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11 Attorneys for Defendant
 12 YELP! INC.

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 WESTERN DIVISION

16 CATS AND DOGS ANIMAL
 17 HOSPITAL, INC., et al., on behalf of
 18 itself and all others similarly situated,

19 Plaintiffs,

20 v.

21 YELP! INC.,

22 Defendant.

23 CHRISTINE LaPAUSKY d/b/a
 24 D'AMES DAY SPA, on behalf of
 herself and all others similarly situated,

25 Plaintiffs,

26 v.

27 YELP! INC.,

28 Defendant.

Case No. CV 10-01340 VBF(SSx)

**DECLARATION OF BRYAN BYRNE IN
 SUPPORT OF DEFENDANT YELP
 INC.'S MOTION TO TRANSFER
 VENUE (28 U.S.C. § 1404(a))**

Hearing Date: May 10, 2010
 Hearing Time: 1:30 p.m.
 Judge: Hon. Valerie Baker Fairbank

Case No. CV 10-01578 VBF (SSx)

1 I, Bryan Byrne, hereby declare as follows:

2 1. I am a product manager at Yelp! Inc. ("Yelp"). I have personal
3 knowledge of each fact stated in this declaration, except as otherwise stated, and if
4 called upon to testify at trial, could and would competently testify thereto.

5 2. Business owners who purchase subscriptions to advertise their
6 business on the Yelp Website (www.yelp.com) generally enter an advertising
7 agreement with Yelp ("Advertising Agreement") in one of three ways: (1) by
8 accepting a click-through agreement online; (2) by signing an agreement in paper
9 form; or (3) by agreeing via email by stating "I agree" or a similar statement. When
10 business owners purchase advertising subscriptions online, the last step of the
11 purchasing process requires the business owner to check the box located to the left
12 of the sentence "I have read, understood, and accept the Terms & Conditions."
13 This sentence is directly under the heading "Terms of Agreement" in bold, red font.
14 After checking the box, the business owner must then click a red button that states
15 "Purchase." A business owner cannot click on the "Purchase" button to complete
16 the purchasing process without first checking the box next to "I have read,
17 understood, and accept the Terms and Conditions." The "Terms and Conditions"
18 text is in blue font and is hyperlinked, such that when the business owner clicks on
19 the text, he or she is taken to the terms and conditions of the agreement.

20 3. Attached as Exhibit A is a true and correct copy of the Advertising
21 Agreement in paper form entered into between California Furnishings d/b/a Sofa
22 Outlet and Yelp, effective February 1, 2008. The Agreement states: "The parties
23 consent to jurisdiction and venue for actions related to the subject matter hereof in
24 the state and federal courts located in San Francisco County, California." The
25 business page for California Furnishings, Inc. d/b/a Sofa Outlet appears to have
26 been claimed on the Yelp Website, but the manner in which it was claimed is
27 unclear.

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1 4. Celibré, Inc. entered a click-through Advertising Agreement by
2 purchasing an advertising subscription online. Attached as Exhibit B is a true and
3 correct copy of the Advertising Agreement entered into between Celibré, Inc. and
4 Yelp, effective January 12, 2010. The Agreement states: “The parties consent to
5 jurisdiction and venue for actions related to the subject matter hereof in the state
6 and federal courts located in San Francisco County, California.”

7 5. Attached as Exhibit C is a true and correct copy of the Advertising
8 Agreement entered into via email between Bleeding Heart Bakery LLC and Yelp,
9 effective October 27, 2008. The Agreement states: “The parties consent to
10 jurisdiction and venue for actions related to the subject matter hereof in the state
11 and federal courts located in San Francisco County, California.”

12 6. In order for a business owner to claim his or her business’s page on the
13 Yelp Website, the business owner must go to www.biz.yelp.com to complete a
14 registration form and electronically submit the form to Yelp. The first page of the
15 online registration process for a business owner to claim his or her business page
16 states: “By clicking the button below, you agree to the Yelp Terms of Service.”
17 The “Yelp Terms of Service” text is in blue font and is hyperlinked such that when
18 the business owner clicks on the text, he or she is taken to the Yelp Terms of
19 Service Agreement. The “button below” refers to a red button underneath the text
20 that states “Next Step.” A business owner cannot proceed past the first page of the
21 registration process unless he or she clicks on the “Next Step” button. Business
22 owners who do not click on the “Next Step” button and complete the rest of the
23 registration process are not permitted to claim their business page on the Yelp
24 Website.

