

1 LAWRENCE D. MURRAY, State Bar No. 77536
NOAH W. KANTER, State Bar No. 224580
2 MURRAY & ASSOCIATES
1781 Union Street
3 San Francisco, CA 94123
Telephone: (415) 673-0555
4 Facsimile: (415) 928-4084

5 DAVID R. ONGARO, State Bar No. 154698
AMELIA D. WINCHESTER, State Bar No. 257928
6 ONGARO BURTT & LOUDERBACK LLP
595 Market St., Suite 610
7 San Francisco, CA 94105
Telephone: (415) 433-3900
8 Facsimile: (415) 433-3950

9 Attorneys for Plaintiffs
BORIS Y. LEVITT *et al.*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12
13 SAN FRANCISCO DIVISION

14 BORIS Y. LEVITT D/B/A RENAISSANCE
15 RESTORATION, CATS AND DOGS ANIMAL
HOSPITAL, INC., TRACY CHAN D/B/A
16 MARINA DENTAL CARE, and JOHN
MERCURIO D/B/A WHEEL TECHNIQUES; on
17 behalf of themselves and all others similarly
situated

18 Plaintiffs,

19 v.

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

21 Defendants.
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Case No. CV 10-01231 EMC
Consolidated with CV 10-02351 EMC

**PLAINTIFFS' OBJECTIONS TO
YELP! INC.'S BILL OF COSTS**

1 **I. INTRODUCTION**

2 Defendant Yelp!, Inc. (“Yelp”) submitted a Bill of Costs, requesting that the Court tax its
3 costs against Plaintiffs Boris Y. Levitt, d/b/a Renaissance Restoration, a/k/a Renaissance Furniture
4 Restoration, Cats and Dogs Animal Hospital, Inc., Tracy Chan, d/b/a Marina Dental Care, a/k/a
5 Marina Dental Care and John Mercurio d/b/a Wheel Techniques (collectively “Plaintiffs”). Yelp,
6 however, cannot recover any costs in this case.

7 Yelp filed its bill of costs after its deadline for filing, which constitutes a waiver of any
8 claimed costs. Even if the court were to overlook Yelp’s waiver, Yelp’s Bill of Costs is replete
9 with items that are not permitted by law and unjustifiably undocumented. Yelp claims costs that
10 are simply not recoverable, including Reporter’s transcripts not permitted under the Local Rules,
11 expedited transcript fees, which are prohibited, filing fees, which were undocumented (and
12 purportedly supported by bill that could not have been for the filing) and costs, loosely described
13 as “government record reproductions” for Westlaw and/or Lexis Nexis printouts.

14 In addition to the numerous problems with Yelp’s Bill of Costs, this Court should exercise
15 its discretion and decline to award any costs to Yelp. As explained below, because of the nature of
16 this case, as well as the financial disparities between the parties, it would be inappropriate to
17 award costs to a large corporate defendant for a close case that had the potential to greatly benefit
18 the public.

19 **II. FACTUAL BACKGROUND**

20 **A. Yelp’s Untimely Filing of its Bill of Costs**

21 Pursuant to the order granting Yelp’s motion to dismiss, the judgment in the above-entitled
22 matter was entered in favor of Yelp on October 26, 2011. *See* Dkt. No. 90. Yelp filed a Bill of
23 Costs on November 10, 2011, which was 15 days after judgment was entered in this case. *See*
24 Dkt. No. 94.

25 **B. Fees of the Clerk**

26 In its Bill of Costs, Yelp requested \$653.50 for “Fees of the Clerk.” *See* Dkt. No. 94. Yelp’s
27 itemization of costs states that the “\$653.50” cost is for “[f]iling Fees incurred in connection with
28

1 removal of action from California State Court to Federal District Court” on 4/30/2010. *See* Dkt.
2 94-1. No bill or documentation is attached that demonstrates that \$653.50 constitutes the filing fee
3 for a removal. The only documentation of this cost is what appears to be a “Cooley Godward
4 Kronish LLP” statement designating, for “costs and disbursements through April 30, 2010” the
5 following: “filing fees, Constant, J. Alan, SF Sup. Filing 653.50.” No date is noted for this charge
6 and aside from “Renaissance Restoration,” no client or case is identified. Pursuant to the Court’s
7 website, the filing fee in a civil case is only \$350.00. *See* also Dkt. No. 1 (stating filing fee for
8 removal in this case). During the parties’ meet and confer efforts, Plaintiff’s counsel raised this
9 issue with Yelp’s counsel. *See* Declaration of Amelia D. Winchester (hereafter “Winchester
10 Decl.”) attached hereto as Exhibit 1, ¶2. Despite a request, no further documentation of this
11 purported cost was provided to Plaintiffs.

