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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 CATS AND DOGS ANIMAL
 12 HOSPITAL, INC., et al., on behalf of
 itself and all others similarly situated,

13 Plaintiffs,

14 v.

15 YELP! INC.,

16 Defendant.

No. CV 10-02351 MHP

**DEFENDANT YELP! INC.'S OPPOSITION TO
 PLAINTIFFS' MOTION TO COMPEL AND
 MOTION FOR SANCTIONS**

Date: July 19, 2010
 Time: 2:00 p.m.
 Judge: Hon. Marilyn Hall Patel
 Trial Date: Not Yet Set

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1 **I. INTRODUCTION**

2 Plaintiffs’ motion to compel Yelp’s Rule 30(b)(6) deponent on “a date certain” is
3 unnecessary and improper. In violation of this Court’s local rules, Plaintiffs’ counsel failed to
4 meet and confer with Yelp before serving the deposition notice. In fact, Plaintiffs never once
5 mentioned the deposition whatsoever after serving the deposition notice, let alone met and
6 conferred on dates, until Yelp served its objections to the notice. Nor did Plaintiffs engage in
7 meaningful meet-and-confer efforts before filing their motion to compel, despite Yelp’s having
8 reiterated that it did not simply object to the date of the deposition, but also had serious objections
9 to the 15 sweeping deposition topics Plaintiffs have noticed, many of which are overly broad and
10 vague and ambiguous. Yelp also made clear to Plaintiffs that to promote efficiency, depositions
11 should await resolution of the consolidation issue concurrently pending before the Court.

12 Yelp’s position is that the parties should meet and confer to set an appropriate date for the
13 30(b)(6) deposition after the Court determines whether to consolidate this case with the related
14 action *Boris Y. Levitt v. Yelp! Inc.*, Case No. CV 10-01321 (“*Levitt*”) and after the court enters a
15 scheduling order and a protective order governing discovery. Plaintiffs have failed to explain
16 why Yelp’s proposal is unreasonable or insufficient.¹

17 Plaintiffs’ procedurally deficient motion for sanctions is disingenuous and without merit.
18 Plaintiffs have presented no basis whatsoever for finding that Yelp has engaged in any discovery
19 abuse that might warrant an award of sanctions. Yet, Plaintiffs’ counsel seeks reimbursement for
20 the full cost of two plane tickets that Plaintiffs’ counsel claim to have purchased to attend the
21 deposition, even though one attorney actually made use of her ticket to fly to San Francisco to
22 represent ***another client*** at a hearing in another case in the Northern District on the date specified
23 in the deposition notice, and the other attorney has offered no arguments why he has any claim
24 for anything over the \$100 cancellation fee for the ticket. At any rate, as described in detail
25 below, no sanctions are warranted.

26
27 ¹ Nevertheless, they have not missed the opportunity to argue, in their cross-motion to stay *Levitt* and for
28 appointment as interim class counsel, that the *Cats and Dogs* litigation is farther along than *Levitt*, in part,
because *Cats and Dogs* Plaintiffs have already noticed Yelp’s 30(b)(6) deposition.

1 **II. RELEVANT FACTS**

2 **A. Transfer of *Cats and Dogs* to the Northern District**

3 This action was initially filed in the Central District and was transferred by Judge
4 Fairbank to this Court, pursuant to 28 U.S.C. § 1404(a), on May 3, 2010. (Docket No. 56.) One
5 factor supporting the transfer order was the potential for consolidation of this action with *Levitt*,
6 already pending here. (*Id.* at 6.) The case was opened in this Court on May 28. (Docket No. 57.)
7 On June 2, 2010, Yelp filed an administrative motion to consider whether this action and *Levitt*
8 should be related (*see Levitt*, Docket No. 10), and on June 4, this action was ordered related and
9 assigned to Your Honor. (Docket Nos. 62.)

