United States District Court,
M.D. Florida.
Sylvester BUTLER, et al., Plaintiffs,
v.
James V. CROSBY, et al., Defendants.
No. 3:04CV917-J-32MMH.

filed Sept. 20, 2004.
June 24, 2005.
last filing April 21, 2006.

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ORDER

HOWARD, Magistrate J.

***1** THIS CAUSE is before the Court on Plaintiffs' Verified Motion for Award of Costs Relating to Defendants' Failure to Waive Formal Service of Process and Attorneys' Fees (Doc. No. 86; Motion) filed May 6, 2005. In support of the Motion, Plaintiffs have filed Plaintiffs' Composite Exhibit "A" (Doc. No. 90; Exhibit). Defendants object to the relief sought by Plaintiffs and have raised a number of arguments in opposition to the Motion. *See* Defendants' Response in Opposition (Doc. No. 93; Response). After reviewing the Response, Plaintiffs sought and obtained leave of Court to file a reply brief addressing Defendants' arguments. *See* Order (Doc. No. 99); Plaintiffs' Reply in Support (Doc No. 97; Reply). The matter is now ripe for resolution.

In the Motion, Plaintiffs seek an award of costs incurred in effecting service of process on certain Defendants who failed to comply with a request to waive personal service in accordance with Rule 4 of the Federal Rules of Civil Procedure (Rule(s)).*See* Motion at 4. In support of their request, Plaintiffs allege that 1) they "complied fully with subsections (A) through (F)" of Rule 4(d)(1),[FN1] 2) 22 Defendants [FN2] failed to comply with the requests for waiver of formal service, 3) Plaintiffs' incurred costs in effecting formal service after giving Defendants thirty days to return the waivers, and 4) Rule 4 entitles Plaintiffs to recover the costs relating to personal service of the 22 non-waiving Defendants as well as any attorneys' fees incurred in the preparation of the Motion. *See* Motion at 2, 3, 4. Specifically, Plaintiffs seek $250.25 for an investigator to discover the home address of each Defendant, $1,652.53 for service of process, and $1,828.00 for attorneys' fees relating to preparing the Motion. *See* Motion at 4.

FN1.*See* Motion at 2. Plaintiffs refer the Court to Rule 4(d)(1), but that Rule regards a defendant's right to challenge venue or jurisdiction at a later time. *See*Rule 4(d)(1).Rule 4(d)(2) lays out the requirements for the notice and waiver with which a plaintiff must comply to trigger operation of the cost-shifting provision contained in the last sentence of that Rule. *See*Rule 4(d)(2). This Court presumes Plaintiffs mean to say they complied with Rule 4(d)(2), not Rule 4(d)(1). Defendants have not suggested that Plaintiffs failed to

comply with any requirement of Rule 4(d)(2).

FN2. The 22 include James Crosby, Bradley Carter, George Sapp, Stephen Sirmones, Allen Clark, Mark Redd, Keith Musselman, Tony Anderson, William Muse, Colin Halle, Steven Tricocci, Tim Chastain, Rodney Barnett, Ronnie Barton, Kenneth Lampp, Wendell Whitehurst, Stacey Green, John Riggs, Glynn Reeder, Oscar Shipley, Dean Ellis, and Jeffrey Lindsey. Plaintiffs refer to these 22 as the "nonwaiving" Defendants. *See* Motion at 2.

In the Response, Defendants raise several objections. First, Defendants argue the Motion is "premature" and would be more appropriately raised after rendering of final judgment. *See* Response at 2 (quoting Local Rule 4.18 of the Middle District of Florida). Second, they challenge as unreasonable Plaintiffs' demands for waiver and suggest that Plaintiffs unnecessarily spent time and money on personal service when they allegedly knew that Defendants were working to return the waivers.[FN3] *Seeid.* Third, they assert Plaintiffs did not provide enough documentary evidence regarding the reasonableness of time spent and rate billed for preparation of the Motion; and finally, they claim the Motion is insufficiently specific as to how each Defendant should bear Plaintiffs' costs. *Seeid.* at 3-4.

FN3. To support their assertions, Defendants refer to an affidavit made by Susan Maher, General Counsel for the Department of Corrections (DOC). According to Ms. Maher, DOC's policy discourages employees from signing waivers when they are sued for activities arising out of their jobs. Response, Affidavit at [unnumbered] 2. Also, Maher states that those who accepted substitute service for DOC employees contravened DOC policy and accepted service without authorization. *Seeid.* at [unnumbered] 4. DOC policy, whatever it may be, does not alter the requirements of the Rules.