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13 **C. Fees for Printed or Electronically Recorded Transcripts Necessarily Obtained for Use
in the Case**

14 In its Bill of Costs, Yelp designates “\$563.90” as “[f]ees for printed or electronically recorded
15 transcripts necessarily obtained for use in the case.” In its itemization of costs, Yelp states that the
16 “\$563.50” is for a transcript of the July 19, 2010 proceeding (\$157.30), a transcript of the March
17 7, 2011 proceeding (\$232.00), and the transcript of October 14, 2011 proceeding (\$174.60). *See*
18 Dkt. 94-1.

19 Pursuant to docket entry No. 30, the July 19, 2010 proceeding consisted of Defendants’
20 Motion to Consolidate and Plaintiff’s Motion to Compel. No bill or documentation is attached to
21 Yelp’s itemization that demonstrates that \$157.30 constitutes the bill or invoice for the transcript.
22 *See* Dkt. 94-1. Instead, the only documentation of this cost is what appears to be a “Cooley
23 Godward Kronish LLP” statement designating, for “costs and disbursements through July 31,
24 2010” “Sullivan, Katherine A. Powell Copy of Transcript 157.30.” There is no indication of the
25 date of the hearing on which the transcript was purportedly taken, the name of the case, the date
26 the transcript was obtained on, or whether it was obtained on an expedited basis. Neither party is
27 appealing the orders on these two motions.

1 On March 7, 2011, the Court heard Defendants' Motion to Dismiss Plaintiff's Second
2 Amended Complaint. *See* Dkt. No. 68. Yelp attaches a certification of the transcript fees charged
3 by Kathy Wyatt stating that the charge is for "ECF & 1 copy" with a billing rate of "7.25" per
4 page. According to the Court's website, the \$7.25 per page charge would have been for the cost of
5 an "hourly transcript." An "ordinary transcript" costs at the most, \$3.25 per page. Neither party is
6 appealing the order on Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint.

7 On October 14, 2011, the Court heard oral arguments on Yelp's Motion to Dismiss Plaintiff's
8 Third Amended Complaint. *See* Dkt. No. 88. Yelp attaches in its itemization an invoice from the
9 United States District Court for the Northern District of California for a transcript obtained on an
10 expedited basis of \$4.85 per page.

11 According to Yelp's counsel, these transcripts were obtained as because they may allow
12 Yelp's counsel to "prepare themselves" for Plaintiff's appeal or otherwise provide "background
13 information." *See* Winchester Decl. ¶2, Ex. 1.

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15 **D. Fees for Exemplification and the Costs of Making Copies Necessarily Obtained for
Use in the Case**

16 Yelp requests \$2.50 for fees for exemplification and the costs of making copies of any
17 materials where the copies are necessarily obtained for use in the case. In its itemization, Yelp
18 states only that these costs are for "[r]eproduction of government record for use in Declaration of
19 S. Ashlie Beringer in Support of Motion to Dismiss First Amended Class Action Complaint Filed
20 by Defendant Yelp, Inc. on October 22, 2010 (5 pages @\$.10/page)" [\$.50] and "[r]eproduction of
21 government record for use in Statement of Recent Decision Filed by Defendant Yelp, Inc. on
22 February 22, 2010 (20 pages @ \$.10/page)" [\$2.50]. Yelp submitted no bills or documentation to
23 support these costs. When asked during the parties' meet and confer efforts, Yelp reported that
24 these costs were for Westlaw or Lexis Nexis case charges, and the costs of printing. *See*
25 Winchester Decl. ¶2, Ex. 1.

26 **E. The Parties' Meet and Confer Conferences**

27

1 Plaintiff sent Yelp a meet and confer letter on November 17, 2011. *See* Winchester Decl. ¶3,
2 Ex. 2. The parties met and conferred several times on Friday, November 18, 2011 and on Monday,
3 November 21, 2011. *See id.* ¶2, Ex. 1. No resolution was reached.

4 **III. ARGUMENT**

5 **A. Legal Standard**

6 Federal Rule of Civil Procedure 54(d) allows a prevailing party to recover costs unless a
7 federal statute or court provides otherwise. “The court’s discretion in awarding costs under Rule
8 54(d) is limited to awarding costs that are within the scope of 28 U.S.C. § 1920.” *Hynix*
9 *Semiconductor Inc. v. Rambus, Inc.*, 697 F.Supp.2d 1139, 1142 (2010). In the Northern District,
10 “Civil Local Rule 54-3 itemizes the costs that are allowed under section 1920.” *Id.* It is within the
11 district court’s discretion to award costs. *See Ass’n of Mexican American Educators v. State of*
12 *California*, 231 F.3d 572, 593 (2000).