25 7. The following named Plaintiffs in *LaPausky d/b/a D’ames Day Spa v.*
26 *Yelp! Inc.* (“*LaPausky*”) and *Cats and Dogs Animal Hospital, Inc., et al. v. Yelp!*
27 *Inc.* (“*Cats and Dogs*”) claimed their respective business pages on the Yelp Website
28 on the following dates:

- 1 • Christine LaPausky d/b/a D'ames Day Spa 9/9/2009
- 2 • Astro Appliance Service 4/23/2009
- 3 • J.L. Ferri Entertainment, Inc. d/b/a Adult Socials 9/2/2009
- 4 • Le Petite Retreat Day Spa, LLC 6/3/2008
- 5 • Wag My Tail, Inc. 11/16/2009
- 6 • Zodiac Restaurant Group d/b/a Scion Restaurant 7/14/2009
- 7 • Bleeding Heart, LLC d/b/a Bleeding Heart 8/27/2008,
- 8 Bakery 12/9/2009
- 9 • Celi**br**é, Inc. 12/18/2008

10 8. Attached as Exhibit D is a true and correct copy of a printout from
 11 Yelp's database, indicating the date on which each named Plaintiff in Paragraph 7
 12 claimed its page on the Yelp Website in the "user_creation_time" column.

13 9. To view the reviews posted about any particular business, one is
 14 required to proceed past the Yelp Website homepage (*i.e.*, the initial webpage
 15 displayed at www.yelp.com). All persons who proceed past the homepage of the
 16 Yelp Website are subject to Yelp's Terms of Service ("TOS"). The homepage of
 17 the Yelp Website states: "Use of this site is subject to express **Terms of Service**.
 18 By continuing past this page, you agree to abide by these terms" (the "TOS
 19 Notice"). The "Terms of Service" text in the TOS Notice is in bold and is
 20 hyperlinked. If a user clicks on the "Terms of Service" text, the user is directed to
 21 the Terms of Service in effect on that date. The TOS Notice is repeated at the
 22 bottom of every webpage on the Yelp Website.

23 10. Attached as Exhibit E is a true and correct copy of the Yelp TOS dated
 24 August 5, 2008 ("Yelp 2008 TOS"). The Yelp 2008 TOS contains a forum
 25 selection clause that states: "If there is any dispute about or involving the Site or
 26 Yelp, you agree that any such dispute will be governed by the laws of the State of
 27 California without regard to its conflict of law provisions. You agree to personal
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1 jurisdiction by and venue in the state and federal courts of San Francisco County,
2 California.” This provision has remained the same in each subsequent version of
3 the Yelp TOS after the Yelp 2008 TOS.

4 11. Attached as Exhibit F is a true and correct copy of Yelp’s TOS dated
5 May 7, 2007 (“Yelp 2007 TOS”). The forum selection clause in the Yelp 2007
6 TOS is nearly identical to the forum selection clause in the Yelp 2008 TOS. The
7 forum selection clause in the Yelp 2007 TOS states: “If there is any dispute about
8 or involving the Yelp Site and/or the Yelp Service, by using the Yelp Site, you
9 agree that the dispute will be governed by the laws of the State of California
10 without regard to its conflict of law provisions. You agree to personal jurisdiction
11 by and venue in the state and federal courts of the State of California, City of San
12 Francisco.”

13 12. The same TOS applies both to business owners who claim their
14 business’s page on the Yelp Website and to all persons who proceed past the Yelp
15 Website homepage.

16 13. The Yelp Website features information on and reviews of businesses
17 throughout the United States and is visited by approximately 30 million people per
18 month.

19 14. Yelp’s headquarters and principal place of business is located in San
20 Francisco, California, in the Northern District of California. As of April 6, 2010,
21 Yelp had a total of 362 employees, 251 of whom work in the Northern District of
22 California. Yelp has 143 salespeople who work in the Northern District of
23 California. Yelp’s user operations department, which handles complaints about
24 reviews of businesses, and Yelp’s engineering department, which develops and
25 maintains the Review Filter algorithm, are located in the Northern District of
26 California. Yelp’s primary servers and most of its documents are located in the
27 Northern District of California. Yelp has only 4 employees in the Central District
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1 of California, none of whom are salespeople. Yelp does not have any offices in the
2 Central District of California.

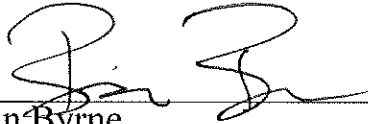
3 I declare under penalty of perjury that the foregoing is true and correct.
4 Executed on the 9th day of April, 2010 at San Francisco, California.

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Bryan Byrne

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