Plaintiffs address Defendants' objections in the Reply. They contend first that Local Rule 4.18 draws its authority from Rule 54, which "does not apply where another federal rule of civil procedure[, like Rule 4(d),] provides for an award of costs or fees". Reply at 3. Next, they argue that they did not act unreasonably in commencing formal service after they gave Defendants thirty days to return the waivers and received communications indicating that Defendants would not waive formal service. *Seeid.* at 4. They further contend the attorneys' fees relating to the preparation of the Motion are reasonable, providing the sworn testimony of Attorney Michael Dewberry in support of that assertion. *Seeid.* at 7. Finally, they deny that the Motion lacks specificity as to the costs associated with each Defendant and assert that the invoices provided identify which costs relate to which non-waiving Defendant. *Seeid.* at 8. Plaintiffs also propose an even division of $83.09 for attorneys' fees for each non-waiving Defendant. *Seeid.*

DISCUSSION

***2** In the Motion, Plaintiffs invoke operation of Rule 4(d), which states:

> [a]n individual ... subject to service under subdivision (e), (f), or (h) ... has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiffs may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons.... If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

Rule 4(d)(2). Defendants do not challenge that they were subject to service under Rule 4. They do not challenge that Plaintiff incurred the costs detailed in Exhibits "C" through "E" of the Motion or that Plaintiffs complied with subdivisions (A) through (G) of Rule 4. Indeed, based on the Court's review of Composite Exhibit "A", it appears that Plaintiffs requested that Defendants waive service in accordance with Rule 4, thereby subjecting Defendants to the duty to avoid unnecessary costs of formal service. Defendants' failure to tend to this duty triggers application of the cost-shifting provision of the Rule. *See*Rule 4(d)(2).

Rule 4 mandates that the Court tax the cost of formal service against Defendants if they failed to waive formal service without "good cause." [FN4]*Id.* The record adequately establishes that the non-waiving Defendants did not comply with Plaintiffs' requests to waive formal service and that Plaintiffs incurred the cost of effecting service of process and attorneys' fees for preparing the Motion. Thus, the Court must determine whether Defendants have shown good cause for their failure.

> FN4. Further, Rule 4(d)(5) provides that costs imposed on defendants under Rule 4(d)(2)"shall include the costs subsequently incurred in effecting service ..., together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service."Rule 4(d)(5).

As a term, "good cause" does not carry a fixed definition; instead, it takes on different meanings in different contexts. When invoked by a federal rule of civil procedure, good cause will depend on the context of that rule. *See,e.g., Parsons v. General Motors Corp.*, 85 F.R.D. 724, 726 (D.C.Ga.1980) (court interpreting good cause within the context of a discovery rule); *Georgia Television Co. v. TV News Clips of Atlanta, Inc.*, 718 F.Supp. 939, 953 (N.D.Ga.1989). The 1993 Advisory Committee on the Federal Rules of Civil Procedure provided some discussion of "good cause" within the context of Rule 4(d), suggesting two instances of its existence: when "a defendant did not receive the request or was insufficiently literate in English to understand it."Fed.R.Civ.P. 41993 advisory committee's note. While a defendant should be given a chance to show good cause, the advisory committee cautions that a finding of "sufficient cause should be rare." *Id.* Else, defendants might frustrate too easily the purpose of the Rule and unnecessarily drive up the costs of litigation. *See* Wright and Miller, *Federal Practice and Procedure: Civil 3d* § 1092.1 (2002) (noting also that "objecting that 'the claim is unjust' or that 'the court lacks jurisdiction' is not good cause within the meaning of the rule"). Still, a finding of good cause is a matter of judicial discretion, and will be made given the proper circumstances. *See generally Southern Ry. Co. v. Landham*, 403 F.2d 119, 126 (11th Cir.1968); *U.S. v. Wright Motor Co., Inc.*, 536 F.2d 1090, 1093 (11th Cir.1976).

