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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARC OPPERMAN, et al.,
Plaintiffs,
v.
PATH, INC., et al.,
Defendants.

Case No. 13-cv-00453-JST

**ORDER SUSTAINING PLAINTIFFS'
OBJECTION TO EVIDENCE
SUBMITTED IN SUPPORT OF YELP'S
REPLY; GRANTING LEAVE TO FILE
A SUR-REPLY; CONTINUING
HEARING TO AUGUST 23**

Re: Dkt. No. 764

Pursuant to Civil Local Rule 7-3(d)(1), the Plaintiffs have filed objections to evidence they assert Defendant Yelp raised for the first time in its reply brief in support of summary judgment. ECF No. 764. The Plaintiffs ask that the Court either not consider the new evidence or, in the alternative, grant leave to file a sur-reply. *Id.* Yelp filed a response opposing the Plaintiffs' requests. ECF No. 767.

“Where ‘new evidence is presented in a reply to a motion for summary judgment, the district court should not consider the new evidence without giving the [non-]movant an opportunity to respond.’” *JG v. Douglas Cnty. Sch. Dist.*, 552 F.3d 786, 803, n. 14 (9th Cir. 2008) (alterations in the original) (quoting *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir.1996)). The Court agrees that Yelp presented new evidence in its reply – namely, excerpts of deposition testimony from class representatives. *See* Yelp’s Reply Brief, ECF No. 759 at 10-16 (quoting from Exs. B, C, and D). Accordingly, the Court grants the Plaintiffs’ request to file a sur-reply to respond to this new evidence. The sur-reply must be filed no later than August 4, 2016 and must not exceed five pages.

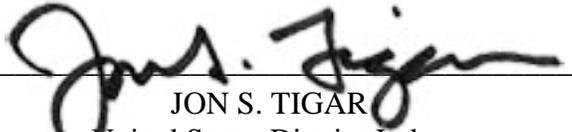
In light of the additional filing, the hearing on Yelp’s motion for summary judgment is

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continued from August 4, 2016 at 2:00 P.M. to August 23, 2016 at 9:30 A.M. To promote judicial efficiency, the hearing on Defendant EA/Chillingo's motion for summary judgment is also continued from August 4, 2016 at 2:00 P.M. to August 23, 2016 at 9:30 A.M.

IT IS SO ORDERED.

Dated: July 28, 2016



JON S. TIGAR
United States District Judge