10 Shortly thereafter, on June 9, Yelp moved to consolidate the two cases, requesting that the
11 Court order the filing of a consolidated complaint; Yelp noticed the earliest available hearing
12 date, July 19. (Docket No. 64.) Plaintiffs in this case declined to stipulate to Yelp’s motion.²
13 Instead, on June 14, Plaintiffs filed an opposition to Yelp’s motion and a cross-motion seeking a
14 stay of the *Levitt* action and designation of this action as the “lead” action, and appointment of
15 Plaintiffs’ counsel as interim class counsel. (Docket No. 65.)

16 **B. Plaintiffs’ Deposition Notice and Yelp’s Response**

17 On May 5, two days after the transfer order and as the case was already en route to the
18 Northern District following that order, Plaintiffs unilaterally noticed Yelp’s 30(b)(6) deposition
19 without meeting and conferring as required by Local Rule 30-1. (Declaration of Matthew D.
20 Brown (“Brown Decl.”) ¶ 4; Docket No. 66-1, Declaration of Jared Beck (“Beck Decl.”), Ex. A.)
21 Plaintiffs never discussed the potential date(s), time, or location of this deposition with Yelp—
22 before or after serving the deposition notice—despite the fact that the parties have engaged in
23 numerous discussions concerning other issues prior to Plaintiffs’ filing of this motion. (Brown
24 Decl. ¶ 5.) Plaintiffs also noticed the deposition for 650 Mission Street, 2nd Floor, San

25 _____
26 ² This stands in contrast to Plaintiffs’ position while the case was still in the Central District, before being
27 transferred to this Court. There, Plaintiffs agreed to the consolidation of *Cats and Dogs* with *LaPausky*
28 *d/b/a D’Ames Day Spa v. Yelp! Inc.*, Case No. CV 10-01578 (C.D. Cal.) (“*LaPausky*”), a related action
that was pending in the Central District but was voluntarily dismissed shortly after counsel for *Cats and*
Dogs Plaintiffs took over the representation of the *LaPausky* plaintiff. (*LaPausky* Docket Nos. 19 and 33.)

1 Francisco, California—a location Yelp does not occupy, and has not occupied for two years.³

2 On June 15 at 6:57 p.m. PST, Yelp served Plaintiffs’ counsel with formal, written
3 objections to the 30(b)(6) notice. (Beck Decl. Exs. D & E.) Yelp generally objected to Plaintiffs’
4 unilaterally declared deposition date as premature given the pending consolidation motion and the
5 fact that the Court has neither held a CMC nor issued a scheduling order. (*Id.* Ex. E.) Yelp also
6 objected to proceeding with the deposition until entry of a protective order, given the highly
7 confidential information the deposition notice seeks. In addition to such general objections, Yelp
8 responded with particularized objections to each of the fifteen deposition topics, many of which
9 are broadly worded and ambiguous, and invited Plaintiffs to meet and confer to clarify such
10 topics. (*Id.*)

11 **C. Plaintiffs’ Communications Prior to Filing of Their “Emergency” Motion.**

12 On June 16 at 1:19 a.m. PST, Plaintiffs’ counsel emailed Yelp and threatened sanctions if
13 Yelp did not agree to the June 21 deposition date. (*Id.* Ex. F.) Without waiting for a response,
14 Plaintiffs’ counsel emailed Yelp at 4:25 p.m. PST that same day, stating Plaintiffs’ intent to file a
15 motion to compel, and giving Yelp two hours in which to stipulate to a shortened time for
16 briefing and hearing. (Brown Decl. ¶ 2, Ex. A.) Despite the declaration of Plaintiffs’ counsel that
17 Yelp did not reply until “well after the end of the business day,” Yelp, in fact, replied to
18 Plaintiffs’ first email at 4:27 p.m. PST—well within standard business hours in California, where
19 Yelp’s counsel is located and this action is venued. (*Id.* ¶ 3; Beck Decl. ¶8.) In its response, Yelp
20 reiterated its concerns with holding the deposition prior to the hearing on consolidation, and,
21 again, offered to meet and confer telephonically (as this Court’s rule requires) and providing
22 specific dates to do so. (Brown Decl. ¶ 3; Beck Decl., Ex. G.)