***3** Courts examining failures to waive service have provided additional guidance regarding the types of circumstances that might justify a finding of good cause. For example, where defendants receive insufficient notice of the action because of plaintiffs' failure to comply properly with Rule 4(d)(2), courts find good cause for defendants' failure to return waivers. *See Spivey v. Bd. of Church Extension and Home Mission of Church of God*, 160 F.R.D. 660, 663 (M.D.Fla.1995) (good cause for defendant's failure to return waiver when plaintiff did not address notice to defendant directly, as per Rule 4(d)(2)(A), even though defendant probably knew that it was intended for him); *Dymits v. American Brands, Inc .*, 1996 WL 751111, *14 (N.D.Cal.1996) (good cause when plaintiffs gave defendants only six days after receipt of waiver before serving him personally, rather than the thirty days required by Rule 4(d)(2)(F)); *Steinberg v. Quintet Publ'g. Ltd. et al.*, 1999 WL 459809, *2 (S.D.N.Y. June 29, 1999) (good cause shown in demonstrating that plaintiffs failed to meet the requirements in Rule 4(2)(A)); *Leung v. SHK Mgmt., Inc.*, 1999 WL 972008, *1-*2 (E.D.Pa. Oct. 20, 1999) (motion for award denied because plaintiff failed to show that the notice and waiver accorded with 4(d)(2)); *Farrell v. Woodham*, 2002 WL 32107644, *5 (M.D.Fla. May 29, 2002) (no award because plaintiff did not comply with the technical requirements of Rule 4(d)(2)). Additionally, where some ambiguity clouds the understanding of Rule 4(d)'s application, courts have found good cause for failing to waive service. *See Whatley v. District of Columbia*, 188 F.R.D. 1, 2 (D.C.1999) (good cause if there was no authority regarding the waiver of service by employees of municipal corporations; while that particular ambiguity provided good cause at the time, it would suffice as good cause after the ambiguity was resolved); *Mosley v. Douglas County Corr. Ctr., et al.*, 192 F.R.D. 282, 284 (D.Neb.2000) (following *Whatley* in finding good cause once but not in the future).

However, where a defendant's misconception of the law causes the failure to waive formal service, courts have refused to find good cause. *See United States v. First Midwest Bank et al.*, 1995 WL 447762, *4 (N.D.Ill. July 21, 1995) (no good cause in "[d]efendant's tortured interpretation of Rule 4" that it had thirty days to return the waiver from the date it learned of the suit); *Dymits*, 1996 WL 751111 at *15-*16 (no good cause for defendant mistakenly calculating the period within which the waiver was

required to be returned).*Seealso* *Ceres Trading Group et al., v. Dowdle*, 1997 WL 94739, *3 (N.D.Ill. Feb. 28, 1997) (no good cause for defendant's belief that plaintiff must prove defendant delayed returning waiver). Similarly, good cause has not been found where the parties attempted to "contract" around the time frame set by Rule 4(d)(2)(F).*See* *Bozell Group, Inc. v. Carpet Co-op of America Ass'n., Inc.*, 2000 WL 1523282, *4 (S.D.N.Y. Oct. 11, 2000) ("the Rules do not authorize the parties to contract around the waiver requirements.... [T]he language of Rule 4 is mandatory.").

***4** In this case, Defendants have failed to establish good cause for their failure to waive formal service. They do not argue that they did not receive or understand the waivers. They do not allege that Plaintiffs failed to comply properly with Rule 4(d)(2). They do not cite any ambiguity that would call into question the Rule's application to them. Instead, Defendants present two reasons for denying the relief sought. They suggest 1) that Rule 4(d) can be estopped or at least delayed by Rule 54 and 2) that Plaintiffs' requests for waiver demands were unreasonable. *See* Response at 2. The Court will dispense with the Rule 54 argument before turning to the reasonableness issue.

The undersigned is not persuaded by Defendants' insistence that Plaintiffs must wait to file their requests for costs and attorneys' fees until after rendering of a final judgment. Rule 4(d) is not tied to Local Rule 4.18 or Rule 54. To the contrary, it is simply a defendant's failure to comply with a plaintiff's request for waiver that triggers the plaintiff's entitlement to reimbursement of costs and reasonable fees under Rule 4(d).*See* *Estate of Darulis v. Garate*, 401 F.3d 1060, 1063-4 (9th Cir.2005) (finding no "interplay between Rules 4(d)(2) and 54(d)(1)"). Moving for that relief before rendering of a final judgment, though perhaps uncommon, is not premature. *See* *Double "S" Truck Line, Inc. v. Frozen Food Express*, 171 F.R.D. 251, 253 (D.Minn.1997). Nor would it seem unprecedented.[FN5]Accordingly, the Court concludes that the Motion is not premature.

