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14 UNITED STATES DISTRICT COURT
 15
 16 NORTHERN DISTRICT OF CALIFORNIA

17 PETROLIAM NASIONAL BERHAD,)
 18)
 19 Plaintiff,)
 20)
 21 vs.)
 22)
 23 GODADDY.COM, INC.,)
 24)
 25 Defendant.)

CASE NO.: 09-CV-5939 PJH

**GO DADDY’S RESPONSE TO
 PETRONAS’S OBJECTIONS TO
 BILL OF COSTS**

26 _____)
 27)
 28 GODADDY.COM, INC.,)
 29)
 30 Counterclaimant,)
 31)
 32 vs.)
 33)
 34 PETROLIAM NASIONAL BERHAD,)
 35)
 36 Counterclaim Defendant.)

Honorable Phyllis J. Hamilton

37 Defendant and Counterclaimant GoDaddy.com, Inc. (“Go Daddy”) respectfully submits
 38 this response to the objections of Plaintiff and Counterclaim Defendant Petroliam Nasional Berhad
 39 (“Petronas”) to the Bill of Costs filed by Go Daddy on February 29, 2012. The objections raised
 40 by Petronas are an attempt to evade responsibility for the monetary costs incurred by Go Daddy in

1 defending itself against an unnecessary lawsuit brought by Petronas. Furthermore, Pertronas's
2 accusation that there is "nothing [that]. . . supports the costs claimed" in Go Daddy's Bill of Costs
3 ignores the documentary evidence and case law cited in the Declaration of Joseph G. Fiorino in
4 support of Go Daddy's Bill of Costs ("Fiorino Decl.") and demonstrates a narrow and erroneous
5 understanding of Civil Local Rule 54.

6 **Deposition Transcripts**

7 Civil Local Rule 54-3(c)(1) provides that, with respect to deposition transcripts, "[t]he
8 cost of an original and one copy of any deposition (including videotaped depositions) taken for
9 any purpose in the case" is recoverable. Petronas's assertion that videotaping of a deposition is to
10 be viewed as a superfluous additional copy is misplaced. See *Objection to Go Daddy's Bill of*
11 *Costs* ("Obj.") at 1-2. Both the videotaping, including technician fees, and the written transcripts
12 are recoverable. Indeed, "a sensible reading of [Rule 54-3(c)(1) is that it] covers the cost of
13 videotaping and the cost incurred by the court reporter associated with obtaining a stenographic
14 transcription of a deposition, as well as the cost of one copy of the videotape and of the written
15 transcript." *MEMC Electronic Materials v. Mitsubishi Materials*, No. C 01-4925 SBA (JCS),
16 2004 WL 5361246, at *3 (N.D. Cal., Oct. 22, 2004) (awarding costs for both the videotaping and
17 transcribing of depositions); see also *Hynix Semiconductor, Inc. v. Rambus Inc.*, 697 F. Supp. 2d
18 1139, 1150 (N.D. Cal. 2010) ("The cost of videotaping, including video technician fees, as well as
19 the cost of the videotape and written transcript are taxable costs.").

20 Furthermore, Petronas's claim that Go Daddy seeks more than an original and one copy of
21 any transcript is incorrect. The invoices for Items 4-6 of the Itemized Bill of Costs each reflect
22 charges that are for only an original and one certified copy of each deposition, and that invoices
23 corresponding to Items 7-10 are for merely one certified copy of each deposition—without any
24 mention of charges for videotaping. See Exhibit C to Go Daddy's Bill of Costs at 5-11. In the
25 invoices for Items 1-3, which (as discussed above) are for the properly recoverable cost of
26 videotaping, the column for "DVD Sync Copies" is a reference to the number of discs required to
27 capture the deposition, as the testimony from one deposition spanned across multiple DVDs. It is
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1 not, as Petronas contends, a reference to the multiple copies of a single deposition. *See* Exhibit C
2 to Go Daddy’s Bill of Costs at 2-4.

3 Similarly, other necessary and natural costs—such as for rough discs, delivery, and
4 expedited services—tied to the transcribing of depositions are recoverable. *See Service Employees*
5 *Intern. Union v. Rosselli*, No. C 09-00404 WHA, 2010 WL 4502176, at *3-4 (N.D. Cal. Nov. 1,
6 2010) (overruling objections to reporter’s invoices listing “‘rough disk’ fees, ‘expedited’ services
7 charges, parking reimbursements, charges for court reporter ‘waiting time,’ charges for court
8 reporter ‘before/after hours,’ delivery costs, appearance and travel fees, ‘video digitizing to
9 DVD[s],’ and ‘video synchronizing’”; awarding over \$200,000 in costs). The argument that Go
10 Daddy seeks to be reimbursed for “deposition transcript costs that are not allowed” is another
11 exaggeration by Petronas. *See* Obj. at 2. For Items 1-13, no invoice reflects even a single charge
12 for miniscripts; only Item 6 contains a charge for ACSII condensing for a total of \$16.00; and only
13 Item 10 contains expedited delivery charges (which, as discussed above, are properly recoverable).
14 *See* Exhibit C to Go Daddy’s Bill of Costs at 2-11.