23 Plaintiffs filed their “emergency” motion to compel and for sanctions a few hours later on
24 June 16. (*See* Docket No. 66 (“Motion”).) Plaintiffs included in the filing a motion to shorten
25 time on the briefing schedule for the motion to compel, asking the Court to schedule the hearing
26 on the motion to compel for two days later, on Friday, June 18, despite the fact that Yelp’s

27 ³ Yelp also does not agree to hold any deposition at its actual offices, an event that would prove highly
28 disruptive to its employees and business.

1 opposition to the motion to shorten time itself would not even be due until Monday, June 21. In
2 accordance with the local rules, Yelp filed its opposition to Plaintiffs’ motion to shorten time on
3 Monday, June 21. (Docket No. 67.) On June 23, Plaintiffs filed the instant amended notice of
4 motion to compel Yelp’s 30(b)(6) deponent for “a date certain” and motion for sanctions.
5 (Docket No. 69.)

6 **D. Plaintiffs’ Counsel’s Role in *Unilever* Case and Appearance as Counsel**

7 *Cats and Dogs* Plaintiffs’ counsel are also plaintiff’s counsel in another case in the
8 Northern District titled *Red v. Unilever United States, Inc.*, Case No. 10 CV 00387 JW, pending
9 before Judge Ware. (See Brown Decl. ¶ 6, Ex. B (docket printout for *Red v. Unilever*.) On May
10 21, Judge Ware scheduled a hearing on defendants’ motion to dismiss in that case for Monday,
11 June 21, 2010. (*Id.*) Two days later—and after all briefing on the motion to dismiss had
12 concluded—Elizabeth Lee Beck, for the first time, filed her formal notice of appearance in that
13 case. (*Id.*)

14 Jared Beck and Elizabeth Lee Beck then purchased their “non-refundable” round-trip
15 plane tickets from Miami to San Francisco on June 13 (again, without confirming the deposition
16 with Yelp beforehand). (J. Beck Decl. ¶ 3, Exs. B and C.) The tickets had counsel returning to
17 Miami the evening of Monday, June 21. According to Jared Beck’s declaration, the Becks
18 purchased these plane tickets “in order to attend the [Yelp] deposition” and they spent a total of
19 \$954.80 on the tickets. (*Id.*) Elizabeth Lee Beck elaborates, stating that “[w]e purchased the
20 foregoing airfare with the intention that Mr. Beck and I would take Yelp’s deposition in San
21 Francisco on June 21st, while Gregory S. Weston and Jack Fitzgerald of the Weston Firm covered
22 the hearing in *Red*.” (E. Beck Decl. ¶ 4.) However, at the motion to dismiss hearing on June 21,
23 Elizabeth Lee Beck was the *only* attorney who appeared on behalf of the plaintiff. (See Brown
24 Decl. ¶ 7, Ex. C.) Jared Beck is silent on what he did with his plane ticket. (See Docket No. 70.)

25 **III. ARGUMENT**

26 **A. Plaintiffs’ Motion to Compel Is Improper.**

27 In bringing this motion to compel, Plaintiffs have disregarded several local rules. *First*,
28 without first meeting and conferring with Yelp, as required by Local Rule 30-1, Plaintiffs

1 unilaterally set the date of June 21 for Yelp’s 30(b)(6) deposition. (Brown Decl. ¶ 4.) *See* L.R.
2 30-1 (“before noticing a deposition of a party . . . the noticing party must confer about the
3 scheduling of the deposition with opposing counsel”).⁴ Nor did Plaintiffs meet and confer *after*
4 serving the notice; in fact, they never even mentioned the deposition once until Yelp served its
5 objections. (Brown Decl. ¶ 5.) Yelp never agreed to this date, and formally objected to both the
6 date and the topics set forth in Plaintiffs’ deposition notice (and requested to meet and confer with
7 Plaintiffs about many of the noticed topics). (Brown Decl. ¶ 4; Beck Decl., Ex. E.)