FN5.*Seegenerally* *Donaghue v. CT Holdings, Inc.*, 2001 WL 1543816 (S.D.N.Y. Dec. 4, 2001); *Kennemer v. Jefferson Autoplex, L.L.C.*, et al., 2004 WL 1291185 (E.D. La. June 10, 2004). Although *Donaghue* and *Kennemer* do not mention whether final judgments had been rendered, the relatively short time frames between the dates of service and the dates of the orders make the preceding of final judgments seem unlikely. In *Donaghue*, the court awarded costs only six months after plaintiff effected service. *See* *Donaghue*, 2001 WL 1543816, at *1. In *Kennemer*, the court awarded costs only two months after plaintiffs effected service. *See* *Kennemer*, 2004 WL 1291185, at *1.

Defendants also suggest that the request for costs should be denied because Plaintiffs were unreasonable in their waiver demands. *See* Response at 2. They argue that the requests for waivers coincided with the Thanksgiving and Christmas holiday seasons. *Seeid.*Plaintiffs' failure to cater to Defendants' schedule is not, in itself, unreasonable. Further, no authority imposes upon Plaintiffs a duty to avoid holidays in sending notices and requests for waivers. Having filed the Complaint on September 19, 2004, Plaintiffs had a 120-day window, over the holidays, to make satisfactory service on all 27 Defendants. *See*Rule 4(m). As Plaintiffs had the obligation to effectuate proper service within that period, they had the right to request waivers of service at any point within that time. Given Plaintiffs' filing date, coincidence with the holidays seems practically unavoidable. Indeed, had Plaintiffs waited until after the holidays to send waiver requests, they would have risked running out of time to effect personal service under Rule 4(m) if such service became necessary. *See* *Weldon v. Electronic Data Systems Corporation*, 2005 WL 1051902, *2 (11th Cir. May 4, 2005) (waiting three months after filing to send waiver request did not extend the time to effect service). Moreover, Defendants' suggestion that Plaintiffs were unreasonable is belied by the fact that Plaintiffs apparently did not effect formal service on any of the Defendants until January 11, 2005, well after the thirty-day period had passed.[FN6]*See* Motion, Exhibits B, C; Reply, Exhibit A.

FN6. Plaintiffs served their requests for waiver on November 19, 2004. *See* Exhibit at [unnumbered] 4 (exemplifying the requests sent to all Defendants and

mentioning specifically that the requests were made on Nov. 19, 2004). The end of the thirty-day window would have been December 19, 2004.

***5** Defendants also assert that Plaintiffs were unreasonable in seeking formal service of process while Defendants were trying to return the waivers. The circumstances underlying this argument are disclosed in the affidavit of Cassandra Capobianco and communications between the parties' attorneys which were attached to Exhibit "A" of the Reply. See Affidavit of Cassandra Capobianco, which is attached to the Reply, at ¶ 4-14 (Capobianco); E-mail Messages Dated Dec. 28, 2004, which are attached to the Affidavit (Messages). In the Messages, Defendants promise to return completed waivers only if Plaintiffs agree to abatement of the proceeding. *See* Capobianco at ¶ 5 (explaining the correspondence between Plaintiffs' and Defendants' attorneys). Indeed, the Dec. 28th e-mail from defense counsel, Dennis Dean, to Plaintiffs' counsel, Cassandra Capobianco, states "... if you do not agree to the motion [to abate] ... then you all will have to do your thing to effect service on the remaining Defendants...." Messages at 1. This correspondence fails to support Defendants' assertion. Rather, it suggests that Defendants attempted to circumvent the time frames of Rule 4 and agree to return the waivers of service only if they obtained a concession from the Plaintiffs.

Defendants' argument resembles that used by the defendant in *Bozell*, 2000 WL 1523282, at *4. There, the defendant argued that it did not return a waiver of service because the plaintiff had allegedly promised not to require compliance with Rule 4(d) if defendant agreed to arbitration. *Seeid.*The court refused to accept the suggestion that the purported agreement constituted good cause for defendant's failure to waive service. *Seeid.*Instead, it found that Rule 4 operated independently of any contract-like agreements between the parties, and that even if the parties had made such an agreement, the Rule would still impose on the defendant the duty to return the waiver or be liable for the costs of service. *Seeid.*

Here, Defendants seek insulation from the operation of Rule 4(d) based on their attempt to elicit a promise to abate Plaintiffs' claims if Defendants returned the waivers. However, it is evident from the correspondence that no such agreement was actually reached. Moreover, Defendants could not condition their compliance with the requirements of Rule 4(d) on Plaintiffs' relinquishment of a substantive right. While *Bozell* indicates that, even if Plaintiffs had promised to allow more time to return the waivers, Rule 4 would still allow Plaintiffs to effect personal service after the thirty-day window had passed and seek reimbursement, this Court need not reach that issue. Instead, the undersigned finds that no agreement was made. In light of the foregoing, the undersigned concludes that Defendants have failed to establish good cause for their failure to waive formal service. Thus, Plaintiffs are entitled to an award of costs, including reasonable attorneys' fees, incurred in effecting service of process on each of the non-waiving Defendants. The Court must now turn to the amount of costs which Plaintiffs shall recover.

