YELP! INC.; and DOES 1 through 100,	
27	inclusive,	Date: October 14, 2011
_	Defendants.	Time: 1:30 p.m. Place: Courtroom 5
28	Defendants.	Judge: The Honorable Edward M. Chen
		baage. The Honorabic Laward IVI. Chen

I. Introduction

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

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

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. Id. 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." Alexander Dawson, Inc. v. NLRB, 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

1	Material	Plaintiffs' Objections	Yelp's Response
2		901(a). The declaration also	1 is unreliable.
3 4		provides no factual basis to establish that the declarant has personal knowledge of the	Further, the Court, pursuant to Federal Rule of Evidence 201,
5		document or its contents. FRE	may also take judicial notice of the
6		602.	fact that Exhibit 1 is the document which Ms. Beringer declares it to
7			be, namely a copy of a page from Yelp's website available at
8			http://www.yelp.com/about
9	Attached as Exhibit 1 is a true and correct copy of the	Exhibit 1 is not authenticated and thus is inadmissible. The	Rule 901 requires only that "there is prima facie evidence,
10	"About Us" page from Yelp's website,	statement that Exhibit 1 is "referenced in Plaintiffs' Third	circumstantial or direct, that the document is what it is purported to
11	http://www.yelp.com/about , which is referenced in	Amended Complaint at paragraphs 2, 3, 5 and footnote	be. If so, the document is admissible in evidence."
12	Plaintiffs' Third Amended Complaint at paragraphs 2,	1" lacks foundation, is not based on personal knowledge and is	Alexander Dawson, Inc., 586 F.2d
13	3, 5 and footnote 1. (Beringer Decl. ¶ 2)	inaccurate. FRE 602. The Third Amended Complaint never	at 1302.
14		references the "About Us" page from Yelp's website. See	Here, the exhibit is declared to be a true and correct copy of a
15		generally Third Amended Complaint ("TAC"). The TAC	specific webpage, and bears on its
16		has no exhibits, let alone the "About Us" page from Yelp's	face the URL of the webpage and the timestamp of the access.
17		website. <i>Id.</i> Paragraphs 3, 5 and footnote 1 (but not paragraph 2)	Plaintiffs fail to explain how or why more is needed, and fail to
18		do provide short quotes of information taken from Yelp's	present facts showing that Exhibit 1 is unreliable.
19		website – as do previously filed complaints, including the initial	
20		complaint filed on March 12, 2010 in San Francisco Superior	Further, the Court, pursuant to Federal Rule of Evidence 201,
21		Court ("Complaint"). Neither the Complaint nor the TAC could	may also take judicial notice of the mere fact that Exhibit 1 is the
22		have referenced Exhibit 1 because the print and access date	document which Ms. Beringer declares it to be, namely a copy of
23		on the face of Exhibit 1 is July 22, 2011 – long after these	a page from Yelp's website
24		complaints were filed. <i>See</i> Ex. 1. Equally implausible and	available at http://www.yelp.com/about
25		objectionable for similar reasons is declarant's contention that	Plaintiffs misstate the issue by
26		Exhibit 1 as well as Exhibit 2 is referenced in paragraphs 3 and 5	claiming that the TAC does not
27		of the TAC (Beringer Decl., ¶¶2-3) and that Exhibit 1 as well as	reference Exhibit 1; however, the TAC does reference the webpage
28		Exhibit 3 is referenced in paragraph 5 of the TAC.	of which Exhibit 1 is a true and correct copy. Plaintiffs concede
			correct copy. I furnished concede

1	Material	Plaintiffs' Objections	Yelp's Response
2		Beringer Decl., ¶¶2, 4. Exhibit 1	that the TAC contains quotations
3		therefore is irrelevant and should not be considered. FRE 401, 402.	from Yelp's website, and do not deny that quoted portions from paragraphs 3, 4, and footnote 1 of
5			their TAC come from Yelp's webpage, available at
6			http://www.yelp.com/about. Because Plaintiffs reference this
7			webpage in their complaint, they
8			may not deprive Yelp of the ability to address its full contents and the Court may consider the full
10			contents of this webpage. See United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).
11			,
12			For the same reasons the cited webpage, of which Exhibit 1 is a
13			true and correct copy, is plainly relevant to Plaintiffs' claims. Fed.
14			R. Evid. 401, 402.
15			To the extent that Plaintiffs object to the "access and print" date of
16 17			Exhibit 1, the Court may rely upon Exhibit 1 to the Declaration of S.
18			Ashlie Beringer in Support of Yelp's Motion to Dismiss the
19			Second Amended Complaint ("SAC") (Dkt. No. 60-1), which is
20			a print out of the "About Us" page from Yelp's website, with an
21			access and print date of December
22			17, 2010, months before the filing of the TAC. This prior exhibit is
23			part of the record before the Court. Plaintiffs did not object to this
24			prior exhibit and have therefore waived any objections to its
25			admissibility.
26	Exhibit 2 (Beringer Ex. 2)	Exhibit 2 is not properly authenticated. FRE 901. The	Rule 901 requires only that "there
27		only attempt at authentication is a statement that it is a "true and	is prima facie evidence, circumstantial or direct, that the
28		correct copy" and a reference to an internet website. Beringer	document is what it is purported to be. If so, the document is

1	Material	Plaintiffs' Objections	Yelp's Response
3		Decl. ¶3. There is no information as to how, why, when, or what	admissible in evidence." Alexander Dawson, Inc., 586 F.2d
4		basis there is for the assertion that the exhibit is a true and	at 1302.
5		correct copy. <i>Id.</i> The declaration also provides no factual basis to establish that the declarant has	Here, the exhibit is declared to be a true and correct copy of a
6		personal knowledge of the document or its contents. FRE	specific webpage, and bears on its face the URL of the webpage and
7		602.	the timestamp of the access. Plaintiffs fail to explain how or
8			why more is needed, and fail to present facts showing that Exhibit
10			2 is unreliable.
11			Further, the Court, pursuant to Federal Rule of Evidence 201,
12			may also take judicial notice of the mere fact that Exhibit 1 is the
13			document which Ms. Beringer declares it to be, namely a copy of
14			a page from Yelp's website available at
15			http://www.yelp.com/faq
16	Attached as Exhibit 2 is a true and correct copy of the	Exhibit 2 is not authenticated and thus is inadmissible. The	Rule 901 requires only that "there is prima facie evidence,
17	"FAQ" page from Yelp's website,	statement that Exhibit 2 is "referenced in Plaintiffs' Third	circumstantial or direct, that the
18	http://www.yelp.com/faq, which is referenced in	Amended Complaint at paragraphs 3 and 5" lacks	document is what it is purported to be. If so, the document is
19	Plaintiffs' Third Amended Complaint at paragraphs 3	foundation, is not based on personal knowledge and is	admissible in evidence." Alexander Dawson, Inc., 586 F.2d
20	and 5. (Beringer Decl. ¶ 3)	inaccurate. FRE 602. The TAC never references the "FAQ" page	at 1302.
21		from Yelp's website. See generally TAC. The TAC has no	Here, the exhibit is declared to be
22		exhibits, let alone the "FAQ" page from Yelp's website. <i>Id</i> .	a true and correct copy of a specific webpage, and bears on its
23		Furthermore, the document submitted as Exhibit 2 is 6 pages	face the URL of the webpage and the timestamp of the access.
24		long, and the declaration does not identify what information, if	Plaintiffs fail to explain how or why more is needed, and fail to
25		any, purportedly is referenced in the TAC. Paragraphs 3 and 5 do	present facts showing that Exhibit
26		provide short quotes of information taken from Yelp's	2 is unreliable.
2728		website – as do previously filed complaints, including the Complaint. The Complaint could	Further, the Court, pursuant to Federal Rule of Evidence 201, may also take judicial notice of the
		not have referenced Exhibit 2	y

1	Material	Plaintiffs' Objections	Yelp's Response
2		because the print and access date on the face of Exhibit 2 is	mere fact that Exhibit 2 is the
3		October 10, 2010 – 7 months	document which Ms. Beringer declares it to be, namely a copy of
4		after the Complaint was filed. See Ex. 2. Equally implausible	the "About Us" page from Yelp's website available at
5		and objectionable for similar reasons is declarant's contention	http://www.yelp.com/faq
6		that Exhibit 1 as well as Exhibit 2 is referenced in paragraphs 3	Plaintiffs misstate the issue by
7		and 5 of the TAC (Beringer Decl., ¶¶2-3) and that Exhibit 2	claiming that the TAC does not reference Exhibit 2; however, the
8		as well as Exhibit 3 is referenced in paragraph 5 of the TAC.	TAC does reference the webpage
9		Beringer Decl., ¶¶3-4. Exhibit 2 therefore is irrelevant and should	of which Exhibit 2 is a true and correct copy. Plaintiffs' concede
10		not be considered. FRE 401, 402.	that the TAC contains quotations from Yelp's website, and do not
11			deny that quoted portions from
12			paragraphs 3 and 5 of their TAC come from Yelp's webpage
13			available at http://www.yelp.com/faq. Because
14			Plaintiffs reference this webpage
15			in their complaint, they may not deprive Yelp of the ability to
16			address its full contents and the Court may consider the full
17			contents of this webpage. See
18			Ritchie, 342 F.3d at 908. For the same reasons the cited webpage,
19			of which this Exhibit is a true and correct copy, is plainly relevant to
20			Plaintiffs' claims. Fed. R. Evid. 401, 402.
21			·
22			Moreover, this Exhibit is an exact duplicate of Exhibit 2 to the
23			Declaration of S. Ashlie Beringer (Dkt. No. 60-2), which is a print
24			out of the "FAQ" page, with an
25			access and print date of December 17, 2010, months before the filing
26			of the TAC. Plaintiffs did not object to this prior exhibit and
			have therefore waived any
27			objections to its admissibility. This prior exhibit is part of the
28			record before the Court and has

	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	Rule 901 requires only that "there
	only attempt at authentication is a statement that it is a "true and	is prima facie evidence, circumstantial or direct, that the
	an internet website. Beringer	document is what it is purported to be. If so, the document is admissible in evidence."
	as to how, why, when, or what	Alexander Dawson, Inc., 586 F.2d at 1302.
	that the exhibit is a true and correct copy. <i>Id</i> . The declaration	Here, the exhibit is declared to be
	also provides no factual basis to establish that the declarant has	a true and correct copy of a
	document or its contents. FRE	specific webpage, and bears on its face the URL of the webpage and
	602.	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.
		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
Attached as Evhibit 3 is a	Evhibit 3 is not authenticated	
true and correct copy of the	and thus is inadmissible. The	Rule 901 requires only that "there is prima facie evidence,
page from Yelp's website,	"referenced in Plaintiffs' Third	circumstantial or direct, that the document is what it is purported to
ess/advertising, which is referenced in Plaintiffs'	paragraph 5" lacks foundation, is not based on personal knowledge	be. If so, the document is admissible in evidence."
Third Amended Complaint at paragraph 5. (Beringer	and is inaccurate. FRE 602. The TAC never references the	Alexander Dawson, Inc., 586 F.2d at 1302.
Decl. ¶ 4)	from Yelp's website. See	Here, the exhibit is declared to be
	exhibits, let alone the	a true and correct copy of a specific webpage, and bears on its
	Attached as Exhibit 3 is a true and correct copy of the "Advertising on Yelp" page from Yelp's website, http://www.yelp.com/busin ess/advertising, which is referenced in Plaintiffs' Third Amended Complaint	Attached as Exhibit 3 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. Id. The declaration also provides no factual basis to establish that the declarant has personal knowledge of the document or its contents. FRE 602. Exhibit 3 is not authenticated and thus is inadmissible. The statement that Exhibit 3 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. (Beringer Decl. ¶ 4)

1	Material	Plaintiffs' Objections	Yelp's Response
2		from Yelp's website. Id.	face the URL of the webpage and
3		Paragraph 5 does provide short quotes of information taken from	the timestamp of the access. Plaintiffs fail to explain how or
4		Yelp's website – as do previously filed complaints,	why more is needed, and fail to
5		including the Complaint. There is no print or access date on the	present facts showing that Exhibit 3 is unreliable.
6		face of Exhibit 3, nor is that information provided in the	Further, the Court, pursuant to
7		declaration. Beringer Decl., ¶4. Therefore, because there is no	Federal Rule of Evidence 201,
8		known date of the document, there is no factual basis to	may also take judicial notice of the mere fact that Exhibit 3 is the
9		support the assertion that Exhibit	document which Ms. Beringer
10		3 was referenced in the TAC or any other complaint filed by	declares it to be, namely a copy of a page from Yelp's website
11		Plaintiff in this matter. Equally implausible and objectionable	available at http://www.yelp.com/business/adv
12		for similar reasons is declarant's contention that Exhibit 3 as well	ertising
13		as Exhibit 1 and Exhibit 2 are referenced in paragraph 5 of the	Plaintiffs misstate the issue by
14		TAC. Beringer Decl., ¶¶2-4. Exhibit 3 therefore is irrelevant	claiming that the TAC does not reference Exhibit 3; however, the
		and should not be considered. FRE 401, 402.	TAC does reference the webpage
15		112 101, 102	of which Exhibit 3 is a true and correct copy. Plaintiffs' concede
16			that the TAC contains quotations from Yelp's website, and do not
17			deny that quoted portions from
18			paragraph 5 of their TAC come from Yelp's webpage available at
19			http://www.yelp.com/business/adv ertising. Because Plaintiffs
20			reference this webpage in their
21			complaint, they may not deprive Yelp of the ability to address its
22			full contents and the Court may
23			consider the full contents of this webpage. <i>See Ritchie</i> , 342 F.3d at.
24			For the same reasons the cited webpage, of which this Exhibit is a
25			true and correct copy, is plainly
26			relevant to Plaintiffs' claims. Fed. R. Evid. 401, 402.
27			To the extent that Plaintiffs object
28			to Exhibit 3, the Court may rely
20			upon Exhibit 3 to the Declaration