15 **Exemplification and Reproduction of Documents**

16 Petronas’s insistence that it should not have to pay costs for reproduction and
17 exemplification of documents with respect to Items 14-36 is without merit. Under Civil Local
18 Rule 54-3(d)(2), “[t]he cost of reproducing disclosure or formal discovery documents when used
19 for any purpose in the case is allowable.” As indicated in the Itemized Bill of Costs and the
20 Fiorino Decl., charges for reproduction were incurred to reproduce discovery documents, several
21 of which were also reproduced for use in depositions. *See* Fiorino Decl. ¶ 8; *see also* Itemized Bill
22 of Costs, Items 14-36. Petronas (again) cites to no authority to back up its claim that Go Daddy
23 must go further and specifically identify each of the documents that were reproduced. Over the
24 course of the litigation Petronas served 57 document requests on Go Daddy, requiring the
25 Company to convert and reproduce documents from multiple databases to meet its discovery
26 obligations. The costs associated with reproduction of such discovery documents is recoverable
27 under Rule 54-3(d)(2). *See Parrish v. Manatt, Phelps & Phillips, LLP*, No. C 10-03200 WHA,
28 2011 WL 1362112, at *2 (N.D. Cal Apr. 11, 2011) (holding that costs incurred for “reproduction,

1 scanning, [conversion,] and imaging of client documents ‘for review and potential production’ or
2 ‘for initial production’ . . . are properly recoverable”). In addition, Go Daddy has made a
3 conscious effort to be conservative in seeking costs for reproduction by only submitting the
4 invoices of outside vendors for recovery. *See* Exhibit C to Bill of Costs at 15-36. Go Daddy has
5 foregone seeking the photocopying costs charged by its counsel Wilson Sonsini Goodrich &
6 Rosati, in order to specifically avoid seeking the cost of reproducing copies of motions, pleadings,
7 notices, and other routine case papers.

8 Petronas also improperly implies that Go Daddy has sought costs for “intellectual effort” in
9 connection with the production of documents. *See* Obj. at 4. However, Petronas fails to cite to
10 any instances where Go Daddy has allegedly done so and relies on a case, *Zuill v. Shanahan*, 80 F.
11 3d 1366 (9th Cir. 1996), that predates the age of e-discovery and deals with the unrelated matter of
12 fees and copying costs from a copyright office. Furthermore, the “intellectual effort” that the
13 court in *Zuill* speaks of is a reference to attorney’s fees for preparation of a production (*see id.* at
14 1371). Here, Go Daddy’s Bill of Costs does not seek any recovery for its attorneys’ time in
15 reviewing or preparing documents for production. Petronas’s objections also misleadingly suggest
16 that Go Daddy has sought to recover oppressive costs for optical character recognition (“OCR”)
17 and metadata extraction in connection with reproducing documents. *See* Obj. at 3-4. However, for
18 Items 14-36 of the Itemized Bill of Costs, no invoice contains a single charge for metadata
19 extraction, and only a single invoice (for Item 21) has a \$4.20 charge for OCR.

20 **Preparation of Charts, Diagrams or Other Visual Aids**

21 Petronas states that, under Civil Local Rule 54-3(d)(5), the cost of preparing a chart,
22 diagram, or other visual aid is reimbursable where “reasonably necessary to assist the jury or the
23 Court in understanding the issues. . .” *See* Obj. at 5. Go Daddy agrees. This is the very reason the
24 demonstrative (Item 37) was prepared by Go Daddy and used in the successful December 7, 2011
25 motion to dismiss hearing: to assist the Court in understanding the complex litigation timeline of
26 this case against the backdrop of the concurrent *in rem* lawsuits brought by Petronas against the
27 disputed domain names.
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Go Daddy respectfully requests that the Items in its Bill of Costs be awarded.

Dated: March 16, 2012

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Joseph G. Fiorino
Joseph G. Fiorino

Attorneys for Defendant/Counterclaimant
GODADDY.COM, INC.