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 24 YELP! INC.

25 UNITED STATES DISTRICT COURT  
 26 NORTHERN DISTRICT OF CALIFORNIA  
 27 SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

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

Defendants.

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

CLASS ACTION

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

1 Defendant Yelp! Inc. (“Yelp”) respectfully submits this Response to Plaintiffs’ Objection to  
2 Yelp’s Bill of Costs. Following this Court’s October 26, 2011 Order dismissing Plaintiffs’ Third  
3 Amended Consolidated Complaint with prejudice (“Order”), Yelp filed a Bill of Costs seeking  
4 recovery of \$1,219.90, a miniscule fraction of the actual costs incurred in defending and defeating  
5 Plaintiffs’ claims during the past 18 months. Yelp’s claims for costs are valid under existing  
6 applicable statutes, Local Rules, and case law and are properly supported by detailed evidence,  
7 including a declaration in the form specified under Local Rule 54-1 and supporting invoices.  
8 Moreover, it is well established in the Ninth Circuit that a court may refuse to award costs only in  
9 extraordinary circumstances, such as where the losing party is indigent, where the prevailing party  
10 engaged in misconduct, or where awarding costs could possibly chill future civil rights litigants from  
11 bringing claims—factors that are not present here. *See Champion Produce, Inc. v. Ruby Robinson*  
12 *Co., Inc.*, 342 F.3d 1016, 1022 (9th Cir. 2003).

13 The Court granted Yelp’s Motion to Dismiss *with prejudice* and terminated this case on  
14 October 26, 2011. As the losing party, Plaintiffs therefore are responsible for Defendant’s costs.  
15 Although Plaintiffs are correct that Yelp mistakenly filed its Bill of Costs one day late, on  
16 November 10, 2011, this was due to an unintentional, and minor, calculation error. This one-day  
17 error in no way prejudiced Plaintiffs (who did not even raise this issue in their initial correspondence  
18 objecting to Yelp’s Bill of Costs), *see* Dkt. No. 97, Ex. 2, and it should not prevent the Court from  
19 awarding Yelp the minimal costs to which it is entitled as the prevailing party. *See ExperExchange,*  
20 *Inc. v. Doculex, Inc.*, No. C–08–03875 JCS, 2010 WL 1881484, at \*3 (N.D. Cal. May 10, 2010) (a  
21 “court may consider a motion that is filed outside of the fourteen-day deadline where there is a  
22 ‘compelling showing of good cause.’”); *see also Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d  
23 877, 889 (9th Cir. 2000). Here, a compelling showing of good cause is demonstrated by (i) the fact  
24 that Yelp’s filing was but one day late; (ii) the modest amount Yelp is seeking to recover; and (iii) the  
25 strong presumption that costs must, absent extraordinary circumstances, be awarded to the prevailing  
26 party. *See also id.* (“Assuming that the Motion was due on December 1, 2009, as Plaintiff contends,  
27 the Court finds that Defendants have made a compelling showing of good cause for filing their  
28

1 motion one day late based on the docket entry expressly stating that judgment was ‘entered’ on  
2 November 18, 2009.”); *cf. Kona Enterprises, Inc.*, 229 F.3d 877, 889 (reversing an award of fees  
3 under Fed. R. Civ. P. 54 where entry of judgment occurred a *year and a half* prior).

4 Contrary to Plaintiffs’ objections, Yelp’s costs are supported by adequate proof and were  
5 necessarily incurred in defending against Plaintiffs’ claims. Specifically, Yelp’s claim for \$563.90 in  
6 transcript costs plainly is recoverable because “[t]he cost of transcripts necessarily obtained for an  
7 appeal is allowable,” and it is undisputed that these transcripts are part of the record on Plaintiffs’  
8 appeal of the Order. Civil L.R. 54-3(b)(1); *see also* 9th Cir. R. 10 (“transcript[s] of proceedings” in  
9 trial court are part of record on appeal). Similarly, Yelp properly has sought a mere \$2.50 in  
10 reproduction and exemplification fees for the reproduction of federal opinions for use in court filings.  
11 “The cost of reproducing and certifying or exemplifying government records used for any purpose in  
12 the case is allowable.” Civil L.R. 54-3(d)(1). Finally, Yelp’s claim for \$653.50 in removal fees is  
13 recoverable under Local Rule 54-3(a)(1), which permits prevailing parties to recover “filing fee[s] . .  
14 . . if paid by the claimant.” Civil L.R. 54-3(a)(1); *see also Grolsche Bierbrouwerij Nederland v.*  
15 *Dovebid, Inc.*, No. C 11-00763 SC, 2011 U.S. Dist. LEXIS 124104, at \*12 (N.D. Cal., Oct. 26, 2011)  
16 (defendants’ removal fees recoverable under Civil L.R. 54). At a minimum, Plaintiffs implicitly  
17 acknowledge that \$350 of the \$653.50 in removal fees is allowable. *See* Dkt. No. 96 (“In its Bill of  
18 Costs, Yelp requested \$653.50 for ‘Fees of the Clerk.’ . . . Pursuant to the Court’s website, the filing  
19 fee in a civil case is only \$350.00.”).<sup>1</sup>

20 Moreover, Plaintiffs have not provided any legal or factual basis to support the notion that this  
21 case involves “extraordinary circumstances” justifying a departure from the presumption in favor of  
22 an award of costs. Indeed, the sole case Plaintiffs cite for this proposition—*Ass’n of Mexican-*  
23 *American Educators v. State of Cal.*, 231 F.3d 572 (9th Cir. 2000)—underscores that Plaintiffs cannot  
24 satisfy the stringent criteria for avoiding costs on grounds of “extraordinary circumstances.” In *Ass’n*  
25 *of Mexican-American Educators*, the court affirmed a denial of an award of costs where plaintiffs

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26 <sup>1</sup> Although Plaintiffs suggest that Yelp has not provided adequate support for its claimed costs,  
27 in fact, Yelp furnished a declaration supporting its costs in precisely the form set forth in Local Rule  
28 54-1(a) and 28 U.S.C. §1924.

1 were “a group of individuals and nonprofit organizations” with “limited” resources and the action  
2 “present[ed] issues of the gravest public importance” related to “the state’s public school system.”  
3 *Id.* at 593. Unlike in *Ass’n of Mexican-American Educators*, Plaintiffs (business owners) have not  
4 asserted civil rights claims or asserted claims impacting matters of the “gravest” public importance  
5 (such as the public school system). Accordingly, no departure from the strong presumption in favor  
6 of an award of costs is warranted here.

7 Under these circumstances, Yelp’s Bill of Costs in the amount of \$1,219.90 should be  
8 sustained, and Plaintiffs’ objections should be overruled.

9  
10 DATED: November 29, 2011

GIBSON, DUNN & CRUTCHER LLP

11 By:           /s/ Ashlie Beringer            
12 Ashlie Beringer

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**DECLARATION OF SERVICE**

I, Lorraine Nishiguchi, declare as follows:

I am employed in the County of Santa Clara, State of California; I am over the age of 18 years and am not a party to this action; my business address is 1881 Page Mill Road, Palo Alto, California 94304, in said County and State. On November 29, 2011, I served the within:

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

to all named counsel of record as follows:



**BY ECF (ELECTRONIC CASE FILING):** I e-filed the above-detailed documents utilizing the United States District Court, Northern District of California's mandated ECF (Electronic Case Filing) service. Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the documents upon confirmation of e-filing.

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s) were printed on recycled paper, and that this Declaration of Service was executed by the undersigned on November 29, 2011, at Palo Alto, California.

/s/ Lorraine Nishiguchi

LORRAINE NISHIGUCHI