1	Material	Plaintiffs' Objections	Yelp's Response
2			of S. Ashlie Beringer in Support of
3			Yelp's Motion to Dismiss the Second Amended Complaint
4			("SAC") (Dkt. No. 60-3), which is a print out of the "Advertising on
5			Yelp" page from Yelp's website, with an access and print date of
6			December 17, 2010, months before the filing of the TAC. This
7			prior exhibit is part of the record
8			before the Court. Plaintiffs did not object to this prior exhibit and
10			have therefore waived any objections to its admissibility.
11	Exhibit 4 (Beringer Ex. 4)	Exhibit 4 is not properly	Rule 901 requires only that "there
12	, ,	authenticated. FRE 901. The only attempt at authentication is	is prima facie evidence, circumstantial or direct, that the
13		a statement that it is a "true and correct copy" and a reference to	document is what it is purported to
14		an internet website. Beringer Decl. ¶5. There is no information	be. If so, the document is admissible in evidence."
15		as to how, why, when, or what basis there is for the assertion	Alexander Dawson, Inc., 586 F.2d at 1302.
16		that the exhibit is a true and correct copy. <i>Id.</i> The declaration	Here, the exhibit is declared to be
17		also provides no factual basis to establish that the declarant has	a true and correct copy of a specific webpage, and bears on its
18		personal knowledge of the document or its contents. FRE	face the URL of the webpage and
19		602.	the timestamp of the access. Plaintiffs fail to explain how or
20			why more is needed, and fail to present facts showing that Exhibit
21			4 is unreliable.
22			Further, the Court, pursuant to Federal Rule of Evidence 201,
23			may also take judicial notice of the
24			mere fact that Exhibit 4 is the document which Ms. Beringer
25			declares it to be, namely a copy of a page from Yelp's website
26			available at http://www.yelp.com/business/adv
27			ertising
28	Attached as Exhibit 4 is a true and correct copy of the	Exhibit 4 is not authenticated and thus is inadmissible. The	Rule 901 requires only that "there

3 You hat he had he h	Terms of Service" from Yelp's website, ttp://www.yelp.com/static p=tos&country=US, which is referenced in Plaintiffs' Third Amended Complaint at paragraphs 6, 4, 40, and footnote 5. The Terms of Service" are also accorporated by Plaintiffs and their definition of Review Terms," (see TAC	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	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." Alexander Dawson, Inc., 586 F.2d at 1302.
14 15 16 17 18 19 20 21 22 23 24 25	6) which is referenced broughout the Third Amended Complaint, including at paragraphs 7, 0, 66, 67, 95, 96, 98, 101, 05, 113, 117, 134, and 42. (Beringer Decl. ¶ 5)	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.	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. 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 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 shility to address its.
25 26		1 KE 401, 402.	
27 28			webpage. <i>See Ritchie</i> , 342 F.3d at 908. For the same reasons the

		Exhibit is a true and correct copy,
		is plainly relevant to Plaintiffs' claims. Fed. R. Evid. 401, 402.
		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.
Exhibit 5 (Beringer Decl. Ex. 5)	Exhibit 5 is not properly authenticated. FRE 901. The	Rule 901 requires only that "there is prima facie evidence,
,	only attempt at authentication is a statement that it is a "true and	circumstantial or direct, that the
	correct copy" and a reference to an internet website. Beringer	document is what it is purported to be. If so, the document is
	Decl. ¶6. There is no information as to how, why, when, or what	admissible in evidence." Alexander Dawson, Inc., 586 F.2d
	that the exhibit is a true and	at 1302.
	also provides no factual basis to	Here, the exhibit is declared to be a true and correct copy of a
	personal knowledge of the	specific webpage, and bears on its
	document or its contents. FRE 602.	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.
Attached as Exhibit 5 is a	Exhibit 5 is not authenticated	Rule 901 requires only that "there
true and correct copy of	and thus is inadmissible. The	is prima facie evidence,
page from Yelp's website,	"referenced in Plaintiffs' Third	circumstantial or direct, that the document is what it is purported to
lines, which is referenced in Plaintiffs' Third	paragraphs 6 and footnote 5"	be. If so, the document is admissible in evidence."
	Attached as Exhibit 5 is a true and correct copy of the. "Content Guidelines" page from Yelp's website, http://www.yelp.com/guide lines, which is referenced	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. Attached as Exhibit 5 is a true and correct copy of the. "Content Guidelines" page from Yelp's website, http://www.yelp.com/guide lines, which is referenced 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"

1	Material	Plaintiffs' Objections	Yelp's Response
2	Amended Complaint at	personal knowledge and is	Alexander Dawson, Inc., 586 F.2d
3	paragraphs 6 and footnote 5. The "Content	inaccurate. FRE 602. The TAC never references the "Content	at 1302.
4	Guidelines" are also incorporated by Plaintiffs	Guidelines" page from Yelp's website. See generally TAC. The	Here, the exhibit is declared to be a true and correct copy of a
5	into their definition of "Review Terms," (see TAC	TAC has no exhibits, let alone the "Content Guidelines" page	specific webpage, and bears on its
6	¶ 6) which is referenced throughout the Third	from Yelp's website. <i>Id.</i> The TAC contains no quoted	face the URL of the webpage and the timestamp of the access.
7	Amended Complaint, including at paragraphs 7,	information from Yelp's website that is defined as "Content	Plaintiffs fail to explain how or why more is needed, and fail to
8	10, 66, 67, 95, 96, 98, 101, 105, 113, 117, 134 and 142. (Beringer Decl. ¶ 6)	Guidelines." Furthermore, although the TAC defines the term "Review Terms," that	present facts showing that Exhibit 5 is unreliable.
10		definition does not specifically incorporate Exhibit 5 or	Plaintiffs misstate the issue by
11		separately define the phrase "content guidelines." Finally, neither the Complaint nor the	claiming that the TAC does not reference Exhibit 5; however, the
12		TAC could have referenced Exhibit 4 because the print and	TAC does reference the webpage of which Exhibit 5 is a true and
13		access date on the face of Exhibit 5 is July 22, 2011 – long	correct copy. Plaintiffs' concede that the TAC contains quotations
14		after these complaints were filed. See Ex. 5. Furthermore, the	from Yelp's website, and do not
15		references in the TAC to the defined term "Review Terms" is	deny that quoted portions from paragraphs 6 and footnote 5 of
16		based <i>only</i> on the quoted information in the TAC and thus	their TAC come from Yelp's webpage available at
17		could not be based or incorporate the 2 page document	http://www.yelp.com/guidelines
18		submitted as Exhibit 5. Equally implausible and objectionable	As stated in the declaration, Exhibit 5 is a copy of this webpage
19		for similar reasons is declarant's contention that Exhibit 5 as well	as of the date of Ms. Beringer's
20		as Exhibit 4 is referenced in paragraph 6 and footnote 5 of the	declaration. Because Plaintiffs reference this webpage in their
21		TAC. Beringer Decl., ¶¶5-6. Exhibit 4 therefore is irrelevant	complaint, they may not deprive Yelp of the ability to address its
22		and should not be considered. FRE 401, 402.	full contents and the Court may consider the full contents of this
23		, in the second	webpage. See
24			Ritchie, 342 F.3d at 908. For the same reasons the cited webpage,
25			of which this Exhibit is a true and correct copy, is plainly relevant to
26			Plaintiffs' claims. Fed. R. Evid. 401, 402.
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28			Moreover, this Exhibit is a duplicate of Exhibit 2 to the
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2	Material	Plaintiffs' Objections	Yelp's Response
3			Supplemental Declaration of S. Ashlie Beringer
4			(Dkt. No. 64-2), which is a print out of the "Content Guidelines"
5			page of Yelp's website, with an access and print date of January
6			16, 2011, months before the filing of the TAC. Plaintiffs did not
7			object to this prior exhibit and
8			have therefore waived any objections to its admissibility.
9			This prior exhibit is part of the record before the Court.
10	Exhibit 6 (Beringer Decl.	Exhibit 6 is not properly	Rule 901 requires only that "there
11	Ex. 6)	authenticated. FRE 901. The only attempt at authentication is	is prima facie evidence, circumstantial or direct, that the
12		a statement that it is a "true and correct copy" and a reference to	document is what it is purported to
13		red-lined comparison. Beringer Decl. ¶6. There is no	be. If so, the document is admissible in evidence."
14		information as to who, how, why, when, where or what basis	Alexander Dawson, Inc., 586 F.2d at 1302.
15		there is for the assertion that the exhibit is a true and correct	Here, the exhibit is declared to be
16		copy. <i>Id.</i> The declaration also provides no factual basis to	a true and correct copy of a red-
17		establish that the declarant has personal knowledge of the	lined comparison of the Third Amended Complaint to the Second
18		document or its contents. FRE 602.	Amended Complaint, pleadings on file in this action. Plaintiffs fail to
19			explain how or why more is needed, and fail to present facts
20			showing that Exhibit 6 is
21			unreliable.

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Material	Plaintiffs' Objections	Yelp's Response
Attached as Exhibit 6 is a true and correct copy of a red-lined comparison of the Third Amended Complaint to the Second Amended Compliant. (Beringer Decl. ¶ 7)	Exhibit 6 is not authenticated and thus is inadmissible. FRE 901.	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." Alexander Dawson, Inc., 586 F.2d at 1302.
		Here, the exhibit is declared to be a true and correct copy of a redlined 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.
		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.

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

Material	Plaintiffs' Objections	Yelp's Response
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	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	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]

1	Material	Plaintiffs' Objections	Yelp's Response
2	time. I then took several	contributing any written content,	and train[s] other Yelp User
3	steps to determine whether	including reviews, to Yelp.com"	Operations employees on Yelp's
	any of these users was a	(MacBean Decl., ¶2) lack	internal administrative tools and
4	current or former employee of Yelp. First, I determined	foundation because declarant provides no foundation or factual	procedures" and that his
5	whether the user's Yelp	basis to support his speculation	declaration is "based upon his
	profile was flagged in the	and declarant lacks personal	personal knowledge of the facts
6	administrative database as	knowledge. FRE 602. For	stated herein." Plaintiffs fail to
7	being associated with one of Yelp's current or former	similar reasons, the statements are untrustworthy and are	explain how or why more is
7	employees. Yelp's practice	inadmissible hearsay. FRE 801,	needed, and fail to present facts showing that Mr. MacBean's
8	is to flag user accounts that	802. Declarant provided only his	statements are unreliable.
	are associated with any current or former employee,	position as a "Manager" in "User Operations" and a general	statements are unremade.
9	in part to enforce its policy	description of what appears to be	Plaintiffs fail to explain their
10	that certain employees	a few of his responsibilities	hearsay objections, which are
	(including sales employees)	(MacBean Decl., ¶1) but	incorrect because Mr. MacBean
11	are prohibited from contributing any written	provides no information on his tenure with Yelp, how he would	has not presented the statement of
12	content, including reviews,	be qualified to provide such	another to prove the truth the
12	to Yelp.com. I confirmed	information, whether it is part of	matter asserted. Fed. R. Evid.
13	that none of the users who	his job, whether he knows what	801(c). Instead, Mr. MacBean's statements describe his personal
1.4	posted reviews relating to the named Plaintiffs are	Yelp's policies are, whether he developed or created policies for	actions and knowledge based on
14	identified as current or	Yelp, whether he is authorized to	his position and experience. This
15	former employees of Yelp	provide information about	includes his findings as to what
	in Yelp's administrative database. (MacBean Decl. ¶	Yelp's policies on its behalf and whether he has access to	was not present upon his review of
16	2).	information about Yelp's	Yelp's business records, namely
17	,	policies that would have been in	his finding that users who posted
1,		effect at the times relevant to the	reviews relating to the named
18		conduct alleged in the Complaint and TAC. FRE 602, 801, 802.	Plaintiffs are not identified as
19		To the extent that any of Yelp's	current or former employees of Yelp in Yelp's records. Moreover,
19		policies and practices are in	Plaintiffs' meritless hearsay and
20		writing, declarant's attempt to	Best Evidence Rule objections to
21		speculate about the content or to recount the contents of those	the form of the evidence do not
21		documents violates the Best	impact the admissibility of the
22		Evidence Rule. FRE 1002.	underlying content of Mr.
		Similarly, declarant's statement	MacBean's sworn statements.
23		that he "confirmed that none of	Fraser, 342 F.3d at 1038.
24		the users are identified as	D1: (:00:2 : : 1: /:
-		current or former employees of	Plaintiffs' remaining objections that Mr. MacBean did not include
25		Yelp in Yelp's administrative database" lacks foundation	other information in his
26		because declarant provides no	declaration lack any merit, and are
20		foundation or factual basis to	unsupported by authority showing
27		support his speculation and	such additional statements are
20		declarant lacks personal knowledge. FRE 602. The	somehow necessary for Mr.
28		statement is also untrustworthy	MacBean to have presented

1	Material	Plaintiffs' Objections	Yelp's Response
2		and inadmissible hearsay. FRE	sufficient testimony regarding his
3 4		801, 802. Declarant provided no foundation or factual basis on how he would be qualified to	personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.
5		provide such information, whether it is part of his job, what	
6		the source and extent of information is in Yelp's	Plaintiffs' factually baseless disputes with the weight of the
		"administrative database," how any search was performed, who	evidence do not affect the admissibility of Mr. MacBean's
7		performed it, when it was performed, or whether declarant	statements, and are inappropriate
8		is qualified or authorized to	argument.
9		undertake any such searches. FRE 602, 801, 802. Moreover,	
10		declarant's contention that he confirmed no current or former	
11		Yelp employees were "users" on Yelp that posted reviews about	
12		plaintiffs is based upon inadmissible hearsay information	
13		purportedly from a third party – the information provided by	
14		users to Yelp during the registration process. FRE 801,	
15		802, 805. Any such information is also untrustworthy because	
16		declarant provides no	
17		information that Yelp in any way verifies or requires verification	
18		of any name that a user provides to register at Yelp. <i>Id.</i> Declarant	
19		lacks personal knowledge as to each user's true name and	
20		identity. FRE 602.	
21	Second, I reviewed each email address provided by	Declarant's statement that he "confirmed that none of the	Mr. MacBean provided sufficient foundation and basis for
	the users who posted these reviews when creating their	users provided a Yelp email address when creating their user	statements about his review of
22	account at Yelp.com to determine whether any user	account, or otherwise have a Yelp email address associated	Yelp's administrative records, in his declaration. Plaintiffs fail to
23	provided a Yelp email	with their user account" lacks	explain how or why more is
24	address – i.e. an address with an "@yelp.com"	foundation because declarant provides no foundation or factual	needed, and fail to present facts showing that Mr. MacBean's
25	domain. I confirmed that none of the users who	basis to support his speculation and declarant lacks personal	statements describing his actions are unreliable.
26	posted reviews about the named Plaintiffs provided a	knowledge. FRE 602. The statement is also untrustworthy	
27	Yelp email address when creating their user account,	and inadmissible hearsay. FRE 801, 802. Declarant provided no	Plaintiffs fail to explain their hearsay objections, which are
28	or otherwise have a Yelp email address associated	foundation or factual basis on how he would be qualified to	incorrect because Mr. MacBean has not presented the statement of