***6** Regarding Plaintiffs' attorneys' fees, Defendants contend that Plaintiffs did not submit any evidence to support their general assertion of the reasonableness of their fees. *See* Response at 3. Quoting *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1301 (11th Cir.1988) and *Duckworth v. Whisenant*, 97 F.3d 1393, 1396 (11th Cir.1996), Defendants state that Plaintiffs should have supplied satisfactory evidence to establish that their rates accord with the prevailing market rate and that the hours are reasonable. *Seeid.*(quoting *Duckworth*, 97 F.3d at 1396). Defendants further suggest that Plaintiffs' generalized statements as to reasonableness are unavailing; instead, the party moving for fees must produce either direct evidence of rates or opinion evidence to establish reasonableness. *See* Response at 3. Defendants conclude that Plaintiffs' failure to provide evidence of the reasonableness of their attorneys' fees or proof that they are in accord with the community's prevailing market rate defeats Plaintiffs' claim for fees. *Seeid.*

In the Reply, Plaintiffs provide the sworn affidavit of Attorney Michael J. Dewberry as opinion evidence to support the allegations of the reasonableness of their rates and the time spent in preparing the Motion. *See* Reply at 7, Exhibit B (Dewberry). Mr. Dewberry's affidavit reads in part:

> 4. I am familiar with the prevailing market rates of attorneys practicing in Jacksonville and northeast Florida, and with the amounts customarily charged

by such attorneys and allowed by courts for attorneys' fees award pursuant to statute or rule. I am also familiar with the applicable federal law relating to court-awarded attorneys' fees. Finally, I am generally familiar with the experience, reputation, education, skills[,] and hourly rates charged by the Plaintiffs' attorneys who prepared Plaintiffs' Motion for Costs and Fees, namely Michael Agliata, Esq. And Cassandra J. Capobianco, Esq.

5.... [I]t is my opinion that given the number of Non-Waiving Defendants involved and the time required to accurately describe Plaintiffs' efforts to serve each of the Non-Waiving Defendants:

a. the total time spent of 8.7 hours in preparing the Motion ... was reasonable and appropriate; and

b. the hourly rates of $220.00 per hour for Michael Agliata and $200.00 per hour for Cassandra J. Capobianco are reasonable and appropriate.

Dewberry at ¶ 4-5. Relying on Dewberry's statements, Plaintiffs argue that their attorneys' fees were reasonable, necessary, and commensurate with the market price for their attorneys' skill and experience. *See* Reply at 7.

A determination of the reasonableness of attorneys' fees should start with a review of the framework articulated in *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292 (11th Cir.1988). Although Defendants quote *Norman* for the proposition that generalized statements as to reasonableness "are not particularly helpful and not entitled to much weight", *seegenerally* Response at 3 (quoting *Norman*, 836 F.2d at 1301),*Norman* also provides a helpful, thorough discussion of the Eleventh Circuit's standard for determining reasonable attorneys' fees. *Seegenerally* *Norman*, 836 F.2d at 1298-1306. A reasonable fee is generally determined by the lodestar method of multiplying the reasonable hours expended by the reasonable rate. *Seeid.* at 1299. A reasonable hourly rate is "the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Norman*, 836 F.2d at 1299 (citing *Blum v. Stetson*, 465 U.S. 886, 895-96 n. 11; *Gaines v. Dougherty Country Bd. of Educ.*, 775 F.2d 1565, 1571 (11th Cir.1985)). Reasonable hours are those that would be reasonable to bill to a client and that are not "excessive, redundant or otherwise unnecessary." *See* *Norman*, 836 F.2d at 1301 (quoting *Hensley v. Eckhart*, 461 U.S. 424, 434 (1983)). In examining whether hours are reasonable, the court may use its discretion to reduce the award for hours spent excessively or unnecessarily. *See* *Norman*, 836 F.2d at 1301.