8 *Second*, Plaintiffs did not meet and confer in good faith prior to filing the motion to
9 compel. In response to Yelp’s objections to Plaintiffs’ deposition notice, Plaintiffs sent an email
10 the next day stating they would change the proposed start *time* or *location* of the deposition, and
11 they threatened to file sanctions against Yelp if Yelp did not appear on the date noticed in the
12 deposition. (Beck Decl., Ex. F.) They did not address Yelp’s grounds for why the deposition is
13 premature, nor did they offer to discuss any of Yelp’s underlying objections on the individual
14 topics. (*Id.*) This was the extent of Plaintiffs’ meet-and-confer efforts prior to filing their motion
15 to compel, which falls far short of what this Court’s rules require. *See* L.R. 37-1(a) (The Court
16 “will not entertain” a motion to compel unless “counsel have previously conferred for the purpose
17 of attempting to resolve *all* disputed issues.”) (emphasis added); Judge Patel Standing Orders ¶ 6
18 (“Parties must comply with the meet and confer requirements of 37-1(a) before contacting the
19 court.”). Contrary to Plaintiffs’ assertions, this is not a meaningful effort to meet and confer, as
20 contemplated by Local Rule 37-1(a). *See Nev. Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 120
21 (D. Nev. 1993) (“Inherent in [a local rule requiring meet and confer discussions prior to filing a
22

23 ⁴ Plaintiffs argue they were not required to abide by the Northern District’s Local Rules because, even
24 though Judge Fairbank had already ordered *Cats and Dogs* to be transferred to the Northern District, the
25 transfer had not yet been administratively effected when they served their deposition notice. Plaintiffs cite
26 no authority for the proposition that they are not bound by the Northern District’s procedural rules after
27 transfer has been ordered, and they appear to admit sidestepping this Court’s rules despite knowing full-
28 well the case was on its way here.

Regardless of what local rules may apply, from a practical standpoint, it is difficult to believe that
Plaintiffs intended to rely on this deposition date, when they at no point reached out to Yelp to confirm the
date(s), time, and location or to inquire as to whether it would be one deponent or multiple deponents
testifying on the many wide-ranging topics set forth in the notice.

1 motion to compel] . . . is the requirement that parties treat the informal negotiation process as a
2 substitute for, and not simply a formalistic prerequisite to, judicial resolution of discovery
3 disputes.”).⁵

4 *Finally*, even if this Court were to grant Plaintiffs’ motion to compel Yelp’s deposition for
5 “a date certain”—which it should not, for reasons detailed below—Plaintiffs have failed to
6 address Yelp’s objections to their fifteen, overly broad, and sometimes vague and ambiguous
7 deposition topics, which cover virtually every aspect of Yelp’s business. (*See* Beck Decl., Ex. E.)
8 For example, Topic 1 in Plaintiffs’ deposition notice seeks testimony regarding “Issues related to
9 class certification, including all elements under Fed. R. Civ. P. 23.” (*Id.*) But it is impossible to
10 designate any witness to speak on this “topic,” which—like other noticed topics—fails Rule
11 30(b)(6)’s requirement that matters for examination be described with “reasonable particularity.”
12 Plaintiffs also seek, in Topic 15, testimony regarding “Yelp’s financial information, including
13 revenue from the sale of advertising subscriptions”—an overly broad topic, like others, without
14 relevance to class certification. (*Id.*) Plaintiffs’ rush to the courthouse seeking an expedited
15 motion to compel is simply a tactical maneuver to avoid a real discussion with Yelp on the
16 problematic scope of these and other topics, and a transparent attempt to avoid having Levitt’s
17 counsel participate in discovery.