1	Material	Plaintiffs' Objections	Yelp's Response
2	with their user account. (MacBean Decl. ¶ 3).	perform such a review, whether it is part of his job, how the	another to prove the truth the
3	(MacDean Deer. 3).	review was performed, what	matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's
4		steps he took to determine whether an @yelp.com email	statements describe his personal actions and knowledge based on
5		address was "otherwise associated" with a user account,	his position and experience. This
6		when the review was performed, or whether declarant is qualified	includes his findings as to what was not present upon his review of
7		or authorized to undertake any such searches. FRE 602, 801,	Yelp's business records, namely
8		802. Moreover, declarant's contention that he confirmed	his finding that users who posted reviews relating to the named
9		none of the users provided an @yelp.com email address is	Plaintiffs did not provide an "@yelp.com" email address when
10		based upon inadmissible hearsay, because declarant	creating their user account, or other
11		admits the information was provided by third parties – it was	have a "@yelp.com" email address associated with their user account
12		"provided [by users] when	in Yelp's business records. Moreover, Plaintiffs' meritless
13		FRE 801, 802, 805. Any such	hearsay objections to the form of
14		information is also untrustworthy because declarant	the evidence do not impact the admissibility of the underlying
15		provides no information that Yelp in any way can verify, does	content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at
16		verify or requires verification of any email address that a user	1038.
17		provides to register at Yelp. Id. Declarant lacks personal	Plaintiffs' remaining objections
18		knowledge as to each user's email address and whether any	that Mr. MacBean did not include other information in his
19		such email address is associated with a current or former Yelp	declaration lack any merit, and are unsupported by authority showing
		employee. FRE 602.	such additional statements are
20			somehow necessary for Mr. MacBean to have presented
21			sufficient testimony regarding his
22			personal knowledge of the matters stated in his declaration. Fed. R.
23			Evid. 602.
24	Third, I ran a search for each user's first and last	Declarant's statement that he "confirmed that none of the	Mr. MacBean provided sufficient
25	name (which are required to create a user account and	users appeared in the list of all current or former Yelp	foundation and basis for statements about his review of
26	post reviews on Yelp) in a database of all current and	employees" lacks foundation because declarant provides no	Yelp's administrative records, in his declaration. Plaintiffs fail to
27	former Yelp employees. I confirmed that none of the	foundation or factual basis to	explain how or why more is
28	users who posted reviews	support his speculation and declarant lacks personal	needed, and fail to present facts showing that Mr. MacBean's
			one wing that ivii. IvideDean b

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2	Material	Plaintiffs' Objections	Yelp's Response
3	about the named Plaintiffs appeared in the list of all current and former Yelp	knowledge. FRE 602. The statement is also untrustworthy and inadmissible hearsay. FRE	statements describing his actions are unreliable.
4	employees. (MacBean Decl. ¶ 4).	801, 802. Declarant provided no foundation or factual basis on	Plaintiffs fail to explain their
5		how he would be qualified to provide such information,	hearsay objections, which are incorrect because Mr. MacBean
6		whether it is part of his job, what is the source and extent of	has not presented the statement of another to prove the truth the
7		information in "the list of all current and former Yelp	matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's
8		employees," how any review was performed, when it was performed, or whether declarant	statements describe his personal actions and knowledge based on
9		is qualified or authorized to undertake any such reviews. FRE	his position and experience. This includes his findings as to what
11		602, 801, 802. Moreover, declarant's contention that he	was not present upon his review of Yelp's business records, namely
12		confirmed none of the users provided a name that appeared on a list of Yelp employees is	his finding that the names provided by users who posted
13		based upon inadmissible hearsay, because declarant admits the first	reviews relating to the named Plaintiffs did not correspond to any
14		and last name information was provided by third parties – the	names "in a database of all current and former Yelp employees."
15		users from whom it is "required to create a user account." FRE	Moreover, Plaintiffs' meritless hearsay objections to the form of
16		801, 802, 805. Any such information is also untrustworthy	the evidence do not impact the admissibility of the underlying
17		because declarant provides no information that Yelp in any way can verify, does verify or	content of Mr. MacBean's sworn
18		requires verification of any name that a user provides to create a	statements. <i>Fraser</i> , 342 F.3d at 1038.
19		user account at Yelp. <i>Id.</i> Declarant lacks personal	Plaintiffs' remaining objections
20 21		knowledge as to each user's true name and identity. FRE 602.	that Mr. MacBean did not include other information in his
22		·	declaration lack any merit, and are unsupported by authority showing
23			such additional statements are
			somehow necessary for Mr. MacBean to have presented
24			sufficient testimony regarding his personal knowledge of the matters
2526			stated in his declaration. Fed. R. Evid. 602.
27			Plaintiffs' factually baseless
28			disputes with the weight of the evidence do not affect the
			admissibility of Mr. MacBean's

1	Material	Plaintiffs' Objections	Yelp's Response
3			statements, and are inappropriate argument.
4	Finally, I reviewed each IP address (i.e. the unique	Declarant's statement that he "confirmed none of these IP	Mr. MacBean provided sufficient foundation and basis for
5	identifier associated with a particular computer)	addresses are associated with any Yelp computer or device"	statements about his review of Yelp's administrative records, in
6 7	associated with each review posted about the named Plaintiffs and	lacks foundation because declarant provides no foundation or factual basis to support his	his declaration. Plaintiffs fail to explain how or
8	confirmed that none of these IP addresses are	speculation and declarant lacks personal knowledge. FRE 602.	why more is needed, and fail to present facts showing that Mr.
9	associated with any Yelp computer or device.	The statement is also untrustworthy and inadmissible	MacBean's statements describing his actions are unreliable.
10	(MacBean Decl. ¶ 5).	hearsay. FRE 801, 802. Declarant provided no	Plaintiffs fail to explain their hearsay objections, which are
11		foundation or factual basis on how he would be qualified to provide such information,	incorrect because Mr. MacBean has not presented the statement of
12		whether it is part of his job, the source of information for the IP	another to prove the truth the matter asserted. Fed. R. Evid.
13		address associated with each review, what the source and	801(c). Instead, Mr. MacBean's statements describe his personal
14 15		extent of information is for "any Yelp computer or device," how any review was performed,	actions and knowledge based on his position and experience. This
16		when it was performed, or whether declarant is qualified or	includes his findings as to what was not present upon his review of
17		authorized to undertake any such reviews. FRE 602, 801,	Yelp's business records, namely that none of the IP addresses
18		802. Moreover, declarant's contention that he confirmed none of the IP addresses is	associated with any review of the Plaintiffs are associated with any
19		associated with a Yelp computer or device is based upon	Yelp computer or device. Moreover, Plaintiffs' meritless
20		inadmissible hearsay, because the IP address can be changed	hearsay objections to the form of the evidence do not impact the
21		by the user of a computer or device. FRE 801, 802, 805. Any such information is also	admissibility of the underlying content of Mr. MacBean's sworn
22 23		untrustworthy because declarant provides no information that	statements. <i>Fraser</i> , 342 F.3d at 1038.
24		Yelp in any way can verify, does verify or requires verification of	Plaintiffs' remaining objections
25		any IP address that a computer or device provides via its user	that Mr. MacBean did not include other information in his
26		creating a review on Yelp. <i>Id.</i> Declarant lacks personal knowledge as to each user's true	declaration lack any merit, and are unsupported by authority showing
27		IP address. FRE 602.	such additional statements are somehow necessary for Mr.
28			MacBean to have presented

1	Material	Plaintiffs' Objections	Yelp's Response
2			sufficient testimony regarding his
3 4			personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.
5			Plaintiffs' factually baseless
6			disputes with the weight of the
7			evidence do not affect the admissibility of Mr. MacBean's statements, and are inappropriate
8			argument.
9	Neither Yelp's sales	Declarant's statement that	Mr. MacBean provided sufficient
10	employees nor its User Operations employees have	"[n]either Yelp's sales employees nor its User	foundation and basis for his knowledge of Yelp's practices and
11	the technical ability to modify the content of third-	Operations employees have the technical ability to modify the	policies, and his review of Yelp's administrative records, in his
12	party reviews that appear on Yelp's site. (MacBean	content of third-party reviews that appear on Yelp's site" lacks	declaration, including his
13	Decl. ¶ 6).	foundation because declarant provides no foundation or	statements that he "supervise[s] and train[s] other Yelp User
14		factual basis to support his speculation and declarant lacks	Operations employees on Yelp's internal administrative tools and
15		personal knowledge. FRE 602. The statement is also	procedures" and that his
16		untrustworthy and inadmissible hearsay. FRE 801, 802.	declaration is "based upon his personal knowledge of the facts
17		Declarant provided no foundation or factual basis on	stated herein." Plaintiffs fail to explain how or why more is
18		how he would be qualified to provide such information (he	needed, and fail to present facts showing that Mr. MacBean's
19		purports to have information about sales employees yet is not	statements are unreliable.
20		even a sales employee), how he knows the "technical ability" of	Plaintiffs fail to explain their
21		each sales and User Operations employee, whether making such	hearsay objections, which are incorrect because Mr. MacBean
22		determinations is part of his job, what it means to modify the	has not presented the statement of
23		content of reviews, the timeframe to which this	another to prove the truth the matter asserted. Fed. R. Evid.
24		statement pertains, or whether declarant is qualified or	801(c). Instead, Mr. MacBean's statements describe his personal
25		authorized to provide this statement. FRE 602, 801, 802.	actions and knowledge based on
26		Declarant lacks personal knowledge as to each member of	his position and experience. This includes his knowledge that Yelp's
27		the sales and User Operation's technical ability to modify	sales employees and user operations employees lack any
28		reviews. FRE 602. The statement is also irrelevant	technical ability to modify the
		statement is also irrelevant	content of reviews on Yelp.

1	Material	Plaintiffs' Objections	Yelp's Response
2		because sales and Users	Moreover, Plaintiffs' meritless
3		Operations employees are only two groups of Yelp employees – there are other Yelp employees	hearsay objections to the form of the evidence do not impact the
4		who could be modifying reviews and declarant does not eliminate	admissibility of the underlying content of Mr. MacBean's sworn
5		this possibility. FRE 401, 402.	statements. <i>Fraser</i> , 342 F.3d at 1038.
7			Plaintiffs' remaining objections
8			that Mr. MacBean did not include other information in his
9			declaration lack any merit, and are unsupported by authority showing
10			such additional statements are
11			somehow necessary for Mr. MacBean to have presented
12			sufficient testimony regarding his personal knowledge of the matters
13			stated in his declaration. Fed. R. Evid. 602.
14			Plaintiffs' factually baseless
15			disputes with the weight of the evidence do not affect the
1617			admissibility of Mr. MacBean's statements, and are inappropriate
18			argument.
19	The default order in which reviews appear on a	Declarant's assertions that a "Yelp Sort" algorithm, which	Mr. MacBean provided sufficient foundation and basis for his
20	particular business page is governed by an automated	"orders reviews based on a number of factors including	knowledge of Yelp's practices and policies, and his review of Yelp's
21	software algorithm called "Yelp Sort," which orders	recency, user voting, and other review quality factors" lack	administrative records, in his
22	reviews based on a number of factors including	foundation because declarant provides no foundation or factual	declaration, including his statements that he "supervise[s]
23	recency, user voting, and other review quality	basis to support his speculation and declarant lacks personal	and train[s] other Yelp User Operations employees on Yelp's
24	factors. As stated on Yelp's website, Yelp Sort does not	knowledge. FRE 602. For similar reasons, the statements	internal administrative tools and procedures" and that his
25	consider whether or not a business advertises on	are untrustworthy and are inadmissible hearsay. FRE 801,	declaration is "based upon his
26	Yelp. No Yelp sales or User Operations employee	802. Declarant provides no information on his tenure with	personal knowledge of the facts stated herein." Plaintiffs fail to
27	has the technical ability to alter or impact the default	Yelp, how he would be qualified to provide such information,	explain how or why more is needed, and fail to present facts
28	order in which reviews appear on Yelp.com. Users,	whether the algorithm is part of his job, whether he knows about	showing that Mr. MacBean's statements are unreliable.
	however, are able to revise	Yelp's algorithm, what all the	Similarity are unremade.

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2	Material	Plaintiffs' Objections	Yelp's Response
3	the defaults established by "Yelp Sort" so as to change	factors are – not just some of the factors, whether he developed or	Plaintiffs fail to explain their
	the manner in which reviews are sorted when	created algorithms for Yelp, whether he is qualified or	hearsay objections, which are
4	they are viewing Yelp.com,	authorized to provide	incorrect because Mr. MacBean has not presented the statement of
5	including by sorting reviews chronologically	information about Yelp's algorithm on its behalf and	another to prove the truth the
6	(with most recent review first or last), by star rating	whether he has access to information about Yelp's	matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's
7	(from highest to lowest (or	algorithm that would have	statements describe his personal
8	vice versa)), or by showing reviews from their friends	been in effect at the times relevant to the conduct alleged	actions and knowledge based on
	on Yelp first. (MacBean Decl. ¶ 7).	in the Complaint and TAC. FRE 602, 801, 802. To the	his position and experience. This includes his knowledge that the
9	Deci. 1).	extent that Yelp's algorithm is	Yelp Sort feature of Yelp's
10		written and its effect or function is documented in	website does not consider whether a business advertises on Yelp, and
11		writing, declarant's attempt to speculate about the content or	his statements that Yelp sales and
12		to recount the contents of	user operations employees do not have the technical ability to alter
13		those writings violates the Best Evidence Rule. FRE	or impact the default order in
		1002.	which reviews appear on Yelp.com. Moreover, Plaintiffs'
14		Declarant's assertion that "[a]s stated on Yelp's website, Yelp	meritless hearsay and Best
15		Sort does not consider whether or not a business advertises on	Evidence Rule objections to the form of the evidence do not impact
16		Yelp" lacks foundation	the admissibility of the underlying
17		because declarant provides no foundation or factual basis to	content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at
18		support his speculation and declarant lacks personal	1038.
19		knowledge. FRE 602. For	Plaintiffs' objections citing the
		similar reasons, the statements are untrustworthy and are	Best Evidence Rule are also
20		inadmissible hearsay. FRE 801, 802. Declarant provides	speculative and irrelevant because
21		no information on his tenure with Yelp, how he would be	they assume Mr. MacBean is merely testifying as to the contents
22		qualified to provide such	of a writing, which is unsupported
23		information, whether it is part of his job, whether he knows	by Mr. MacBean's statement.
24		what Yelp's policies are, whether he developed or	Plaintiffs' remaining objections
		created policies for Yelp,	that Mr. MacBean did not include other information in his
25		whether he is authorized to provide information about	declaration lack any merit, and are
26		Yelp's policies on its behalf and whether he has access to	unsupported by authority showing such additional statements are
27		information about Yelp's	somehow necessary for Mr.
28		policies that would have been in effect at the times relevant	MacBean to have presented sufficient testimony regarding his
		to the conduct alleged in the	sufficient testimony regarding ins

