

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:11-cv-23483

YS CATERING, LLP,

Plaintiff,

v.

YELP! INC.,

Defendant.

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**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant, Yelp! Inc. (“Yelp”), hereby files this Notice of Removal of the lawsuit entitled YS CATERING, LLP v. YELP! INC., pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 11-29280-CA-08 (the “State Court Action”). The grounds for removal are as follows:

1. This Notice of Removal has been filed within the time prescribed in 28 U.S.C. § 1446(b). This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a).

**Background**

2. This is an action whereby YS CATERING, LLP (“Plaintiff”), has alleged that Defendant has engaged in practices constituting defamation by implication.

3. Yelp is the sole named defendant in the State Court Action. The Complaint was filed on or about September 13, 2011. A copy of all pleadings served on Defendant and on file in the State Court Action is attached hereto as Composite Exhibit A.

### Diversity of Citizenship

4. At all times that the Complaint was filed in the State Court Action and at the time of this removal, Defendant Yelp! Inc. is a corporation incorporated under the laws of the State of Delaware, with its principal place of business located at 706 Mission Street, 9th Floor, San Francisco, California 94103. It is at this location that nearly all executive officers operate and nearly all corporate decisions are made. Yelp maintains no offices in the State of Florida.

5. Pursuant to 28 U.S.C. § 1332(c)(1), a corporation is a citizen of the state in which it is incorporated and of the state where it maintains its principal place of business. Accordingly, Defendant is a citizen of Delaware and California.

6. Plaintiff YS Catering, LLP is a Florida limited liability partnership with its principal place of business in Miami-Dade County, Florida. Complaint ¶ 2. Plaintiff is therefore a resident and citizen of the State of Florida.

7. Therefore, complete diversity of citizenship exists between the parties within the meaning of 28 U.S.C. § 1332(a)(1).

### Amount in Controversy

8. The amount in controversy in this action exceeds seventy-five thousand dollars (\$75,000.00). Plaintiff alleges entitlement to money damages and an injunction, without specifying the amount or value thereof, merely alleging that such amount is “in excess of \$15,000.00, exclusive of costs.” Complaint ¶ 1.

9. Where a complaint only alleges unspecified damages and does not support the amount in controversy, the defendant in a diversity case may invoke federal jurisdiction so long as it can show by a preponderance of the evidence that the amount in controversy is more likely

than not to exceed the \$75,000.00 jurisdictional requirement. *See Tapscott v. MS Dealer Serv. Corp.*, 77 F.3d 1353, 1359 (11th Cir. 1996).

10. It is well settled that a defendant may use written communications to determine if the case is removable. *See Essenson v. Coale*, 848 F. Supp. 987, 989-90 (M.D. Fla. 1994); *Jade East Towers Developers v. Nationwide Mut. Ins. Co.*, 936 F. Supp. 890, 892 (N.D. Fla. 1996).

11. In written communications made after filing suit, Plaintiff expressed the value of its claim in terms of a dollar amount per customer. More specifically, Plaintiff claims that its damages average \$3,000.00 per customer and that “hundreds of customers” have been affected, making Plaintiff’s estimation of damages at least \$600,000.00.

12. The foregoing evidence amply supports a conclusion that the amount in controversy, for purposes of diversity jurisdiction, exceeds the minimum requirement of \$75,000.00. As a result, this Court has subject matter jurisdiction over Plaintiff’s Complaint.

#### Timing

13. Because Defendant removed this case on September 23, 2011, Defendant is within thirty (30) days of the date it first received “other paper” indicating that the case was removable, i.e., the email from Plaintiff’s counsel providing Plaintiff’s estimation of damages. 28 U.S.C. § 1446(b).

#### Process and Pleadings

14. Pursuant to 28 U.S.C. § 1446(a), copies of all process and pleadings served upon Defendant, and the pleadings now on file in the State Court Action, have been herewith provided. *See Exhibit A.*

Conclusion

15. This Court has removal jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 1441. Defendant therefore exercises its right pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 to remove this action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida, Miami Division.

WHEREFORE, Defendant, Yelp! Inc. requests that this action proceed in this Court as an action properly removed pursuant to 28 U.S.C § 1441.

Dated: September 23, 2011

Respectfully submitted,

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*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, on this 23rd day of September, 2011, via U.S. Mail to Plaintiff's counsel, David S. Willig, 2837 SW 3rd Ave., Miami, Florida 33129.

s/Jason A. Fischer