***7** Those seeking fees "bear[ ] the burden of producing satisfactory evidence that the requested rate is in line with prevailing market rates."*Id.* at 1299. Satisfactory evidence of rates may be provided in the form of direct evidence of rates charged by lawyers under similar circumstances or by opinion evidence. *Seeid.*Although a court may properly make an award of fees based solely on affidavits in the record, *seeid.* at 1300, 1303, the minimum for satisfactory evidence demands more than an affidavit from the attorney requesting the fee. *Seeid.* at 1299. Indeed, parties attempting to substantiate the reasonableness of a rate may wish to seek out testimony of other lawyers to provide a basis for the court's analysis. *Seeid.* at 1300. Evidence of prevailing views among practitioners in the community also assists the court in its determination of the reasonableness of hours expended. *Seeid.* at 1301. Finally, where parties oppose an award of fees and suggest exclusion of unreasonable or unnecessary work, such "objections and proof from fee opponents" should be "reasonably precise" and properly supported. *Seeid.* at 1301.

In *Duckworth v. Whisenant*, 97 F.3d 1393 (11th Cir.1996) (per curiam), the court of appeals considered the quality and quantity of opinion evidence needed to assist a court in determining a reasonable fee. *See* *Duckworth*, 97 F.3d at 1394-7. The *Duckworth* plaintiff claimed that the rate charged was reasonable and provided one affidavit to support his claim. *See* *Duckworth*, 97 F.3d at 1396. Defendants argued that plaintiff had not met his burden and challenged the content of the affidavit. *Seeid.*The court disagreed and found the single affidavit to be sufficient. *Seeid.*In doing so, the court noted that the plaintiff "clearly ha[d] met his burden in providing evidence by which th [e] court [could] assess the prevailing market rate." *Duckworth*, 97 F.3d at 1396-7. *Seealso* *Primerica Life Ins. Co. v. Walden et al.*, 170 F.Supp.2d 1195 (S.D.Ala.2001)

(the court found a fee reasonable when presented with an attorney's affidavit, reciting his "belie[f] that the time expended ... [was] reasonable for the issues involved and that the hourly rates charged ... [were] consistent with the hourly rates charged by attorneys having reasonably comparable skills, experience, and reputation").

Failure of the parties to provide sufficient evidence to support the relief requested or precise objections will not, however, prevent the court from determining a reasonable fee. Instead, the court "may make the [fee] award based on its own experience."*See* Norman, 836 F.2d at 1303 (citing *Davis v. Bd. of Sch. Comm'rs of Mobile County*, 526 F.2d 865, 868 (5th Cir.1976)). As noted in *Norman*,"the court, either trial or appellate, is itself an expert on the question [of the reasonableness of fees] and may consider its own knowledge and experience ... [in forming] an independent judgment either with or without the aid of witnesses as to value." *Norman*, 836 F.2d at 1303 (quoting *Campbell v. Green* 112 F.2d 143, 144 (5th Cir.1940) (Sibley, J.)).

***8** Decisions since *Norman* have echoed its tenets. Indeed, in *Loranger v. Stierheim et al.*, 10 F.3d 776 (11th Cir.1994) (per curiam), the circuit court expressed its continued willingness to give a court the freedom to draw from its expertise in making a final determination as to reasonableness of fees. *See Loranger*, 10 F.3d at 781-3. The district court in *Loranger* faced conflicting evidence as to the reasonableness of the rate charged for representation. *See Loranger*, 10 F.3d at 781. Rather than accepting either the applicant's or the opponents' affidavits, the court relied on its own expertise in determining the rate. *See Loranger*, 10 F.3d at 781. The court of appeals affirmed the court's exercise of that discretion. *Seeid.*

Applying *Norman* and its progeny to this case, the undersigned finds that the fees requested are reasonable. The fees charged are the product of the hours expended and the rate charged. *See* Motion, Exhibit E. All hours expended arise out of the Plaintiffs' efforts to effect service of process on the non-waiving Defendants or the preparation of the Motion. *Seeid.*The opinion evidence provided in Michael Dewberry's affidavit provides support for both the rate charged and number of hours expended. Defendant has provided no evidence to the contrary. Thus, the Court finds that the attorneys' fees requested are reasonable.