1	Material	Plaintiffs' Objections	Yelp's Response
2	TVIULUI IUI	•	<u> </u>
3		Complaint and TAC. FRE 602, 801, 802. To the extent Yelp's	personal knowledge of the matters stated in his declaration. Fed. R.
3		policies are set forth on its	Evid. 602.
4		website, declarant's attempt to speculate about the content or	
5		to recount the contents of those	Plaintiffs' factually baseless
5		writings violates the Best	disputes with the weight of the
6		Evidence Rule. FRE 1002.	evidence do not affect the admissibility of Mr. MacBean's
7		Declarant's statement that	statements, and are inappropriate
		"[n]either Yelp's sales employees nor its User	argument.
8		Operations employees have the	
9		technical ability to alter or	
		impact the default order in which reviews appear on Yelp.com"	
10		lacks foundation because	
11		declarant provides no foundation	
12		or factual basis to support his speculation and declarant lacks	
12		personal knowledge. FRE 602.	
13		The statement is also untrustworthy and inadmissible	
14		hearsay. FRE 801, 802.	
14		Declarant provided no	
15		foundation or factual basis on how he would be qualified to	
16		provide such information (he	
10		purports to have information	
17		about sales employees yet is not even a sales employee), how he	
18		knows the "technical ability" of	
		each sales and User Operations employee, whether making such	
19		determinations is part of his job,	
20		what it means to alter or impact	
		the order of reviews, the timeframe to which this	
21		statement pertains, or whether	
22		declarant is qualified or	
22		authorized to provide this statement. FRE 602, 801, 802.	
23		Declarant lacks personal	
24		knowledge as to each member of the sales and User Operation's	
25		technical ability to modify sort	
۷.		orders. FRE 602. The statement	
26		is also irrelevant because sales and Users Operations employees	
27		are only two groups of Yelp	
		employees – there are other Yelp	
28		employees who could be modifying the order of reviews	
		<u> </u>	

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2	Material	Plaintiffs' Objections	Yelp's Response
3		and declarant does not eliminate this possibility. FRE 401, 402.	
4		The remainder of declarant's	
5		statements regarding a user's ability to manipulate the sort order of reviews is irrelevant to	
6		the issues presented in the motion to dismiss. FRE 401, 402.	
7	A 1 '1 1 X/ 1 2		
8	As described on Yelp's website, Yelp employs an automated review filter for	Declarant's assertions that "[a]s described on Yelp's website, Yelp employs an automated	Mr. MacBean provided sufficient foundation and basis for his
9	the purpose of identifying and filtering reviews that may be unreliable and/or	review filter for the purpose of identifying and filtering reviews that may be unreliable and/or	knowledge of Yelp's practices and policies, and his review of Yelp's administrative records, in his
11	violate Yelp's Terms of	violate Yelp's Terms of Service"	declaration, including his
12	Service. This software filter applies a number of factors to identify reviews that are	and "[a]s stated on Yelp's website, the filter does not take into account whether a business	statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's
13	less reliable, and it affects both positive and negative	advertises with Yelp or not" lack foundation because declarant	internal administrative tools and
14	reviews. As stated on Yelp's website, the filter	provides no foundation or factual basis to support his speculation	procedures" and that his declaration is "based upon his
15	does not take into account whether a business	and declarant lacks personal knowledge. FRE 602. For	personal knowledge of the facts stated herein." Plaintiffs fail to
16	advertises with Yelp or not. Reviews that are filtered by	similar reasons, the statements are untrustworthy and are	explain how or why more is needed, and fail to present facts
17	Yelp's automated filter are not displayed on a	inadmissible hearsay. FRE 801, 802. Declarant provides no	showing that Mr. MacBean's statements are unreliable. Mr.
18	business's main profile page, and do not factor into	information on his tenure with Yelp, how he would be qualified	MacBean's statements are supported by Plaintiffs' own
19	a business's overall Yelp star rating. Filtered reviews	to provide such information about the filter, whether it is part	allegations in their Third Amended
20	may be viewed on a separate page by clicking on the link at the bottom of	of his job, whether he knows how Yelp's filter functions, whether he developed or created	Complaint. See, e.g., TAC ¶5.
21	any business profile page	the filter for Yelp, whether he is	Plaintiffs fail to explain their hearsay objections, which are
22	that has received filtered reviews. The filter is	authorized or qualified to provide information about	incorrect because Mr. MacBean
23	running continuously across all reviews on Yelp	Yelp's filter on its behalf and whether he has access to	has not presented the statement of another to prove the truth the
24	and operates based on up to date information.	information about Yelp's filter that would have been in effect at	matter asserted. Fed. R. Evid. 801(c). Instead, Mr. MacBean's
25	Accordingly, reviews that were filtered by the	the times relevant to the conduct alleged in the Complaint and	statements describe his personal
26	automated filter in the past may reappear on a	TAC. FRE 602, 801, 802. To the extent information about the	actions and knowledge based on his position and experience. This
27	business's main profile page if applicable factors	function of Yelp's filter is set forth on its website, declarant's	includes his knowledge regarding Yelp's automated review filter.
28	change (such as the reviewer gaining trust over	attempt to speculate about the content or to recount the	Moreover, Plaintiffs' meritless

1	Material	Plaintiffs' Objections	Yelp's Response
3	time). (MacBean Decl. ¶8).	contents of those writings violates the Best Evidence Rule. FRE 1002.	hearsay and Best Evidence Rule objections to the form of the evidence do not impact the
5		Declarant's assertions about the filter "running continuously" and that "reviews that were filtered	admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at
6		by the automated filter in the past may reappear on a	1038.
7		business's main profile page if applicable factors change (such	Plaintiffs' remaining objections that Mr. MacBean did not include
8		as the reviewer gaining trust over time)" lack foundation	other information in his declaration lack any merit, and are
9		because declarant provides no foundation or factual basis to	unsupported by authority showing
10		support his speculation and declarant lacks personal knowledge. FRE 602. For	such additional statements are somehow necessary for Mr.
11		similar reasons, the statements are untrustworthy and are	MacBean to have presented sufficient testimony regarding his
12		inadmissible hearsay. FRE 801, 802. Declarant provides no	personal knowledge of the matters stated in his declaration. Fed. R.
13		information on his tenure with Yelp, how he would be qualified	Evid. 602.
14		to provide such information about the filter, whether it is part	Plaintiffs' objections citing the
15		of his job, whether he knows how Yelp's filter functions,	Best Evidence Rule are speculative and irrelevant because
1617		whether he developed or created the filter for Yelp, whether he is	they assume Mr. MacBean is merely testifying as to the contents
18		authorized or qualified to provide information about	of a writing, which is unsupported by Mr. MacBean's statement.
19		Yelp's filter on its behalf and whether he has access to	Plaintiffs' factually baseless
20		information about Yelp's filter that would have been in effect at	disputes with the weight of the
21		the times relevant to the conduct alleged in the Complaint and	evidence do not affect the admissibility of Mr. MacBean's
22		TAC. FRE 602, 801, 802. The information is also of	statements, and are inappropriate argument.
23		questionable reliability because it refers to the reappearance of a	
24		filtered review "if applicable factors change" but only	
25		purports to provide one such factor. <i>Id.</i> To the extent	
26		information about the function of Yelp's filter is set forth in	
27		writing or on its website, declarant's attempt to speculate	
28		about the content or to recount the contents of those writings	
28		violates the Best Evidence Rule.	

1			
2	Material	Plaintiffs' Objections	Yelp's Response
		FRE 1002.	
3 4	When the automated filter identifies and filters a	Declarant's assertion about the filter shading a review and	Mr. MacBean provided sufficient foundation and basis for his
5	review, that review is automatically "shaded" in Yelp's internal	flagging it in "Yelp's internal administrative database" lacks foundation because declarant	knowledge of Yelp's practices and policies, and his review of Yelp's
6	administrative database, and is flagged with the	provides no foundation or factual basis to support his speculation	administrative records, in his declaration, including his
7	notation "Untrustworthy (Filtered)." (MacBean Decl. ¶ 9).	and declarant lacks personal knowledge. FRE 602. For similar reasons, the statements	statements that he "supervise[s] and train[s] other Yelp User Operations employees on Yelp's
8		are untrustworthy and are inadmissible hearsay. FRE 801,	internal administrative tools and procedures" and that his
10		802. Declarant provides no information on his tenure with Yelp, how he would be qualified	declaration is "based upon his personal knowledge of the facts
11		to provide such information about the filter and	stated herein." Plaintiffs fail to explain how or why more is
12		administrative database, whether it is part of his job, whether he	needed, and fail to present facts showing that Mr. MacBean's
13		knows how Yelp's filter and the administrative database	statements are unreliable.
14		functions, whether he developed or created the filter or administrative database for Yelp,	Plaintiffs fail to explain their hearsay objections, which are
15 16		whether he is authorized or qualified to provide information	incorrect because Mr. MacBean
17		about Yelp's filter and administrative database on its	has not presented the statement of another to prove the truth the matter asserted. Fed. R. Evid.
18		behalf and whether he has access to information about Yelp's filter	801(c). Instead, Mr. MacBean's
19		and administrative database that would have been in effect at the times relevant to the conduct	statements describe his personal actions and knowledge based on
20		alleged in the Complaint and TAC. FRE 602, 801, 802. To the	his position and experience. This includes his knowledge that when
21		extent information about the function of Yelp's filter and	Yelp's automated filter identifies and filters a review, that review is
22		administrative database is set forth in writing or on its website,	automatically shaded in Yelp's internal administrative database
23		declarant's attempt to speculate about the content or to recount	and flagged with the notation "Untrustworthy (Filtered)."
24		the contents of those writings violates the Best Evidence Rule. FRE 1002.	Moreover, Plaintiffs' meritless hearsay objections to the form of
25		1 KL 1002.	the evidence do not impact the admissibility of the underlying
26 27			content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at
28			1038.
20			

1	Material	Plaintiffs' Objections	Yelp's Response
2	1, Autol IIII	1 minums Objections	Plaintiffs' remaining objections
3			that Mr. MacBean did not include other information in his
4			declaration lack any merit, and are unsupported by authority showing
5			such additional statements are somehow necessary for Mr.
6			MacBean to have presented
7			sufficient testimony regarding his personal knowledge of the matters
8 9			stated in his declaration. Fed. R. Evid. 602.
10			Plaintiffs' objections citing the Best Evidence Rule are
11			speculative and irrelevant because
12			they assume Mr. MacBean is merely testifying as to the contents
13			of a writing, which is unsupported by Mr. MacBean's statement.
14			Plaintiffs' factually baseless
15			disputes with the weight of the evidence do not affect the
16			admissibility of Mr. MacBean's
17			statements, and are inappropriate argument.
18	Exhibit 1 (MacBean Ex. 1).	Exhibit 1 is not properly	Rule 901 requires only that "there
19		authenticated. FRE 901. The only attempt at authentication is	is prima facie evidence, circumstantial or direct, that the
20		a statement that it is a "true and correct copy" and a reference to	document is what it is purported to
21		an internet website. MacBean Decl., ¶10. There is no	be. If so, the document is admissible in evidence."
22		information as to how, why, or when to support the assertion	Alexander Dawson, Inc., 586 F.2d at 1302.
23		that the exhibit is a true and correct copy. Id. The declaration	Here, the exhibit is declared to be
24		also provides no factual basis to establish that the declarant has	a true and correct copy of Yelp's
25		personal knowledge of the document or its contents. FRE	Terms of Service. Mr. MacBean has also provided sufficient
26		602.	evidence regarding his personal knowledge of Yelp's Terms of
27			Service, stating for example, that his position requires him to
28			"investigate potential Terms of

Material	Plaintiffs' Objections	Yelp's Response
		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.
		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
		(Dkt. No. 64-1), which is a print out of the "Terms of Service" pag
		of Yelp's website, and states clearly on its face that it was "Las
		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.
Attached as Exhibit 1 is a	Exhibit 1 is not authenticated	Rule 901 requires only that "there
true and correct copy of Yelp's Terms of Service,	and thus is inadmissible. Exhibit 1 is also irrelevant because there	is prima facie evidence,
dated July 21, 2010, and	is no foundation or factual basis	circumstantial or direct, that the document is what it is purported t
available at http://www.yelp.com/static	to establish whether the purported terms of service would	be. If so, the document is
?p=tos&country=US. Section 6.A.i. of Yelp's	have been in effect at the times relevant to the conduct alleged in	admissible in evidence." Alexander Dawson, Inc., 586 F.20
Terms of Service prohibits violations of Yelp's	the TAC. FRE 401, 402.	at 1302.
Content Guidelines. (MacBean Decl. ¶ 10).		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."

