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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA  
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10 TROAS V. BARNETT,

Case No. 1:05-cv-01022-BAM PC

11 Plaintiff,

**ORDER DENYING PLAINTIFF'S  
MOTION TO FILE REPLY AS MOOT  
(ECF Nos. 303, 304)**

12 v.

13 MARTIN GAMBOA, et al.,

**ORDER DENYING OBJECTIONS TO  
BILL OF COSTS  
(ECF No. 299)**

14 Defendants.  
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16 Following a trial by jury, judgment was entered in favor of Defendants Gamboa, Duran  
17 and Torres on January 30, 2013. Defendants submitted a bill of costs for \$1,303.94 on February  
18 12, 2013. Plaintiff filed an objection on March 4, 2013, which was labeled a request for relief  
19 from bill of costs and included a proof of service dated February 26, 2013. (ECF No. 299.)  
20 Defendants filed an opposition on March 18, 2013. (ECF No. 302.) On April 10, 2014, Plaintiff  
21 filed a motion requesting that his response to Defendants' opposition be filed. (ECF No. 303.)  
22 Plaintiff's response was entered on the Court's docket the same day. (ECF No. 304.)

23 A. Request to File Reply

24 As stated, Plaintiff filed a motion requesting that his response to Defendants' opposition be  
25 filed. Plaintiff's motion is unnecessary because his response was filed on April 10, 2014.  
26 Accordingly, the motion shall be denied as moot.

27 B. Objections to Bill of Costs

28 As an initial matter, Plaintiff's objection to the bill of costs was not timely filed. Pursuant

1 to Local Rule 292(c), a party against whom costs are claimed may, within seven days from the  
2 date of service, filed specific objections to claimed items. Applying the prison mailbox rule to  
3 Plaintiff's objection, it was deemed filed on February 26, 2013. *Douglas v. Noelle*, 567 F.3d  
4 1103, 1107 (9th Cir. 2009). Plaintiff's objection was filed fourteen days after service of the Bill of  
5 Costs. Although Plaintiff's objections may be disregarded as untimely, the Court nonetheless  
6 considers the substance of Plaintiff's objections.

7 Defendants seek an award of costs for the fees incurred in obtaining transcripts of  
8 Plaintiff's deposition. (ECF No. 296, p. 1 and Ex. A.) "Fees for printed or electronically recorded  
9 transcripts necessarily obtained for use in the case" are recoverable as costs. 28 U.S.C. § 1920(2).

10 Plaintiff first objects to these costs based on an assertion that the changes he sought to  
11 make in his deposition testimony were not made to the recorded transcript and were not read into  
12 the record. (ECF No. 299, p. 2.) Plaintiff's argument regarding the reading of the errors into the  
13 record is unrelated to the propriety of awarding costs to the prevailing defendants for amounts  
14 occurred in obtaining deposition transcripts. Moreover, during the course of the trial, defense  
15 counsel expressly noted that Plaintiff's purported changes to the original deposition transcript  
16 were included in the testimony on an errata sheet. Plaintiff also acknowledged that the errata sheet  
17 was attached to the transcripts. (ECF No. 314, 157:3-158:5.)<sup>1</sup>

18 Plaintiff next objects that deposition costs should not be allowed where the deposition was  
19 taken merely for counsel's convenience. (ECF No. 304, p. 2.) Plaintiff's objection lack merit. At  
20 trial, Defendants relied on the deposition transcript during cross-examination of Plaintiff. See  
21 ECF No. 314. In other words, the deposition was not taken merely as a convenience for defense  
22 counsel, but was necessarily obtained for use in the case.

23 The Court finds that Plaintiff's reasons for denying costs are not sufficiently persuasive to  
24 overcome the presumption in favor of an award. Fed. R. Civ. P. 54(d)(1); Save Our Valley v.  
25 Sound Transit, 335 F.3d 932, 944-45 (9th Cir. 2003). Accordingly, Plaintiff's objections shall be  
26 denied.

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28 <sup>1</sup> Page numbers refer to the pagination of the Court's electronic docket.

1 C. Conclusion and Order

2 For the reasons stated, IT IS HEREBY ORDERED as follows:

- 3 1. Plaintiff's motion requesting that his response to Defendants' opposition be filed is  
4 DENIED as moot;  
5 2. Plaintiff's objections to Defendants' bill of costs are DENIED; and  
6 3. Defendants' bill of costs in the amount of \$1,303.94 is GRANTED.

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8 IT IS SO ORDERED.

9 Dated: June 2, 2014

/s/ Barbara A. McAuliffe  
10 UNITED STATES MAGISTRATE JUDGE  
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