18 **B. Plaintiffs’ Motion to Compel Is Unnecessary.**

19 Plaintiffs have made it clear they are pressing for Yelp’s 30(b)(6) deposition to occur as
20 soon as possible. But Plaintiffs fail to explain why an immediate deposition is necessary or why
21 Yelp’s objections to holding the deposition prior to consolidation and a scheduling order are not

22
23 ⁵ The circumstances surrounding the June 21st deposition date reveal that Plaintiffs’ failure to meet and
24 confer may have been tactical. In early May, Plaintiffs unilaterally noticed Yelp’s 30(b)(6) deposition for
25 June 21 “and continuing from day to day as necessary.” (Beck Decl. Ex A.) In late May, Judge Ware set
26 the motion to dismiss hearing date for June 21 in the *Red v. Unilever* matter. Two days later, Plaintiffs’
27 counsel in both the *Red v. Unilever* case and this case, Elizabeth Lee Beck, filed her notice of appearance
28 in *Red v. Unilever*. (Brown Decl., Exs. B & C.) Plaintiffs’ counsel bought their airfare in mid-June (with
a return flight to Miami scheduled for the evening of June 21), and Elizabeth Lee Beck ultimately attended
the June 21 hearing on behalf of plaintiff in *Red v. Unilever*. (*Id.*; Beck Decl. ¶ 3.) Nowhere in this
timeline did Plaintiffs’ counsel seek to confirm with Yelp’s counsel that the deposition was going forward,
despite knowing that Yelp’s position was that such discovery should await the Court’s rulings on the issue
of consolidation.

1 well founded. Plaintiffs have not shown they would suffer any prejudice. Yelp can only wonder
2 whether Plaintiffs are so eager to compel “a date certain” for their 30(b)(6) deposition of Yelp in
3 order to create the appearance that *Cats and Dogs* is further along in the litigation than the related
4 *Levitt* matter.

5 As Yelp has conveyed to Plaintiffs, a deposition at this point is premature for a number of
6 reasons. *First*, Yelp moved to consolidate this case with *Levitt* to streamline the proceedings and
7 to avoid dual, repetitive discovery. Yelp should not be subjected to deposition on the noticed
8 topics in this action only to be re-deposed on the same subjects by plaintiff in *Levitt*.⁶
9 Furthermore, even if the cases are not *consolidated* for all purposes, the Court may still decide to
10 *coordinate* discovery. *Second*, no CMC has been held, nor has a Scheduling Order been entered
11 in either action, and this Court’s Standing Order prohibits filing a motion to dismiss prior to the
12 CMC absent express Court approval. Thus, compelling a deposition of Yelp in the coming days
13 would be unwarranted. *Third*, no protective order has been entered. A protective order is
14 essential, and should be agreed to by all parties, because Plaintiffs seek discovery of confidential
15 information, including trade secrets, critical to Yelp’s continued operation. Yelp cannot have its
16 corporate representatives deposed on such matters until a protective order is in place.

17 In light of the present circumstances, it makes no sense to proceed with a 30(b)(6)
18 deposition now. Yelp has not “cancel[ed]” the noticed deposition. (*See* Motion 2:11.) Yelp
19 merely objects to the timing and scope of the deposition. Yelp intends to participate fully in
20 30(b)(6) depositions but disagrees with Plaintiffs’ proposed timing and scope on reasonable
21 grounds.

22
23 ⁶ Plaintiffs claim that, given Yelp’s desire for coordinated discovery, they would have agreed to Levitt’s
24 counsel’s presence at the deposition. (Motion 3:15-19.) But this statement is directly contradicted by the
25 supporting declaration of Plaintiffs’ counsel, Jack Fitzgerald, which states that having Levitt involved in
26 discovery meet and confer is “improper,” that “meet and confer should take place between Yelp and the
27 Cats and Dogs Plaintiffs,” and that the “dispute” between Cats and Dogs and Levitt as to whether Levitt
28 should stay or dismiss his case or agree to designate Cats and Dogs counsel as interim class counsel “was
not resolved and remains intact.” (Docket No. 66-2, Decl. of Jack Fitzgerald ¶ 3.) Further, the presence of
Levitt’s counsel at a deposition would be meaningless unless a prior agreement or order to coordinate or
consolidate has been made so that Yelp employees are not subjected to duplicative questioning at multiple
depositions.