1	Material	Plaintiffs' Objections	Yelp's Response
2	1/14/01/14/		Plaintiffs fail to explain how or
3			why more is needed, and fail to present facts showing that Exhibit 1 is unreliable.
5			
6			Plaintiffs' relevancy objection is also without basis, as Yelp's Terms of Service is plainly
7			relevant to Plaintiffs' claims in this action.
8	Ewhibit 2 (MacDaga Ew. 2)	Evhibit 2 is not manually	
9	Exhibit 2 (MacBean Ex. 2).	Exhibit 2 is not properly authenticated. FRE 901. The only attempt at authentication is	Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the
10 11		a statement that it is a "true and correct copy" and a reference to	document is what it is purported to be. If so, the document is
		an internet website. MacBean Decl., ¶11. There is no	admissible in evidence."
12 13		information as to how, why, or when to support the assertion that the exhibit is a true and	Alexander Dawson, Inc., 586 F.2d at 1302.
14		correct copy. Id. The declaration	Here, the exhibit is declared to be
15		also provides no factual basis to establish that the declarant has personal knowledge of the	a true and correct copy of Yelp's Content Guidelines. Mr. MacBean
16		document or its contents. FRE 602.	has also provided sufficient evidence regarding his personal
17		002.	knowledge of Yelp's Terms of
18			Service and Content Guidelines, stating for example, that his
19			position requires him to "investigate potential Terms of
20			Service violations on Yelp's website, and enforce
21			those Terms of Service," and his
22			statement that "Section 6.A.i. of Yelp's Terms of Service prohibits
23			violations of Yelp's Content Guidelines." Plaintiffs fail to
24			explain how or why more is
25			needed, and fail to present facts showing that Exhibit 2 is
26			unreliable.
27			Moreover, this Exhibit is a duplicate of Exhibit 2 to the
28			Supplemental Declaration of S. Ashlie Beringer

1	Material	Plaintiffs' Objections	Yelp's Response
3			(Dkt. No. 64-2), which is a print out of the "Content Guidelines" page of Yelp's website, with an
4			access and print date of January
5			16, 2011, months before the filing of the TAC. Plaintiffs did not
6			object to this prior exhibit and have therefore waived any
7			objections to its admissibility. This prior exhibit is part of the
8			record before the Court.
9	Attached as Exhibit 2 is a true and correct copy of	Exhibit 2 is not authenticated and thus is inadmissible. Exhibit	Rule 901 requires only that "there
10	Yelp's Content Guidelines, available	2 is also irrelevant because there is no foundation or factual basis	is prima facie evidence, circumstantial or direct, that the
11	athttp://www.yelp.com/gui delines. (MacBean Decl. ¶	to establish whether the purported terms of service would	document is what it is purported to be. If so, the document is
12	11).	have been in effect at the times relevant to the conduct alleged in	admissible in evidence." Alexander Dawson, Inc., 586 F.2d
13		the TAC, particularly since the access or print date on Exhibit 2	at 1302.
14		is July 22, 2011, which is well after the filing of the Complaint	Here, the exhibit is declared to be
15 16		and the TAC. FRE 401, 402.	a true and correct copy of Yelp's Terms of Service. Mr. MacBean
17			has also provided sufficient evidence regarding his personal
18			knowledge of Yelp's Terms of Service, stating for example, that
19			his position requires him to "investigate potential Terms of
20			Service violations on Yelp's website, and enforce those Terms
21			of Service." Plaintiffs fail to explain how or why more is
22			needed, and fail to present facts
23			showing that Exhibit 1 is unreliable.
24			Plaintiffs' relevancy objection is
25			also without basis, as Yelp's Content Guidelines are plainly
26			relevant to Plaintiffs' claims in this action.
27 28	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

1	Material	Plaintiffs' Objections	Yelp's Response
2	pertaining to each review	which reviews were purportedly	knowledge of Yelp's practices and
3	posted about Plaintiff Wheel Techniques, of	filtered or removed by the User Operations team or by reviewers	policies, and his review of Yelp's
4	Santa Clara, California. As	lacks foundation because	administrative records, in his declaration, including his
5	of July 21, 2011, Wheel Techniques had 31 active,	declarant provides no foundation or factual basis to support his	statements that he "supervise[s]
	unfiltered reviews (with a 2.5 average star rating), 51	assertions and lacks personal knowledge. FRE 602. For	and train[s] other Yelp User Operations employees on Yelp's
6	reviews that were filtered	similar reasons, the statements	internal administrative tools and
7	by Yelp's automated review filter, 7 reviews or	are untrustworthy and are inadmissible hearsay. FRE 801,	procedures" and his explanations
8	review updates that Yelp's	802. Declarant provides no	regarding Yelp's user operations team and administration records
9	User Operations team removed for violations of	information on his tenure with Yelp, he does not describe any	contained in paragraph 13 of his
	Yelp's Terms of Service, and three reviews which	of the records he reviewed, how the information was obtained,	declaration. Plaintiffs fail to explain how or why more is
10	were removed by the users	how he would be qualified to	needed, and fail to present facts
11	themselves. (MacBean Decl. ¶ 14).	provide such information about the filter and how particular	showing that Mr. MacBean's
12		reviews were removed, whether	statements are unreliable.
13		it is part of his regular job, whether he is authorized or	Plaintiffs fail to explain their
		qualified to provide this information on Yelp's behalf and	hearsay objections, which are incorrect because Mr. MacBean
14		whether this information would	has not presented the statement of
15		be accurate or applicable at the times relevant to the conduct	another to prove the truth the
16		alleged in the TAC as to Wheel	matter asserted. Fed. R. Evid. 801(c). Moreover, Plaintiffs'
17		Techniques. FRE 602, 801, 802. The information is particularly	meritless hearsay and Best
		unreliable because declarant states that whether a review is	Evidence Rule objections to the
18		filtered or not is moving target	form of the evidence do not impact the admissibility of the underlying
19		because "[t]he filter is running continuously across all reviews	content of Mr. MacBean's sworn
20		on Yelp and operates based on	statements. <i>Fraser</i> , 342 F.3d at 1038.
21		up to date information" which means that previously filtered	1050.
		reviews "may reappear on a business's main profile page."	Plaintiffs' remaining objections that Mr. MacBean did not include
22		MacBean Decl., ¶8. Therefore,	other information in his
23		declarant's information is irrelevant because it could only	declaration lack any merit, and are
24		be accurate as to the point in	unsupported by authority showing such additional statements are
25		time it was examined—July 21, 2011 – and could not address the	somehow necessary for Mr.
		relevant conduct and timeframes alleged in the TAC. FRE 401,	MacBean to have presented sufficient testimony regarding his
26		402.	personal knowledge of the matters
27		Declarant claims to have	stated in his declaration. Fed. R.
28		"reviewed Yelp's administrative records" but no such records are	Evid. 602.
		records but no such records are	

1	Material	Plaintiffs' Objections	Yelp's Response
2		provided. Thus, declarant's	Plaintiffs' objections citing the
3		attempt to speculate about the content or to recount the contents of those writings	Best Evidence Rule are speculative and irrelevant because
4		violates the Best Evidence Rule. FRE 1002.	they incorrectly assume Mr. MacBean is merely testifying to
5		TRL 1002.	prove the contents of a writing, which is not supported by his
6			statement.
7 8			Plaintiffs' factually baseless
9			disputes with the weight of the evidence do not affect the
10			admissibility of Mr. MacBean's statements, and are inappropriate
11			argument.
12	Exhibit 3 (MacBean Decl. Ex. 3).	Exhibit 3 is not properly authenticated. FRE 901. The	Rule 901 requires only that "there is prima facie evidence,
13		only attempt at authentication is a statement that "[c]opies of	circumstantial or direct, that the
14		each of these reviews and related information from Yelp's	document is what it is purported to be. If so, the document is
15		administrative records are attached as Exhibit 3" and a	admissible in evidence." Alexander Dawson, Inc., 586 F.2d
16		reference to an internet website. MacBean Decl., ¶15 (emphasis	at 1302.
17		added). There is no information as to how, why, when or where	Here, the exhibit is declared to be a true and correct copy of
18		to support the assertion that the exhibit is a copy of "related information." Id. The declaration	information located in Yelp's administrative records. Mr.
19		also provides no factual basis to establish that the declarant has	MacBean has also provided
20		personal knowledge of the document or its contents. FRE	sufficient evidence regarding his personal knowledge of Yelp's
21		602. The document attached as Exhibit 3 on its face gives rise to	administrative records, stating for example, that he "supervise[s] and
22		questions of reliability and trustworthiness because much of	train[s] other Yelp User Operations employees on Yelp's
23		the so-called "related information" declarant relies	internal administrative tools and
24		upon from the administrative records for his assertions, is not	procedures" and his explanations regarding Yelp's user operations
25		contained in the document. For example, declarant states that 6	team and administration records contained in paragraph 13 of his
26		of the reviews listed in Exhibit 3 were removed for violations of	declaration. Plaintiffs fail to explain how or why more is
27		the Terms of Service, but that information appears nowhere in	needed, and fail to present facts showing that Exhibit 3 is
28		Exhibit 3. Nor does Exhibit 3 contain the alleged specific	unreliable.

1	Material	Plaintiffs' Objections	Yelp's Response
2 3 4 5 6 7 8 9 10 11 12 13		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.	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. 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.
14 15 16	Of the 7 Wheel Techniques reviews removed for violations of Yelp's Terms of Service, 6 were 5-star reviews or review updates	Declarant's assertion that reviews were removed for "violations of Yelp's Terms of Service" and "Content Guidelines" lacks foundation	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
17 18	posted by the same user, Ellyn M, between November 24, 2008 and April 22, 2010. Copies of	because declarant provides no foundation or factual basis to support his assertions and lacks personal knowledge. FRE 602.	declaration, including his statements that he "supervise[s]
19	each of these reviews and related information from	For similar reasons, the statements are untrustworthy and	and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and
20	Yelp's administrative records are attached as	are inadmissible hearsay. FRE 801, 802. Declarant provides no	procedures" and his explanations regarding Yelp's user operations
21	Exhibit 3. Each of Ellyn M.'s reviews of Wheel Techniques was removed	information on his tenure with Yelp, he does not describe any of the records he reviewed which	team and administration records contained in paragraph 13 of his
22 23	on March 31, 2011 due to violations of Yelp's Terms	would possibly indicate the reason a review was removed, he	declaration. Plaintiffs fail to explain how or why more is
24	of Service and Content Guidelines, which prohibit reviews that are "conflicts	provides no information on how the information was obtained, how he would be qualified to	needed, and fail to present facts showing that Mr. MacBean's
25	of interest." Exhibit 2 ("Conflicts of interest:	provide such information about the filter and how particular	statements are unreliable.
26	Your reviews should be unbiased and objective. For	reviews were removed, whether it is part of his regular job,	Plaintiffs fail to explain their
27	example, businesses and their employees shouldn't	whether he is authorized or qualified to provide this	hearsay objections, which are incorrect because Mr. MacBean has not presented the statement of
28	write reviews about themselves or their	information on Yelp's behalf and whether this information would	another to prove the truth the

1	Material	Plaintiffs' Objections	Yelp's Response
2	competitors."). Each of these removed reviews was	be accurate or applicable at the times relevant to the conduct	matter asserted. Fed. R. Evid. 801(c). Moreover, Plaintiffs'
4	also marked as "Untrustworthy (Filtered)"	alleged in the TAC as to Wheel Techniques. FRE 602, 801, 802.	meritless hearsay and Best Evidence Rule objections to the
5	by Yelp's review filter, meaning that even if they had not been removed by	The information is particularly unreliable because declarant states that whether a review is	form of the evidence do not impact the admissibility of the underlying
6	Yelp's User Operations team, they would be	filtered or not is moving target because "[t]he filter is running	content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at
7	filtered by Yelp's automated software and	continuously across all reviews on Yelp and operates based on	1038.
8	would not show up on Wheel Techniques' main	up to date information" which means that previously filtered	Plaintiffs' remaining objections that Mr. MacBean did not include
9	Yelp profile page. A seventh review by Ellyn M. posted to Yelp on May 2,	reviews "may reappear on a business's main profile page." MacBean Decl., ¶8. It is also	other information in his declaration lack any merit, and are
10 11	2011 (after the removal of this user's other reviews of	unreliable because nowhere in the alleged "administrative	unsupported by authority showing such additional statements are
12	Wheel Techniques), is currently filtered, although	records" attached as Exhibit 3 is there any information about why	somehow necessary for Mr.
13	it has not yet been removed by Yelp's User Operations	any particular review was removed and who removed it.	MacBean to have presented sufficient testimony regarding his
14	team. (MacBean Decl. ¶ 15).	Therefore, declarant's information is irrelevant because it could only be accurate as to	personal knowledge of the matters. stated in his declaration. Fed. R.
15		the point in time it was examined—July 21, 2011 – and	Evid. 602
16		could not address the relevant conduct and timeframes alleged	Plaintiffs' objections citing the Best Evidence Rule are
17		in the TAC. FRE 401, 402.	speculative and irrelevant because they assume Mr. MacBean is
18		Declarant claims to base his statements on his "review[] [of] Yelp's administrative records"	merely testifying as to the contents of a writing, which is unsupported
19		but the purported records do not contain the information declarant	by Mr. MacBean's statements.
20 21		is asserting – such as why a particular review was removed	Plaintiffs' factually baseless disputes with the weight of the
22		and who removed it and declarant lacks personal	evidence do not affect the admissibility of Mr. MacBean's
23		knowledge. FRE 602. Declarant's attempt to speculate	statements, and are inappropriate argument.
24		about the content or to recount the contents of writings (particularly any records not	
25		provided that would show why a review was removed) violates	
26		the Best Evidence Rule. FRE 1002.	
27 28	Exhibit 4 (MacBean Ex. 4).	Exhibit 4 is not properly authenticated. FRE 901. The only attempt at authentication is	Rule 901 requires only that "there is prima facie evidence, circumstantial or direct, that the

1	Material	Plaintiffs' Objections	Yelp's Response
2		a statement that a "true and	document is what it is purported to
3		correct copy" of a February 23, 2010 "message" is attached as	be. If so, the document is admissible in evidence."
4		Exhibit 4. MacBean Decl., ¶16. There is no information as to	Alexander Dawson, Inc., 586 F.2d
5		how, why, when or where to support the assertion that the	at 1302.
6		exhibit is a copy of this message. Id. The declaration also provides	Here, the exhibit is declared to be a true and correct copy of
7		no factual basis to establish that the declarant has personal	information located in Yelp's
8		knowledge of the document or	administrative records. Mr. MacBean has also provided
9		its contents, without knowing facts establishing declarant's	sufficient evidence regarding his
10		tenure at Yelp (was he even employed in February 2010)	personal knowledge of Yelp's administrative records, stating for
11		and/or whether reviewing or obtaining this message falls	example, that he "supervise[s] and train[s] other Yelp User
		within his job purview, there is no basis for either authentication	Operations employees on Yelp's
12		or personal knowledge, and the exhibit is inadmissible. FRE 602,	internal administrative tools and procedures." Plaintiffs fail to
13		901.	explain how or why more is
14		Furthermore, the February 2010	needed, and fail to present facts showing that Exhibit 4 is
15		document is not identified as a review posted on Yelp and thus	unreliable or does not reflect a communication from Plaintiff
16		has no relevance to the claims asserted in the TAC. FRE 401,	Wheel Techniques.
17		402.	Plaintiffs' arguments about the
18			relevance of Exhibit 4 are
19			incorrect. Plainly, evidence showing that Plaintiffs have
20			threatened actual users of Yelp's services who left reviews of
21			Plaintiffs' business is relevant to
22			show that such negative reviews are the legitimate opinions of
			Plaintiffs' customers, and are not
23			the result of any conduct by Yelp.
24	On February 23, 2010, Yelp received a complaint	Declarant's assertion that Yelp received a complaint about a	Mr. MacBean provided sufficient foundation and basis for his
25	from a user about communications he had	user in February 2010 lacks foundation because declarant	knowledge of Yelp's practices and
26	received from Ellyn M. through Yelp's messaging	provides no foundation or factual basis to support his assertions	policies, and his review of Yelp's administrative records, in his
27	systems. A true and correct copy of the user's	and lacks personal knowledge. FRE 602. For similar reasons,	declaration, including his statements that he "supervise[s]
28	complaint to Yelp, which	the statements are untrustworthy	and train[s] other Yelp User