13 **B. Plaintiffs Satisfied their Obligation to Meet and Confer**

14 Local Rule 54-2 requires that “[a]ny objections [to a Bill of Costs] must contain a
15 representation that counsel met and conferred in an effort to resolve disagreement about the
16 taxable costs claimed in the bill, or that the objecting party made a good faith effort to arrange
17 such a conference.”

18 Plaintiffs have fully satisfied their meet and confer requirements. In an effort to avoid filing
19 formal objections, Plaintiffs sent Yelp a meet and confer letter on November 17, 2011. *See*
20 Winchester Decl. ¶3, Ex. 2. On Friday, November 18, 2011, counsel for both parties met and
21 conferred telephonically regarding Plaintiffs’ objections. *See id.* ¶2, Ex. 1. At that time, in
22 addition to all issues raised herein, Plaintiffs’ counsel requested that Yelp provide the appropriate
23 documentation for its undocumented costs.

24 On Monday, November 21, 2011, counsel for both parties met and conferred once again. *See*
25 *id.* ¶2, Ex. 1. Plaintiffs’ counsel sent an additional email documenting their concerns. *See id.* ¶2,
26 Ex. 1. No resolution could be reached, and Yelp provided no additional documentation to support
27 its purported costs.

1 docket entry No. 1 in this case also states that a \$350.00 filing fee was paid for the removal. As a
2 result, despite Yelp’s declaration, the \$653.50 cost claimed was not a removal filing fee. During
3 the parties’ meet and confer conferences, Yelp offered no explanation for the discrepancy.

4 Yelp, therefore, failed to provide “appropriate documentation” to support this item as required
5 by Local Rule 54-1(a), and cannot recover the filing fee cost. *See Kelly v. U.S. Bank*, No. 08-
6 1421-AC, 2011 WL 2934023 (D. Or. June 21, 2011) (declining to award costs when party “failed
7 to adequately itemize or document the costs is [sic] seeks”). Yelp did not provide a bill or other
8 documentation that demonstrates that the \$653.50 charge constitutes the filing fee for its removal.
9 The only documentation of this cost is what appears to be a “Cooley Godward Kronish LLP”
10 statement that states under “costs and disbursements through April 30, 2010,” “filing fees,
11 Constant, J. Alan, SF Sup. Filing 653.50.” No date is noted for this charge and the only apparent
12 connection to this case is a notation at the top of the sheet stating “Renaissance Restoration.”
13 Moreover, the submitted fee appears to be for a superior court filing, as opposed to a “USDC”
14 filing charge (one of which is listed on the top of the cost list for \$52.50). Plainly, this submission
15 is inadequate and does not appropriately document any recoverable filing fees.

16 Because Yelp failed to submit appropriate documentation of this cost, and because the
17 submitted cost is plainly not the Clerk’s filing fee for the removal, Yelp’s request for filing fee
18 costs must be denied.

19 **E. Yelp’s Transcript Costs are Not Recoverable**

20 Pursuant to Local Rule 54-3(b)(3), “the costs of [] transcripts is *not normally allowable* unless,
21 before it is incurred, it is approved by a Judge or stipulated to be recoverable by counsel”
22 (emphasis added). The only reporters’ transcripts that are allowable are “1) the cost of transcripts
23 necessarily obtained for an appeal;” and 2) the cost of a transcript of a statement by a Judge from
24 the bench which is to be reduced to a formal order prepared by counsel.” Local Rule 54-3(b)(1)-
25 (2).

26 As set forth above, Yelp cannot recover any costs for transcripts because it has waived its right
27 to claim costs. Even if Yelp had not waived costs (it has), Yelp’s requested costs for transcripts

1 are not recoverable. Accordingly to Yelp’s counsel, it is Yelp’s position that the costs for
2 transcripts are recoverable because they were “necessarily obtained for an appeal” pursuant to
3 Local Rule 54-3(b). Yelp does not maintain that the transcripts were allowable based on a
4 statement by a Judge from the bench, or otherwise approved by a Judge or stipulated to be
5 recovered by counsel.