1 In sum, this motion to compel should be denied because it is improper and unnecessary.
2 After the court determines whether to consolidate this case with *Levitt* and enters a scheduling
3 order, counsel for all parties should meet and confer as to an appropriate date for Yelp’s 30(b)(6)
4 deposition, taking into account the eventual scheduling order. Prior to the agreed-upon date of
5 the deposition, the Parties should meet and confer regarding an appropriate protective order
6 governing confidential information in these actions.

7 **C. Sanctions Are Not Warranted Against Yelp.**

8 Rule 37 does not contemplate an award of sanctions under the circumstances here. Rule
9 37(d)(1)(A)(i) provides that sanctions “may” be awarded where “a party or a party’s officer,
10 director, or managing agent—or a person designated under Rule 30(b)(6) or 31(a)(4) —fails, *after*
11 *being served with proper notice*, to appear for that person’s deposition.” Fed. R. Civ. P.
12 37(d)(1)(A)(i) (emphasis added). As discussed above, the record establishes that the deposition
13 notice was not “proper,” in that Plaintiffs completely failed to comply with Local Rules 30-1 and
14 37, or this Court’s Standing Orders. Plaintiffs never met and conferred with Yelp about the date
15 of the deposition, either before or after the notice was served. Nothing in Rule 37 or elsewhere
16 compels an award of sanctions *in favor* of a party that has violated its own discovery obligations
17 in this manner.

18 Given Yelp’s reasonable concerns with going forward with a 30(b)(6) deposition given
19 the procedural posture of this case (and the related *Levitt* case), there is also no basis for finding
20 that Yelp has engaged in any discovery abuse that might warrant an award of sanctions. *See*
21 *Davis v. Nevarez*, No. 3:07-CV-00427-EJL-LMB, 2009 WL 1468705, at *2 (D. Idaho May 22,
22 2009) (“Rule [37]’s purpose [is] to deter discovery abuses and [p]romote full and efficient
23 discovery.”) (citing *Marchand v. Mercy Med. Ctr.*, 22 F.3d 933 (9th Cir. 1994)).

24 Moreover, sanctions are not necessary to compensate Plaintiffs for any actual losses
25 incurred because Plaintiffs had no reasonable expectation of going forward with the deposition on
26 the date it was unilaterally set. *See McFadden v. Ballard, Spahr, Andrews, & Ingersoll, LLP*, 243
27 F.R.D. 1, 9 (D.D.C. 2007) (denying motion for sanctions “for costs Defendants needlessly
28 incurred” showing up for the deposition “fully aware [the deponent] would not be present,” and

1 “[the deponent’s] failure to attend the deposition was in good faith”). Plaintiffs were notified in
2 advance that Yelp’s witnesses would not be made available on that date. Their argument that
3 Yelp’s objections came at the “11th hour” is disingenuous given that in the parties’ numerous
4 calls and correspondence in the preceding weeks, Plaintiffs themselves never once raised the
5 issue of the deposition, the location, the topics to be covered, the number of witnesses to be
6 deposed, or the date or dates on which they might proceed. (Brown Decl. ¶¶ 4-5; cf. Beck Decl.
7 Ex. A at 2:9-11.) Plaintiffs’ failure to confirm the deposition is particularly difficult to square
8 with their current motion for sanctions given that they have long known Yelp’s position that this
9 case should be consolidated with the *Levitt* case, that discovery in the two cases should proceed in
10 a coordinated and non-duplicative manner, and that a protective order is needed prior to
11 proceeding with discovery regarding confidential business matters.⁷