Defendants argue that any award of costs of service and attorneys' fees should be specific to each Defendant. *See* Response at 3-4. This Court agrees, and while Plaintiffs need not give a detailed accounting of every dollar spent, they do bear the burden of establishing the nature of costs expended, substantiating the necessity of the costs, and differentiating between recoverable and non-recoverable costs. *See,e.g.*, *Horton Homes, Inc. v.. United States*, No. CIVA5:01-CV-130-2(W), 2004 WL 1719354, *2 (M.D. Ga. June 10, 2004); *Scelta v. Delicatessen Support Servs., Inc.*, 2003 F.Supp.2d 1328, 1340 (M.D.Fla.2002); *George v. GTE Directories Corp.*, 114 F.Supp.2d 1281, 1299 (M.D.Fla.2000). This Court finds that Plaintiffs have satisfied their burden and submitted sufficient information to allow for specific awards against each non-waiving Defendant. Indeed, the Motion and supporting documentation give this Court adequate understanding of each Defendant's contribution to the $1,652.53 figure that Plaintiffs request.[FN7]*See* Motion at 4. By operation of Rule 4(d), Plaintiffs are entitled to recover the costs incurred in effecting service of process on the non-waiving Defendants. However, questions arise regarding how this Court is to interpret some of the process server's notations [FN8] as well as how the Court is to determine which of the Defendants should be responsible for the costs of researching home addresses, shipping and postage. Without explanation from the Plaintiffs or reference from the process server, one might conclude that Defendants Lampp, Ellis, Musselman, Chastain, Redd, Whitehurst, Tricocci, Barton, Carter, Sirmones, and Anderson were served multiple times and billed unnecessarily for repeated service. However, based on the assumptions explained in footnote 7, the Court concludes that Plaintiffs shall recover the costs relating to the unsuccessful or rejected attempts to effect service. *Seegenerally Thompson v. Solo*, 2004 WL 1385825, *2 (N.D. Ill. Jun 21, 2004) (compelling payment for cost of attempted service in addition to cost of effective service).

> FN7. Plaintiffs do not explain why they ask for $1,652.53, which is $28.50 less than the total billed. *See* Motion, Exhibit D (totaling $1,681.03). Curiously, no charge appearing

on the invoices amounts to less than $30.00. Further, the $1,681.03 total includes a $60.00 charge for service on Defendant Wilson, reimbursement for which Plaintiffs supposedly do *not* seek. *See* Motion at 3 n. 3. This Court therefore assumes Plaintiffs actually seek $1,621.03 for the cost of the process server. Plaintiffs might do well to show their work in the future, explaining specifically each Defendant's contribution to Plaintiffs' costs.

FN8. It is not clear why the process server's invoices list some of the Defendants more than once. Further, this Court is without explanation as to the meaning of "a/s" or "s/s". As best this Court can infer, "a/s" denotes "attempted service" and "s/s" denotes "substitute service".

***9** Plaintiffs also seek recovery of $250.25 as the cost of finding the home addresses to effect process on all 22 non-waiving Defendants. *See* Motion at 4, Exhibit C. However, Plaintiffs do not address how each individual Defendant should bear these costs. Presumably, Plaintiffs expect the cost of the investigator to be divided equally among Defendants, similar to the pro ration they request for taxing Defendants for attorneys' fees. *See* Reply at 8. Unlike the preparation of a motion, which applies equally to all 22 non-waiving Defendants, the effort spent investigating individual residence addresses can vary greatly from one individual to the next. Neither of the invoices provided breaks down the individual charges for investigating the addresses of the 22 non-waiving Defendants.[FN9]Absent a specific indication of each Defendant's contribution, this Court cannot award these costs.[FN10]

FN9. Invoice 1119 only references charges for investigating Defendants Barton, Musselman, and Muse, lumping the charges for investigating each into one indiscriminate figure. Invoice 1209 does not specifically reference *any* Defendant.

FN10. The Court notes in passing that the circumstances regarding the Plaintiffs' use of the investigator are unclear. The Motion refers to the investigator only in passing to highlight Plaintiffs' costs. *See* Motion at 4. It does not state the circumstances that made such costs necessary. Cassandra Capobianco's affidavit seems to address that matter, suggesting that Defendants' rejection of valid substitute service necessitated the personal service of Defendants Anderson, Ellis, Lampp, Musselman, Redd, Tricocci, and Whitehurst personally. *See* Capobianco at ¶ 15-16. However, only Defendant Musselman appears both in Capobianco's list of defendants and on the investigator's invoice 1119. *See* Capobianco at ¶ 15; Motion, Exhibit C. If Musselman was served at work as indicated on the invoice, this would undercut the idea that it was necessary to investigate Musselman's home address. *See* Motion, Exhibit C at [unnumbered] 5. Also, no explanation is given regarding the need to investigate the home address for Defendant Muse, who also appears to have received service at work. *Seeid.* at [unnumbered] 3. None of the other six Defendants listed in Capobianco's affidavit is mentioned on either of the invoices in the Motion's Exhibit C. Moreover, Defendant Barton appears to be the only Defendant whose home address was investigated and who received personal service at home. *Seeid.*

Similarly, this Court must reject Plaintiffs' request of $41.03 for shipping and return of documents and $30.00 for postage. While the notation shown in Exhibit C of the Motion suggests rush shipment of documents to Defendants Anderson and Sirmones, it does not indicate the individual costs of shipping documents relating to each Defendant. *See* Motion, Exhibit C at [unnumbered] 3, 4. It is also unclear to which Defendant(s) the $30.00 postage charge relates. *Seeid.* at [unnumbered] 5. This Court will not allocate these costs among all Defendants without direction as to which Defendant is actually responsible for which share of these charges.