6 When asked, Yelp’s counsel justified the transcripts as being “necessarily obtained for an
7 appeal” because they might allow Yelp’s counsel to “prepare themselves” for Plaintiff’s appeal or
8 otherwise provide “background information.” *See* Winchester Decl. ¶2, Ex. 1. That justification
9 plainly does not meet the exception for transcript costs “necessarily obtained for an appeal.”

10 As a preliminary matter, the only issue being appealed in this case is Defendant’s Motion to
11 Dismiss Plaintiff’s Third Amended Complaint (Docket No. 89) and the Judgment (Docket No.
12 90). *See* Dkt. No. 92 (Plaintiff’s Notice of Appeal). Neither party is appealing Defendants’
13 Motion to Consolidate, yet Yelp includes the cost for that transcript in its Bill of Costs.
14 Accordingly, Yelp’s request for costs for the July 19, 2010 proceeding was not “necessarily
15 obtained for an appeal.” *See Dong Ah Tire & Rubber Co., Ltd. v. Glasforms, Inc.*, 2010 WL
16 1691869 at *7 (N.D. Cal. April 23, 2010) (transcript costs not recoverable if no appeal).

17 Similarly, neither party is appealing Defendants’ Motion to Dismiss Plaintiff’s Second
18 Amended Complaint. As a result, Yelp’s costs for the transcript of the March 7, 2011 hearing was
19 also not “necessarily obtained for an appeal” and therefore cannot be claimed simply to possibly
20 provide background information. Finally, because Plaintiff is appealing the ruling from October
21 14, 2011 hearing, and subsequent order, a transcript from those proceedings will be filed by the
22 court reporter several months before Yelp’s response to the appeal is due. *See* Dkt. No. 95. That
23 transcript, accordingly, was also not “necessarily obtained for an appeal” and does not meet the
24 standard articulated under Rule 54-3(b).

25 In addition to the fact that the reporter’s transcripts are not recoverable costs, Yelp’s submitted
26 transcript costs are problematic for other reasons. Pursuant to Local Rule 54-1(a) “[a]ppropriate
27 documentation to support each item claimed must be attached to the bill of costs.” Yelp’s

1 submitted transcript cost from the July 19, 2010 proceedings was not appropriately documented,
2 and is therefore not recoverable. As noted above, no bill or documentation is attached to Yelp's
3 bill of costs that demonstrates that \$157.30 constitutes a bill or invoice for a transcript. *See* Dkt.
4 94-1. Instead, the only documentation of this cost is what appears to be a statement from "Cooley
5 Godward Kronish LLP" designating, for "costs and disbursements through July 31, 2010"
6 "Sullivan, Katherine A. Powell Copy of Transcript 157.30." There is no indication of the date of
7 the hearing on which the transcript was purportedly taken, and aside from stating in the middle of
8 the page "Renaissance Restoration," whether it was even for this matter. Further, the bill does not
9 indicate whether the transcript was completed on an expedited basis, which would not be
10 recoverable. Yelp has had ample opportunity to supplement this cost, but has not done so.
11 Because Yelp has failed to comply Rule 54-d(1)'s requirement that "appropriate documentation"
12 must support each claim, it must be denied.

13 The other transcript costs submitted by Yelp for the March 7, 2011 and October 14, 2011
14 proceedings are for transcripts obtained on an hourly and expedited basis, at \$7.25 and \$4.85 per
15 page respectively. In addition to the other issues set forth above, it is well-settled that expedited
16 transcript charges are not recoverable as costs. *See Affymetrix, Inc. v. Multilyte Ltd.*, No. C 03-
17 03779, 2005 WL 2072113 (N.D. Cal. Aug. 26, 2005) (expedited fees for hearing transcripts not
18 recoverable). These charges, therefore, cannot be claimed by Yelp.

19 **F. Yelp's Copying Costs are Not Recoverable**

20 Yelp maintains it is entitled to its copying costs for "[r]eproduction of government record for
21 use in Declaration of S. Ashlie Beringer in Support of Motion to Dismiss First Amended Class
22 Action Complaint Filed by Defendant Yelp, Inc. on October 22, 2010 (5 pages @\$.10/page)"
23 [\$.50] and "[r]eproduction of government record for use in Statement of Recent Decision Filed by
24 Defendant Yelp, Inc. on February 22, 2010 (20 pages @ \$.10/page)" [\$2.50].

25 Again, Yelp's copying costs are not recoverable because Yelp waived its right to obtain costs.
26 Even disregarding the waiver, Yelp failed to provide "appropriate documentation" to support these
27 items. No bills are submitted to support the itemization. Further, according to Yelp's counsel, the