3	includes the		
וו כ	communication from Ellyn	and are inadmissible hearsay. FRE 801, 802. Declarant	Operations employees on Yelp's internal administrative tools and
4	M. that prompted the user's complaint, is attached as	provides no information on his tenure with Yelp (whether he	procedures" and his explanations
5	Exhibit 4 (an internal Yelp administrative email	was even employed by Yelp at the time), whether reviewing	regarding Yelp's user operations team and administration records
6	address has been redacted from this document). Ellyn	complaints of this sort was part of his job responsibilities in	contained in paragraph 13 of his declaration. Plaintiffs fail to
7	M.'s communication to the user states in part: "Dear	2010 (if he was even employed by Yelp then), he does not	explain how or why more is needed, and fail to present facts
8	Vincent, We here at Wheel Tech really feel put down	describe how the information was obtained other than a vague	showing that Mr. MacBean's
9	by your recent review and want to let you know that	reference to unidentified Yelp "messaging systems," how he	statements are unreliable.
10	legally you cannot put such input out on the net. If you	would be qualified to provide such information about a	Plaintiffs fail to explain their hearsay objections, which are
11	read your invoice we can legally sue you for any	complaint and whether he is authorized or qualified to	incorrect because Mr. MacBean has not presented the statement of
12	positive OR negative reviews Please remove	provide this information on Yelp's behalf. FRE 602, 801,	another to prove the truth the matter asserted. Fed. R. Evid.
13	your negative comments or we have no choice to seek	802. Declarant's assertions of the	801(c). Because Exhibit 4 also
14	legal actions against you Hope to hear from you	purported content of the complaint (apparently from a	contains the admissions of Plaintiff Wheel Techniques—a
15	soon. John Mercurio owner." (MacBean Decl. ¶	third party) as a true statement is inadmissible hearsay. FRE	fact Plaintiffs' do not contest—the hearsay rule is inapplicable to
16	16).	801, 802.	these statements. Fed. R. Evid. 801(d)(2). Moreover, Plaintiffs'
17		Declarant's excerpts of the complaint omit the purported	meritless hearsay objections to the
18		comment or response to the complaint which asks "[i]s	form of the evidence do not impact the admissibility of the underlying
19		Yelp going to allow this?" Based on Exhibit 4 and	content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at
20		declarant's statements, Yelp made no response to this	1038.
21		request from early 2010 which further calls into question the reliability or	Plaintiffs' remaining objections that Mr. MacBean did not include
22		trustworthiness of the hearsay document. FRE 801, 802.	other information in his
23		Finally, the document attached	declaration lack any merit, and are unsupported by authority showing
24		as Exhibit 4 relates to a message or conversation on Yelp and not	such additional statements are somehow necessary for Mr.
25		a posted review. Accordingly, it is not relevant to any of the	MacBean to have presented sufficient testimony regarding his
26		claims asserted in the TAC. FRE 401, 402.	personal knowledge of the matters
27		101, 102.	stated in his declaration. Fed. R. Evid. 602.
28			Plaintiffs' factually baseless

1	Material	Plaintiffs' Objections	Yelp's Response
2 3 4 5 6	Exhibit 5 (MacBean Ex. 5).	Exhibit 5 is not properly authenticated. FRE 901. The	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. Rule 901 requires only that "there is prima facie evidence,
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24		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. To the extent declarant relies upon or asserts any statements from Exhibit 5 as true, they are inadmissible hearsay. FRE 801, 802.	circumstantial or direct, that the document is what it is purported to be. If so, the document is admissible in evidence." Alexander Dawson, Inc., 586 F.2d at 1302. 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. 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.
2526			Because Exhibit 5 also contains the admissions of Plaintiff Wheel Techniques—a fact Plaintiffs' do
27 28			not contest—the hearsay rule is inapplicable to these statements. Fed. R. Evid. 801(d)(2). Moreover, Plaintiffs' meritless

1	Material	Plaintiffs' Objections	Yelp's Response
2 3 4 5			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.
6 7 8 9 10 11	A true and correct copy of the publicly available Yelp profile page for Ellyn M., available at http://www.yelp.com/user_details?userid=dcuTyUmp5K4WuQma3 fkNZQ, is attached as Exhibit 5. On this page, Ellyn M. states that users	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.	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." Alexander Dawson, Inc., 586 F.2d at 1302.
12 13	can "find me on facebook under ellyn mercurio."		Here, the exhibit is declared to be a true and correct copy of public information located on Yelp's
14			website. Mr. MacBean has also provided sufficient evidence
15			regarding his personal knowledge of Yelp's administrative records, stating for example, that he
16			"supervise[s] and train[s] other Yelp User Operations employees
17 18			on Yelp's internal administrative tools and procedures." Plaintiffs
19			fail to explain how or why more is needed, and fail to present facts
20			showing that Exhibit 5 is unreliable.
21			Because Exhibit 5 also contains the admissions of Plaintiff Wheel
22 23			Techniques—a fact Plaintiffs' do not contest—the hearsay rule is
24			inapplicable to these statements. Fed. R. Evid. 801(d)(2).
25			Moreover, Plaintiffs' meritless hearsay objections to the form of
26			the evidence do not impact the admissibility of the underlying
2728			content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at 1038.

Material	Plaintiffs' Objections	Yelp's Response
		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.
Exhibit 6	Exhibit 6 is not properly authenticated and thus is inadmissible. FRE 901. Declarant provides no factual basis for the exhibit other than asserting it is a "true and correct copy" and provides an internet address. 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.	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." Alexander Dawson, Inc., 586 F.2d at 1302. 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. 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.
A true and correct copy of the Facebook page for "Ellen Mercurio," available athttps://www.facebook.co m/people/Ellen- Mercurio/10000016371012 9, is attached as Exhibit 6. On this page, Ms. Mercurio identifies herself as an owner of Wheel	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	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." Alexander Dawson, Inc., 586 F.2d at 1302.

hadmissible hearsay and is not based on declarant's personal knowledge. FRE 602, 801, 802. Declarant appears to be relying in part on inadmissible hearsay contained in Exhibit 5 as well as inadmissible hearsay contained in Exhibit 5 as well as inadmissible hearsay contained in Exhibit 6. The characturing in part on inadmissible hearsay contained in Exhibit 5 as well as inadmissible hearsay contained in Exhibit 5 as well as inadmissible hearsay contained in Exhibit 5 as well as inadmissible hearsay contained in Exhibit 6 is unreliable. Exhi	1	Material	Plaintiffs' Objections	Yelp's Response
knowledge. FRE 602, 801, 802. Declarant appears to be relying in part on inadmissible hearsay contained in Exhibit 5 as well as inadmissible hearsay contained in Exhibit 5 as well as inadmissible hearsay contained in Exhibit 5, but "elly m" can be found on Facebook as "cllyn mercurio" This information is untrustworthy and unreliable because as Exhibit 6 makes plain, the Facebook page submitted is not "ellyn mercurio" but instead is "Ellen 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. The seventh Wheel Techniques 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 that word of Velp's Terms of Service" was a 5-s tar review from a user that identified itself as a were that identified itself as a were that identified itself as a count was closed on October 7, 2009, due to unauthorized promotional conduct on Yelp's website. Declarant appears to be relying in part on inadmissible hearsay contained in Exhibit 5 as well as inadmissible hearsay contained in Exhibit 5 and Exhibit 6 is unreliable. Exhibit 6 is unreliable. FRE 801, 802. The seventh Wheel Techniques 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 that it dentified itself as a count was closed on October 7, 2009, due to unauthorized promotional conduct on Yelp's website. PRE 801, 802. Declarant appears to be relying in part on inadmissible hearsay contained in Exhibit 6 is unreliable. FRE 801, 802. Declarant's assertion that a Wheel Techniques review from a user that identified itself as Axiom Auto Group. This review (along with all other reviews posted by that user) was removed when the user's account was closed on October 7, 2009, due to unauthorized promotional condu	2 3	Techniques.	based on declarant's personal	Here, the exhibit is declared to be
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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 with the statement are untrusted because the Service of or commercial wenture or event, or otherwise use the Service for commercial with the statement and 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 was a 5- star review from a user known as Axiom Auto Group was removed when the user's account was closed because it "violated 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 review of Yelp's administrative records, in his declaration, including his 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 on how the information was obtain	16	The seventh Wheel		Mr. MacBean provided sufficient
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 was a 5- star review from a 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 have the Service for commercial wenture or event, or otherwise use the Service for commercial information was obtained because it "violated Yelp's account was closed because it "violated Yelp's account was closed because it "violated Yelp's and train[s] other Yelp User Operations employees on Yelp's internal administrative records, in his declaration, including his statements attaments and train[s] other Yelp User Operations employees on Yelp's internal administrative records, in his declaration, including his statements and train[s] other Yelp User Operations employees on Yelp's internal administrative records and procedures" and his explantion; regarding Yelp's user operations team and administration regarding Yelp's user operations team and administration explain how or why more is needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.		removed for violations of	user known as Axiom Auto	-
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 at 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 on how the information was obtained, how		was a 5- star review from a	user's account was closed	policies, and his review of Yelp's administrative records, in his
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 the Service for commercial the service of the commercial that a user cannot the service for commercial that the service for commercial that a user cannot the s		Axiom Auto Group. This review (along with all other	Terms of Service" lacks foundation because declarant	
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 to the Service of the Service for commercial to the Service of the Servi		user) was removed by	basis to support his assertions	Operations employees on Yelp's
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 to the service for commer	22	team when the user's	FRE 602. For similar reasons,	procedures" and his explanations
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 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 that violated Yelp's Terms of Service, which provide that a user cannot 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	23	October 7, 2009, due to unauthorized promotional	and are inadmissible hearsay. FRE 801, 802. Declarant	team and administration records
that a user cannot "[p]romote a business or other commercial venture or event, or otherwise use the Service for commercial that a user cannot reviewed which would possibly indicate the reason a review was removed, he provides no information on how the information was obtained, how		that violated Yelp's Terms	tenure with Yelp, he does not	declaration. Plaintiffs fail to
other commercial venture or event, or otherwise use the Service for commercial information was obtained, how		that a user cannot	reviewed which would possibly	needed, and fail to present facts
the Service for commercial information was obtained, how		other commercial venture or event, or otherwise use	removed, he provides no information on how the	_
28 purposes, except in the would be quarried to provide connection with a Business such information about why a hearsay objections, which are	28	purposes, except in	he would be qualified to provide	Plaintiffs fail to explain their hearsay objections, which are

1	Material	Plaintiffs' Objections	Yelp's Response
2	Account and as expressly	particular review was removed,	incorrect because Mr. MacBean
3	permitted by Yelp." Exhibit 1 at Section 6.A.iv. and	whether it is part of his regular job, whether he is authorized or	has not presented the statement of another to prove the truth the
4	Exhibit 2 ("Promotional content: Unless you're	qualified to provide this information on Yelp's behalf and	matter asserted. Fed. R. Evid.
5	using your Business Owners Account to add	whether this information would be accurate or applicable at the	801(c). Moreover, Plaintiffs' meritless hearsay and Best
6	content to your business's profile page, we generally	times relevant to the conduct alleged in the TAC as to Wheel	Evidence Rule objections to the form of the evidence do not impact
7	frown upon promotional content. Let's keep the site	Techniques. FRE 602, 801, 802.	the admissibility of the underlying
8	useful for consumers and not overrun with	Declarant claims to base his statements on his review of	content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at
9	commercial noise from every user.").	Yelp's administrative records, none of which are provided.	1038.
10	,.	Therefore, declarant's attempt to speculate about the content or to	Plaintiffs' objections citing the Best Evidence Rule are
11		recount the contents of writings violates the Best Evidence Rule.	speculative and irrelevant because
12		FRE 1002.	they assume Mr. MacBean is merely testifying as to the contents
13			of a writing, which is not support by his statements.
14			Plaintiffs' remaining objections
15			that Mr. MacBean did not include
16			other information in his declaration lack any merit, and are
17			unsupported by authority showing such additional statements are
18			somehow necessary for Mr.
19			MacBean to have presented sufficient testimony regarding his
20			personal knowledge of the matters stated in his declaration. Fed. R. Evid. 602.
21			
22			Plaintiffs' factually baseless disputes with the weight of the
23			evidence do not affect the admissibility or relevance of Mr.
24			MacBean's statements, and are
25	II 17/1 2	D. 1	inappropriate argument.
26	I have reviewed Yelp's records pertaining to	Declarant's assertion about the results of his review of	Mr. MacBean provided sufficient foundation and basis for his
27	Plaintiff Renaissance Furniture Restoration, of	Renaissance Furniture Restoration's reviews, including	knowledge of Yelp's practices and policies, and his review of Yelp's
28	San Francisco, California. As of July 21, 2011,	which reviews were purportedly filtered or removed by the User	administrative records, in his

