

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JAMES P. DEFAZIO, et al.,
Plaintiff.

NOS. CIV. 2:04-1358 WBS GGH
2:05-0559 WBS GGH
2:05-1726 WBS GGH
CONSOLIDATED

HOLLISTER, INC., et al.,
Defendants

ORDER RE: COSTS

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After a fifteen-day bench trial, the court found in favor of all defendants on all claims and judgment was entered on April 6, 2012. (Docket Nos. 664, 665.) Plaintiffs appealed and the Ninth Circuit affirmed this court's decision on May 15, 2015. (Docket No. 697.) Pursuant to the Ninth Circuit's mandate, its judgment took effect on June 8, 2015. (Docket No. 698.) On June 22, 2015, defendants filed a Bill of Costs limited to the costs incurred on appeal, which total \$15,789.50. (Docket No. 700.)

1 Plaintiffs' sole objection to defendants' Bill of Costs
2 is that it is untimely under Eastern District Local Rule 292
3 because it was filed over three years after this court entered
4 judgment. Local Rule 292's deadline for filling a Bill of Costs
5 "[w]ithin fourteen (14) days after entry of judgment" logically
6 applies only when costs were incurred in the district court prior
7 to entry of judgment. Here, defendants seek only costs incurred
8 in defending that judgment on appeal and defendants thus had
9 fourteen days after the issuance of the Ninth Circuit's mandate
10 to seek those costs. See E.D. Local R. 292(b) ("Within fourteen
11 (14) days after entry of judgment or order under which costs may
12 be claimed, the prevailing party may serve on all other parties
13 and file a bill of costs conforming to 28 U.S.C. § 1924.")
14 (emphasis added). Defendants never sought and do not now seek
15 costs incurred to defend this case in the district court.
16 Defendants therefore timely filed their Bill of Costs to recover
17 costs incurred on appeal.

18 Federal Rule of Appellate Procedure 39 provides that
19 costs are taxed against the appellant if the judgment is
20 affirmed, and the Ninth Circuit mandate taxed costs against
21 plaintiffs in the amount of \$499.50. (Docket No. 698.) Federal
22 Rule of Appellate Procedure 39(e) also provides that costs for
23 the reporter's transcript and the fee for filling the appeal may
24 be taxed in the district court. In their Bill of Costs,
25 defendants seek costs only for (1) the reporter's transcripts;
26 (2) the filing fee for the appeal; and (3) the costs taxed by the
27 Ninth Circuit. After reviewing the bill, and in light of the
28 fact that plaintiffs have objected only to the timeliness of

1 defendants' request, the court finds the requested appeal costs
2 are reasonable. Accordingly, costs of \$15,789.50 are taxed
3 against plaintiffs.

4 IT IS SO ORDERED.

5 Dated: August 31, 2015



6 **WILLIAM B. SHUBB**
7 **UNITED STATES DISTRICT JUDGE**

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