12 Finally, Plaintiffs’ motion for sanctions is procedurally deficient for its failure to comply
13 with Local Rule 37-4. *First*, Local Rule 37-4(a) obligates the moving party to comply with Local
14 Rule 7-8, which requires that a motion for sanctions be “separately filed.” *See* L.R. 37-4(a) and
15 L.R. 7-8. Here, Plaintiffs have filed a joint motion to compel and motion for sanctions. *Second*,
16 Local Rule 37-4(b)(3) requires that a motion for sanctions “[b]e accompanied by competent
17 declarations,” which “*itemize with particularity* the otherwise unnecessary expenses, including
18 attorneys fees, directly caused by the alleged violation or breach, and *set forth an appropriate*
19 *justification* for any attorney-fee hourly rate claimed.” L.R. 37-4(b)(3) (italics added). Here,
20 Plaintiffs have failed to itemize their attorneys fees, instead merely providing a barebones
21 statements of the number of hours billed, and they have failed to provide any justification for their
22 hourly rate. (*See* Beck Decl. ¶ 9.)

23 _____
24 ⁷ Further underscoring an inference that Plaintiffs could not reasonably have expected the deposition
25 would be going forward as noticed, counsel’s “non-refundable” plane tickets state that they were
26 scheduled to return to Florida on June 21 at 9:55 p.m. (Beck Decl. Exs. B and C.) But their deposition
27 notice, on 15 broad topics, purports to be for June 21 “and continuing from day to day as necessary.” (*Id.*
28 Ex. A at 2:9-11.) Given Plaintiffs’ claims about the non-refundable nature of the tickets, it is questionable
that they bought such tickets in reliance on the deposition(s) proceeding on the noticed date and for
additional days (for multiple witnesses, depending on scheduling issues) as necessary without first
conferring with Yelp about the logistics (i.e., place, number of witnesses/days and topics) for the
deposition.

1 **D. Plaintiffs’ Claim for Reimbursement of Airfare is Unwarranted.**

2 As discussed above, there is no basis for an award of sanctions. Nevertheless, Yelp notes
3 that Plaintiffs’ claim for reimbursement of their airfare is unwarranted.

4 Plaintiffs’ counsel argue that they incurred the cost of “non-refundable airfare to San
5 Francisco in order to attend the deposition as scheduled.” (Beck Decl. ¶ 3.) Specifically,
6 Plaintiffs’ counsel seeks recovery of “their non-refundable costs, i.e., \$954.80” in airfare.
7 (Motion 4:7-8.) But Elizabeth Lee Beck “*made use of* the plane ticket by travelling to San
8 Francisco” to attend a motion to dismiss hearing for another case in the Northern District (*Red v.*
9 *Unilever*)—scheduled at the same time as the noticed deposition—on behalf of *another client*.
10 (Brown Decl. Ex. C; Lee Beck Decl. ¶ 5 (emphasis added).) It is thus disingenuous for counsel to
11 claim that she is out the cost of her plane ticket, and there is no basis for this Court to order Yelp
12 to reimburse her for plane fare.

13 Further, even “non-refundable” tickets are exchangeable for a “cancellation” or “change”
14 fee. According to JetBlue’s website, Plaintiffs could have cancelled their tickets and taken a
15 credit to their account for a fee of \$100. (Brown Decl. ¶ 8, Ex. D.) At most, Plaintiffs’ counsel is
16 out of pocket \$100 for the fee to change the plane reservation of Jared Beck (which, as discussed
17 above, Yelp should not have to pay, in any event)—not the \$954.80 that they seek.

18 If anything, in light of the circumstances outlined above, there is ample basis for the Court
19 to find that this motion was brought “without substantial justification” for purposes of Rule
20 37(a)(5)(B) and to award Yelp the fees and costs it has incurred to oppose the motion. Yelp
21 requests leave to move for such relief and, if granted, will file a declaration supporting its
22 reasonable fees and costs.

23 **IV. CONCLUSION**

24 For the foregoing reasons, Yelp respectfully requests that the Court deny Plaintiffs’
25 motion to compel and for sanctions in its entirety.

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Dated: July 6, 2010

COOLEY LLP

/s/ Matthew D. Brown
Matthew D. Brown (196972)

Attorneys for Defendant Yelp! Inc.