1	Material	Plaintiffs' Objections	Yelp's Response
2	Renaissance Furniture	Operations team or by reviewers	declaration, including his
3	Restoration had 14 active, unfiltered reviews (with a 5	lacks foundation because declarant provides no foundation	statements that he "supervise[s]
4	star rating), 14 reviews that	or factual basis to support his	and train[s] other Yelp User Operations employees on Yelp's
_	were filtered by Yelp's automated review filter,	assertions and lacks personal knowledge. FRE 602. For	internal administrative tools and
5	three reviews that Yelp's	similar reasons, the statements	procedures" and his explanations
6	User Operations team removed for violations of	are untrustworthy and are inadmissible hearsay. FRE 801,	regarding Yelp's user operations
7	Yelp's Terms of Service,	802. Declarant provides no	team and administration records contained in paragraph 13 of his
	and two reviews which	information on his tenure with	declaration. Plaintiffs fail to
8	were removed by the users themselves	Yelp, he does not describe any of the records he reviewed, how	explain how or why more is
9		the information was obtained,	needed, and fail to present facts showing that Mr. MacBean's
10		how he would be qualified to provide such information about	statements are unreliable.
10		the filter and how particular	
11		reviews were removed, whether it is part of his regular job,	Plaintiffs fail to explain their
12		whether he is authorized or	hearsay objections, which are incorrect because Mr. MacBean
12		qualified to provide this information on Yelp's behalf and	has not presented the statement of
13		whether this information would	another to prove the truth the
14		be accurate or applicable at the times relevant to the conduct	matter asserted. Fed. R. Evid. 801(c). Moreover, Plaintiffs'
15		alleged in the TAC as to	meritless hearsay and Best
		Renaissance Furniture Restoration. FRE 602, 801, 802.	Evidence Rule objections to the
16		The information is particularly	form of the evidence do not impact
17		unreliable because declarant states that whether a review is	the admissibility of the underlying content of Mr. MacBean's sworn
18		filtered or not is moving target	statements. Fraser, 342 F.3d at
		because "[t]he filter is running continuously across all reviews	1038.
19		on Yelp and operates based on	Plaintiffs' objections citing the
20		up to date information" which means that previously filtered	Best Evidence Rule are
21		reviews "may reappear on a	speculative and irrelevant because
		business's main profile page." MacBean Decl., ¶8. Therefore,	they assume Mr. MacBean is
22		declarant's information is	merely testifying as to the contents of a writing, which is not support
23		irrelevant because it could only be accurate as to the point in	by his statements.
24		time it was examined—July 21,	DI: (:CC 2
		2011 – and could not address the relevant conduct and timeframes	Plaintiffs' remaining objections that Mr. MacBean did not include
25		alleged in the TAC. FRE 401,	other information in his
26		402.	declaration lack any merit, and are
27		Declarant claims to have	unsupported by authority showing such additional statements are
		"reviewed Yelp's administrative records" but no such records are	somehow necessary for Mr.
28		provided. Thus, declarant's	MacBean to have presented

1	Material	Plaintiffs' Objections	Yelp's Response
3		attempt to speculate about the content or to recount the contents of those writings	sufficient testimony regarding his personal knowledge of the matters
4		violates the Best Evidence Rule. FRE 1002.	stated in his declaration. Fed. R. Evid. 602.
5			Plaintiffs' factually baseless disputes with the weight of the
6 7			evidence do not affect the admissibility or relevance of Mr.
8			MacBean's statements, and are inappropriate argument.
9	Of the three Renaissance	Declarant's assertion that	Mr. MacBean provided sufficient
10	Furniture Restoration reviews removed for	Renaissance Furniture Restoration reviews were	foundation and basis for his knowledge of Yelp's practices and
11	violations of Yelp's Terms of Service, one was a 5¬ star review submitted by	removed for "violating Yelp's Terms of Service and Content Guidelines" for a review	policies, and his review of Yelp's administrative records, in his
12	user Boris L., one was a 5- star review submitted by	submitted by Boris L. lacks foundation because declarant	declaration, including his statements that he "supervise[s]
13 14	user Zhopik b., and one was a 5-star review	provides no foundation or factual basis to support his assertions	and train[s] other Yelp User Operations employees on Yelp's
15	submitted by user Dan H. Boris L.'s 5-star review of Renaissance Furniture	and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy	internal administrative tools and procedures" and his explanations
16	Restoration was removed on October 14, 2009 for	and are inadmissible hearsay. FRE 801, 802. Declarant	regarding Yelp's user operations team and administration records
17	violating Yelp's Terms of Service and Content Guidelines which prohibit	provides no information on his tenure with Yelp, he does not describe any of the records he	contained in paragraph 13 of his declaration. Plaintiffs fail to
18	reviews that are "conflicts of interest." Exhibit 2	reviewed which would possibly indicate the reason a review was	explain how or why more is needed, and fail to present facts
19 20	("Conflicts of interest: Your reviews should be	removed, he provides no information on how the	showing that Mr. MacBean's statements are unreliable.
21	unbiased and objective. For example, businesses and their employees shouldn't	information was obtained, how he would be qualified to provide such information about why a	Plaintiffs fail to explain their
22	write reviews about themselves or their	particular review was removed, whether it is part of his regular	hearsay objections, which are incorrect because Mr. MacBean
23	competitors."). Boris L. had identified himself to	job, whether he is authorized or qualified to provide this	has not presented the statement of another to prove the truth the
24	Yelp during his account creation as Boris Levitt, who is the owner of	information on Yelp's behalf and whether this information would be accurate or applicable at the	matter asserted. Fed. R. Evid. 801(c). Because Exhibits 7 and 8
25	Renaissance Furniture Restoration. This removed	times relevant to the conduct alleged in the TAC as to	also contains the admissions of Plaintiff Boris Levitt—a fact
2627	review was also marked as "Untrustworthy(Filtered)"	Renaissance Furniture Restoration. FRE 602, 801, 802.	Plaintiffs' do not contest—the hearsay rule is inapplicable to
28	by Yelp's review filter, meaning that even if it had not been removed by	Declarant's statements are based on inadmissible hearsay because	these statements. Fed. R. Evid. 801(d)(2). Plaintiffs' statement that Exhibits 7 and 8 contain "third

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2	Material Vala 'a User Or antions	Plaintiffs' Objections	Yelp's Response
3	Yelp's User Operations team, it would be filtered by Yelp's automated	he takes as true third party statements in Exhibits 7 and 8 that Boris L. is in fact the owner	party statements" are unsupported.
4	by Yelp's automated software and would not	of Renaissance Furniture Restoration. FRE 801, 802.	Plaintiffs' objections citing the Best Evidence Rule are
5	show up on Renaissance Furniture Restoration's main Yelp profile page.	Declarant claims to base his statements on his review of	speculative and irrelevant because they assume Mr. MacBean is
6		Yelp's administrative records, none of which are provided.	merely testifying as to the contents of a writing, which is not support
7		Therefore, declarant's attempt to speculate about the content or to	by his statements.
8		recount the contents of writings violates the Best Evidence Rule. FRE 1002.	Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule
10		TRL 1002.	objections to the form of the evidence do not impact the
11			admissibility of the underlying content of Mr. MacBean's sworn
12			statements. <i>Fraser</i> , 342 F.3d at 1038.
13			Plaintiffs' remaining objections
14			that Mr. MacBean did not include other information in his
15			declaration lack any merit, and are unsupported by authority showing
16 17			such additional statements are somehow necessary for Mr.
18			MacBean to have presented sufficient testimony regarding his
19			personal knowledge of the matters stated in his declaration. Fed. R.
20			Evid. 602.
21			Plaintiffs' factually baseless disputes with the weight of the
22			evidence do not affect the admissibility or relevance of Mr.
23			MacBean's statements, and are
24			inappropriate argument.
25	Exhibit 7	Exhibit 7 is not properly authenticated. FRE 901. The	Rule 901 requires only that "there is prima facie evidence,
26		only attempt at authentication is a statement that a "true and	circumstantial or direct, that the document is what it is purported to
27		correct copy" of the Yelp profile of Boris L." and an internet address for the document	be. If so, the document is admissible in evidence."
28		attached as Exhibit 7. MacBean	Alexander Dawson, Inc., 586 F.2d

1	Material	Plaintiffs' Objections	Yelp's Response
2		Decl., ¶22. A review of the document attached as Exhibit 7	at 1302.
3		demonstrates on its face that is not a true and correct copy	Here, the exhibit is declared to be
4		because there are pages which are not included in Exhibit 7. In	a true and correct copy of public information located on Yelp's
5		particular, the profile references 11 reviews by the user but only	website. Mr. MacBean has also provided sufficient evidence
6 7		10 reviews are contained in Exhibit 7. Likewise, the last	regarding his personal knowledge of Yelp's administrative records,
8		page of the document has the text "More<<" at the bottom of	stating for example, that he
9		the page.	"supervise[s] and train[s] other Yelp User Operations employees
10		To the extent declarant relies upon or asserts any statements	on Yelp's internal administrative tools and procedures." Plaintiffs
11		from Exhibit 7 as true, they are inadmissible hearsay. FRE 801,	fail to explain how or why more is needed, and fail to present facts
12		802.	showing that Exhibit 7 is unreliable.
13			Plaintiffs' speculative and
14			improper arguments that Exhibit 7
15			should contain certain details is unwarranted and incorrect, and has
16			no impact on the admissibility of Exhibit 7.
17			Because Exhibit 7 also contains
18			the admissions of Boris Levitt—a fact Plaintiffs' do not contest—the
19			hearsay rule is inapplicable to
20			these statements. Fed. R. Evid. 801(d)(2).
21			
22	A true and correct copy of the Yelp profile page for	Exhibit 7 is not properly authenticated and thus is	Rule 901 requires only that "there is prima facie evidence,
23	Boris L. available at http://www.yelp.com/user_	inadmissible. FRE 901. Declarant relies upon and asserts	circumstantial or direct, that the
24	details ?userid=EQ0Ln_QuAPKF	as true that a statement contained in Exhibit 7 that the user's	document is what it is purported to be. If so, the document is
25	XwFp6 TmgOw, is attached as Exhibit 7.	profile page identifies the user's "blog or website" as	admissible in evidence." Alexander Dawson, Inc., 586 F.2d
26	On this page, Boris L.	www.renarest.com is inadmissible hearsay and is not	at 1302.
27 28	states that his blog or website is http://www.renarest.com.	based on declarant's personal knowledge. FRE 602, 801, 802. A reference in a user profile to	Here, the exhibit is declared to be a true and correct copy of public information located on Valn's
28			a true and correct copy of pul information located on Yelp'

1	Material	Plaintiffs' Objections	Yelp's Response
2	3.74	irrelevant to Plaintiffs' claims	website. Mr. MacBean has also
3		regarding conduct on Yelp's site. FRE 401, 402.	provided sufficient evidence regarding his personal knowledge
5			of Yelp's administrative records, stating for example, that he
6			"supervise[s] and train[s] other Yelp User Operations employees
7			on Yelp's internal administrative tools and procedures." Plaintiffs
8			fail to explain how or why more is needed, and fail to present facts showing that Exhibit 7 is unreliable.
10			
11			Because Exhibit 7 also contains the admissions of Boris Levitt—a
12			fact Plaintiffs' do not contest—the hearsay rule is inapplicable to
13			these statements. Fed. R. Evid. 801(d)(2). Further the citation of
14			Boris L.'s statement regarding his blog or website,
15			www.renarest.com, is relevant to further show that Boris L. Is
16			indeed Plaintiff Boris Levitt, the owner of Renaissance Furniture
17 18			Restoration, a fact Plaintiffs do not dispute.
19	Exhibit 8	Exhibit 8 is not properly	Rule 901 requires only that "there
20		authenticated and thus is inadmissible. FRE 901. Declarant provides no factual	is prima facie evidence, circumstantial or direct, that the
21		basis for the exhibit other than asserting it is a "true and correct	document is what it is purported to be. If so, the document is
22		copy" and provides an internet address. <i>Id.</i> Moreover, a	admissible in evidence." Alexander Dawson, Inc., 586 F.2d
23	document from non-Yelp webs	document from an external, non-Yelp website is irrelevant to	at 1302.
24		Plaintiffs' claims in the TAC. FRE 410, 402.	Here, the exhibit is declared to be a true and correct copy of public
25			information located on Mr.
26			Levitt's website, www.renarest.com. This website,
27 28			and therefore Exhibit 8 which is a copy of this website, is relevant because it shows that Yelp user

1	Material	Plaintiffs' Objections	Yelp's Response
2 3 4			Boris L. is Plaintiff Boris Levitt, the owner of Renaissance Furniture Restoration, a fact Plaintiffs do not dispute.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A true and correct copy of the webpage available at http://www.renarest.com is attached as Exhibit 8. This webpage is the website for Renaissance Furniture Restoration.	Exhibit 8 is not properly authenticated and thus is inadmissible. FRE 901. Declarant relies upon and asserts as true that a statement contained in Exhibit 7 that the user's profile page identifies the user's "blog or website" as www.renarest.com and that the specific internet address in fact is "the website for Renaissance Furniture Restoration" is inadmissible hearsay and is not based on declarant's personal knowledge. FRE 602, 801, 802. A reference in a user profile to an external (non-Yelp) website is irrelevant to Plaintiffs' claims regarding conduct on Yelp's site. FRE 401, 402.	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." Alexander Dawson, Inc., 586 F.2d at 1302. 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. 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.
21			Fed. R. Evid. 801(d)(2).
22	Zhopik b.'s 5-star review of Renaissance Furniture	Declarant's assertion that a Renaissance Furniture	Mr. MacBean provided sufficient foundation and basis for his
23	Restoration was removed on October 8, 2009 for violating Yelp's Terms of	Restoration review from a user known as Zhopik b. was removed for "violating Yelp's	knowledge of Yelp's practices and policies, and his review of Yelp's
24 25	Service and Content Guidelines, which prohibit	Terms of Service" lacks foundation because declarant	administrative records, in his declaration, including his
26	reviews that do not reflect "firsthand consumer	provides no foundation or factual basis to support his assertions	statements that he "supervise[s] and train[s] other Yelp User
27 28	experience." Exhibit 2 ("Personal experience: We want to hear about your firsthand consumer experience, not what you	and lacks personal knowledge. FRE 602. For similar reasons, the statements are untrustworthy and are inadmissible hearsay. FRE 801, 802. Declarant	Operations employees on Yelp's internal administrative tools and procedures" and his explanations regarding Yelp's user operations

1	Material	Plaintiffs' Objections	Yelp's Response
2	heard from your co-worker	provides no information on his	team and administration records
3	or significant other."). Zhopik b.'s review violated	tenure with Yelp, he does not describe any of the records he	contained in paragraph 13 of his declaration. Plaintiffs fail to
4	these prohibitions.	reviewed which would possibly indicate the reason a review was	explain how or why more is
5		removed, he provides no information on how the	needed, and fail to present facts showing that Mr. MacBean's
6		information was obtained, how he would be qualified to provide	statements are unreliable.
7		such information about why a particular review was removed,	Plaintiffs fail to explain their
8		whether it is part of his regular	hearsay objections, which are incorrect because Mr. MacBean
9		job, whether he is authorized or qualified to provide this	has not presented the statement of
10		information on Yelp's behalf and whether this information would	another to prove the truth the matter asserted. Fed. R. Evid.
11		be accurate or applicable at the times relevant to the conduct	801(c).
12		alleged in the TAC as to Renaissance Furniture	Plaintiffs' objections citing the Best Evidence Rule are
13		Restoration. FRE 602, 801, 802.	speculative and irrelevant because
14		Declarant claims to base his statements on his review of	they assume Mr. MacBean is merely testifying as to the contents
15		Yelp's administrative records, none of which are provided.	of a writing, which is not support by his statements.
		Therefore, declarant's attempt to speculate about the content or to	-
16		recount the contents of writings violates the Best Evidence Rule.	Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule
17		FRE 1002.	objections to the form of the evidence do not impact the
18			admissibility of the underlying
19			content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at
20			1038.
21			Plaintiffs' remaining objections
22			that Mr. MacBean did not include other information in his
23			declaration lack any merit, and are
24			unsupported by authority showing such additional statements are
25			somehow necessary for Mr. MacBean to have presented
26			sufficient testimony regarding his personal knowledge of the matters
27			stated in his declaration. Fed. R.
28			Evid. 602.