CONCLUSION

The undersigned finds that Plaintiffs properly requested waivers of service from all Defendants and the 22 non-waiving Defendants failed to comply with Plaintiffs' request without good cause. Plaintiffs incurred $1,550.00 in recoverable costs effecting

personal service on those 22 non-waiving Defendants and $1,828.00 in reasonable attorneys' fees related to preparing the instant Motion.

Accordingly, it is hereby ORDERED:

1. Plaintiffs' Verified Motion for Award of Costs Relating to Defendants' Failure to Waive Formal Service of Process and Attorneys' Fees (Doc. No. 86) is GRANTED, in part, and DENIED, in part.

A. The Motion is GRANTED in that:

i. Defendant CROSBY shall reimburse Plaintiffs $143.09 ($60.00 costs and $83.09 attorneys' fees).

ii. Defendant CARTER shall reimburse Plaintiffs $173.09 ($90.00 costs and $83.09 attorneys' fees).

iii. Defendant SAPP shall reimburse Plaintiffs $143.09 ($60.00 costs and $83.09 attorneys' fees).

iv. Defendant SIRMONES shall reimburse Plaintiffs $193.09 ($110.00 costs and $83.09 attorneys' fees).

v. Defendant CLARK shall reimburse Plaintiffs $143.09 ($60.00 costs and $83.09 attorneys' fees).

vi. Defendant REDD shall reimburse Plaintiffs $253.09 ($170.00 costs and $83.09 attorneys' fees).

vii. Defendant MUSSELMAN shall reimburse Plaintiffs $143.09 ($60.00 costs and $83.09 attorneys' fees).

viii. Defendant ANDERSON shall reimburse Plaintiffs $243.09 ($160 .00 costs and $83.09 attorneys' fees).

***10** ix. Defendant MUSE shall reimburse Plaintiffs $113.09 ($30.00 costs and $83.09 attorneys' fees).

x. Defendant HALLE shall reimburse Plaintiffs $113.09 ($30.00 costs and $83.09 attorneys' fees).

xi. Defendant TRICOCCI shall reimburse Plaintiffs $173.09 ($90.00 costs and $83.09 attorneys' fees).

xii. Defendant CHASTAIN shall reimburse Plaintiffs $143.09 ($60.00 costs and $83.09 attorneys' fees).

xiii. Defendant BARNETT shall reimburse Plaintiffs $113.09 ($30.00 costs and $83.09 attorneys' fees).

xiv. Defendant BARTON shall reimburse Plaintiffs $173.09 ($90.00 costs and $83.09 attorneys' fees).

xv. Defendant LAMPP shall reimburse Plaintiffs $203.09 ($120.00 costs and $83.09 attorneys' fees).

xvi. Defendant WHITEHURST shall reimburse Plaintiffs $143.09 ($60 .00 costs and $83.09 attorneys' fees).

xvii. Defendant GREEN shall reimburse Plaintiffs $113.09 ($30.00 costs and $83.09 attorneys' fees).

xviii. Defendant RIGGS shall reimburse Plaintiffs $143.09 ($60.00 costs and $83.09 attorneys' fees).

xix. Defendant REEDER shall reimburse Plaintiffs $113.09 ($30.00 costs and $83.09 attorneys' fees).

xx. Defendant SHIPLEY shall reimburse Plaintiffs $143.09 ($60.00 costs and $83.09 attorneys' fees).

xxi. Defendant ELLIS shall reimburse Plaintiffs $143.09 ($60.00 costs and $83.09 attorneys' fees).

xxii. Defendant LINDSEY shall reimburse Plaintiffs $113.09 ($30.00 costs and $83.09 attorneys' fees).

2. In all other respects, the Motion is DENIED.

DONE AND ORDERED.

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Not Reported in F.Supp.2d, 2005 WL 3970740 (M.D.Fla.), 19 Fla. L. Weekly Fed. D 461

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