1	Material	Plaintiffs' Objections	Yelp's Response
2 3 4 5			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.
6 7 8 9 10 11 12 13	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	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.	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
13 14 15	no need for threats, harassment, lewdness, hate speech, and other displays of bigotry.").	FRE 801, 802. Declarant provides no information on his tenure with Yelp, he does not describe any of the records he	team and administration records contained in paragraph 13 of his declaration. Plaintiffs fail to explain how or why more is
16		reviewed which would possibly indicate the reason a review was removed, he provides no information on how the	needed, and fail to present facts showing that Mr. MacBean's statements are unreliable.
17 18		information was obtained, how he would be qualified to provide	Plaintiffs fail to explain their
19		such information about why a particular review was removed,	hearsay objections, which are incorrect because Mr. MacBean
20		whether it is part of his regular job, whether he is authorized or qualified to provide this	has not presented the statement of another to prove the truth the
21		information on Yelp's behalf and whether this information would	matter asserted. Fed. R. Evid. 801(c).
22		be accurate or applicable at the times relevant to the conduct	Plaintiffs' objections citing the
23		alleged in the TAC as to Renaissance Furniture Recognition FRE 602, 801, 802	Best Evidence Rule are speculative and irrelevant because
24		Restoration. FRE 602, 801, 802. Declarant claims to base his	they assume Mr. MacBean is merely testifying as to the contents
25		statements on his review of Yelp's administrative records,	of a writing, which is not supported by his statements.
26 27 27 27 27 27 27 27		none of which are provided. Therefore, declarant's attempt to	Moreover, Plaintiffs' meritless
28		speculate about the content or to recount the contents of writings violates the Best Evidence Rule.	hearsay and Best Evidence Rule objections to the form of the

1	Material	Plaintiffs' Objections	Yelp's Response
2 3 4 5		FRE 1002.	evidence do not impact the admissibility of the underlying content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at 1038.
6			Plaintiffs' remaining objections
7			that Mr. MacBean did not include other information in his declaration lack any merit, and are
8			unsupported by authority showing such additional statements are
9			somehow necessary for Mr. MacBean to have presented
11			sufficient testimony regarding his personal knowledge of the matters
12			stated in his declaration. Fed. R. Evid. 602.
13			Plaintiffs' factually baseless
14			disputes with the weight of the evidence do not affect the
1516			admissibility or relevance of Mr. MacBean's statements, and are inappropriate argument.
17	I have reviewed Yelp's	Declarant's assertion about the	Mr. Macbean provided sufficient
18	records pertaining to Cats and Dogs Animal Hospital	results of his review of Cats and Dogs' reviews, including which	foundation and basis for his knowledge of Yelp's practices and
19	of Long Beach, California. As of July 21, 2011, Cats and Dogs Animal Hospital	reviews were purportedly filtered or removed by the User Operations team lacks	policies, and his review of Yelp's administrative records, in his
20 21	had 49 active, unfiltered reviews (with a 4 star	foundation because declarant provides no foundation or factual	declaration, including his statements that he "supervise[s]
22	average rating), 24 reviews that were filtered by Yelp's automated review filter,	basis to support his assertions and lacks personal knowledge. FRE 602. For similar reasons,	and train[s] other Yelp User Operations employees on Yelp's
23	five reviews or review updates that Yelp's User	the statements are untrustworthy and are inadmissible hearsay.	internal administrative tools and procedures" and his explanations
24	Operations team removed for violations of Yelp's	FRE 801, 802. Declarant provides no information on his	regarding Yelp's user operations team and administration records
25	Terms of Service, and 4 reviews which were	tenure with Yelp, he does not describe any of the records he	contained in paragraph 13 of his declaration. Plaintiffs fail to
26	removed by the users themselves.	reviewed, how the information was obtained, how he would be qualified to provide such	explain how or why more is needed, and fail to present facts
27		information about the filter and how particular reviews were	showing that Mr. MacBean's statements are unreliable.
28		removed, whether it is part of	

1	Material	Plaintiffs' Objections	Yelp's Response
2		his regular job, whether he is authorized or qualified to	Plaintiffs fail to explain their
3		provide this information on	hearsay objections, which are incorrect because Mr. MacBean
4		Yelp's behalf and whether this information would be accurate	has not presented the statement of another to prove the truth the
5		or applicable at the times relevant to the conduct alleged	matter asserted. Fed. R. Evid.
6		in the TAC as to Cats and Dogs. FRE 602, 801, 802. The	801(c).
7		information is particularly unreliable because declarant	Plaintiffs' objections citing the
8		states that whether a review is filtered or not is moving target	Best Evidence Rule are speculative and irrelevant because
9		because "[t]he filter is running	they assume Mr. MacBean is
10		continuously across all reviews on Yelp and operates based on	merely testifying as to the contents of a writing, which is not
11		up to date information" which means that previously filtered	supported by his statements.
12		reviews "may reappear on a business's main profile page."	Moreover, Plaintiffs' meritless
		MacBean Decl., ¶8. Therefore, declarant's information is	hearsay and Best Evidence Rule objections to the form of the
13		irrelevant because it could only be accurate as to the point in	evidence do not impact the admissibility of the underlying
14		time it was examined—July 21,	content of Mr. MacBean's sworn
15		2011 – and could not address the relevant conduct and timeframes	statements. <i>Fraser</i> , 342 F.3d at 1038.
16		alleged in the TAC. FRE 401, 402.	
17		Declarant claims to have	Plaintiffs' remaining objections that Mr. MacBean did not include
18		"reviewed Yelp's administrative records" but no such records are	other information in his
19		provided. Thus, declarant's attempt to speculate about the	declaration lack any merit, and are unsupported by authority showing
20		content or to recount the	such additional statements are somehow necessary for Mr.
21		contents of those writings violates the Best Evidence Rule.	MacBean to have presented
22		FRE 1002.	sufficient testimony regarding his personal knowledge of the matters
23			stated in his declaration. Fed. R. Evid. 602.
24			Plaintiffs' factually baseless disputes with the weight of the
25			evidence do not affect the
26			admissibility or relevance of Mr. MacBean's statements, and are
27			inappropriate argument.
28			

1	Material	Plaintiffs' Objections	Yelp's Response
2 3 4			Plaintiffs' remaining objections that Mr. MacBean did not include other information in his declaration lack any merit, and are
5			unsupported by authority showing such additional statements are
6			somehow necessary for Mr. MacBean to have presented
7			sufficient testimony regarding his personal knowledge of the matters
8			stated in his declaration. Fed. R. Evid. 602.
10			Plaintiffs' factually baseless
11			disputes with the weight of the evidence do not affect the admissibility or relevance of Mr.
12			MacBean's statements, and are inappropriate argument.
13 14	I have reviewed Yelp's	Declarant's assertion about the	Mr. Macbean provided sufficient
15	records pertaining to Marina Dental, formerly Marina Dental Care, of San	results of his review of Marina Dental's reviews, including which reviews were purportedly	foundation and basis for his knowledge of Yelp's practices and
16	Francisco, California. As of July 21, 2011, Marina	filtered, removed by users or removed by the User Operations	policies, and his review of Yelp's administrative records, in his
17	Dental had 16 active, unfiltered reviews (with a 3.5 star average rating), 86	team lacks foundation because declarant provides no foundation or factual basis to support his	declaration, including his statements that he "supervise[s]
18 19	reviews that were filtered by Yelp's automated	assertions and lacks personal knowledge. FRE 602. For	and train[s] other Yelp User Operations employees on Yelp's internal administrative tools and
20	review filter, nine reviews or review updates that	similar reasons, the statements are untrustworthy and are	procedures" and his explanations regarding Yelp's user operations
21	Yelp's User Operations team removed for violations of Yelp's Terms	inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with	team and administration records contained in paragraph 13 of his
22	of Service, three reviews that Yelp's User	Yelp, he does not describe any of the records he reviewed, how	declaration. Plaintiffs fail to explain how or why more is
23	Operations team removed (along with all other reviews of the users) when	the information was obtained, how he would be qualified to provide such information about	needed, and fail to present facts showing that Mr. MacBean's
24	the users accounts were closed at their request, and	the filter and how particular reviews were removed, whether	statements are unreliable.
2526	two reviews which were removed by the users	it is part of his regular job, whether he is authorized or	Plaintiffs fail to explain their hearsay objections, which are
27	themselves.	qualified to provide this information on Yelp's behalf and whether this information would	incorrect because Mr. MacBean has not presented the statement of
28		be accurate or applicable at the times relevant to the conduct	another to prove the truth the matter asserted. Fed. R. Evid.

1	Material	Plaintiffs' Objections	Yelp's Response
2		alleged in the TAC as to Marina	801(c).
3		Dental. FRE 602, 801, 802. The information is particularly	. ,
4		unreliable because declarant states that whether a review is	Plaintiffs' objections citing the Best Evidence Rule are
5		filtered or not is moving target because "[t]he filter is running	speculative and irrelevant because they assume Mr. MacBean is
6		continuously across all reviews	merely testifying as to the contents
7		on Yelp and operates based on up to date information" which	of a writing, which is not supported by his statements.
8		means that previously filtered reviews "may reappear on a	Moreover, Plaintiffs' meritless
9		business's main profile page." MacBean Decl., ¶8. Therefore,	hearsay and Best Evidence Rule
10		declarant's information is irrelevant because it could only	objections to the form of the evidence do not impact the
11		be accurate as to the point in time it was examined—July 21,	admissibility of the underlying content of Mr. MacBean's sworn
12		2011 – and could not address the relevant conduct and timeframes	statements. <i>Fraser</i> , 342 F.3d at 1038.
13		alleged in the TAC. FRE 401, 402.	
14		Declarant claims to have	Plaintiffs' remaining objections that Mr. MacBean did not include
15		"reviewed Yelp's administrative records" but no such records are	other information in his declaration lack any merit, and are
16		provided. Thus, declarant's attempt to speculate about the	unsupported by authority showing
17		content or to recount the contents of those writings	such additional statements are somehow necessary for Mr.
18		violates the Best Evidence Rule. FRE 1002.	MacBean to have presented sufficient testimony regarding his
19			personal knowledge of the matters stated in his declaration. Fed. R.
			Evid. 602.
20			Plaintiffs' factually baseless
21			disputes with the weight of the evidence do not affect the
22			admissibility or relevance of Mr.
23			MacBean's statements, and are inappropriate argument.
24	Of the nine Marina Dental	Declarant's assertions that	Mr. MacBean provided sufficient
25	reviews removed for violations of Yelp's Terms	Marina Dental's reviews or review updates were removed	foundation and basis for his
26	of Service, eight were removed on November 30,	"for violations of Yelp's Terms of Service" because "the users'	knowledge of Yelp's practices and policies, and his review of Yelp's
27	2010 (along with all other reviews by the users)	accounts were closed for violat[ing] Yelp's Terms of	administrative records, in his declaration, including his
28	because the users' accounts	Service and Content Guidelines"	statements that he "supervise[s]

1	Material	Plaintiffs' Objections	Yelp's Response
2	were closed by Yelp for creating multiple accounts	or that a review update "violated Yelp's Terms of Service and	and train[s] other Yelp User
3	in violation of Yelp's Terms of Service and	Content Guidelines" because it did not reflect "a new experience	Operations employees on Yelp's internal administrative tools and
4	Content Guidelines, which state that "[y]ou may not	or interaction" lack foundation because declarant provides no	procedures" and his explanations regarding Yelp's user operations
5	. create multiple Personal	foundation or factual basis to	team and administration records
6	Accounts." Exhibit 1 at 4.D.1. The ninth review, a	support his assertions and lacks personal knowledge. FRE 602.	contained in paragraph 13 of his declaration. Plaintiffs fail to
7	one star review, was removed on December 23,	For similar reasons, the statements are untrustworthy and	explain how or why more is needed, and fail to present facts
8	2010 because it was a review update which violated Yelp's Terms of	are inadmissible hearsay. FRE 801, 802. Declarant provides no information on his tenure with	showing that Mr. MacBean's statements are unreliable.
9	Service and Content	Yelp, he does not describe any of the records he reviewed which	Plaintiffs fail to avalain their
10	Guidelines, which state "[r]eview updates should	would possibly indicate the	Plaintiffs fail to explain their hearsay objections, which are
11	reflect a new experience or interaction with the	reason a review was removed, he provides no information on how	incorrect because Mr. MacBean has not presented the statement of
12	business. Don't tell the same old story you've	the information was obtained, how he would be qualified to	another to prove the truth the matter asserted. Fed. R. Evid.
13	already told." Exhibit 2.	provide such information about why a particular review was	801(c).
14		removed, whether it is part of his regular job, whether he is	Plaintiffs' objections citing the
15		authorized or qualified to provide this information on	Best Evidence Rule are speculative and irrelevant because
16		Yelp's behalf and whether this information would be accurate or	they assume Mr. MacBean is
17		applicable at the times relevant to the conduct alleged in the	merely testifying as to the contents of a writing, which is not
18		TAC as to Marina Dental. FRE 602, 801, 802.	supported by his statements.
19		Declarant claims to base his	Moreover, Plaintiffs' meritless hearsay and Best Evidence Rule
20		statements on his review of Yelp's administrative records,	objections to the form of the
21		none of which are provided. Therefore, declarant's attempt to	evidence do not impact the admissibility of the underlying
22		speculate about the content or to recount the contents of writings	content of Mr. MacBean's sworn statements. <i>Fraser</i> , 342 F.3d at
23		violates the Best Evidence Rule. FRE 1002.	1038.
24			Plaintiffs' remaining objections
25			that Mr. MacBean did not include other information in his
26			declaration lack any merit, and are
27			unsupported by authority showing such additional statements are
28			somehow necessary for Mr. MacBean to have presented
			<u>*</u>