

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WEST PALM BEACH DIVISION

Case No. 01-9013-CIV.-RYSKAMP
Magistrate Judge Vitunac

FILED BY [Signature]
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D.C.
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Delma Luz Carranza,
Francelia Hernandez,
Virginia Perez,
Hermelinda Ramos,
Carlos Ramos,
Adolfo Perez,
Gloria Roblero, and
David Matias,
individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

Complaint--Class Action

Mecca Farms, Inc.,
M. Sanchez & Son, Inc.,
Maria T. Sanchez, and
Rogerio T. Rodriguez,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR ORDER IMPOSING ON
DEFENDANTS THE COSTS OF SERVICE**

The Plaintiffs have moved the Court for an order imposing on the Defendants the costs incurred in effecting personal service upon them.¹ This motion is based upon Rule 4(d)(2) of the

¹As reflected in the accompanying Affidavit from the Plaintiffs' counsel, Plaintiffs exclusively seek \$250 in reasonable attorney's fees. Plaintiffs are not seeking the costs related to the service effectuated by their paralegal, which took two hours.

[Signature]

Federal Rules of Civil Procedure.

Rule 4(d) provides a means by which a defendant can avoid bearing the cost of service. However, if the defendant does not waive service after a plaintiff has so requested in accordance with Rule 4, the defendant is then responsible for the costs incurred in effecting service on him, unless the defendant can show good cause for not complying with the request for waiver of service. Pollock v. Vista Village Mobile Home Park, 229 F.3d 1164, 2000 WL 1271062 (10th Cir. 2000); Spivey v. Board of Church Extension & Home Mission of the Church of God, 160 F.R.D. 660, 662 (M.D. Fla. 1995) (“If the plaintiff properly complies with all of the requirements of Rule 4(d)(2), then costs are awarded.”) These costs include a reasonable attorney’s fee. Rule 4(d)(5): Bozell Group, Inc. v. Carpet Co-op of America Association, Inc., 2000 WL 1523282 (S.D.N.Y. 2000). “In other words, Rule 4(d) contemplates two ways to avoid unnecessary costs of service: Either a defendant waives service or, once served with a summons, the defendant reimburses the plaintiff for its expense in effecting service of the summons.” Khorozian v. McCullough, 186 F.R.D. 325, 328 (D.N.J. 1999).

Rule 4(d)(2) expressly provides that a plaintiff may avoid the costs of service by mailing a notice to the defendant by first class mail, along with a copy of the complaint. Defendants residing in the United States are to be provided with at least 30 days to respond to the request, and are to be provided with an extra copy of the notice and a prepaid means of complying with the waiver request. Rule 4(d) stresses that defendants have “a duty to avoid unnecessary costs of serving the summons.”

As stated in the accompanying affidavit of counsel, the Plaintiffs mailed the requisite notices, along with the complaint and a stamped, self-addressed envelope to the defendants on

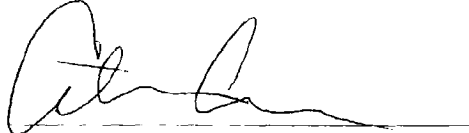
November 27, 2001. See Affidavit in Support of Plaintiffs' Motion for Order Imposing on Defendants the Costs of Service ¶ 2. The Defendants Maria T. Sanchez, Rogelio Rodriguez, and M. Sanchez & Son, Inc. failed to sign and return the acknowledgments, thereby forcing the plaintiffs to serve the three defendants. Id. ¶ 4. The Defendants Maria Sanchez and Rogelio Rodriguez are wife and husband. Maria Sanchez is also the president and sole officer of M. Sanchez & Son, Inc. Id. ¶ 4 For these reasons, Plaintiffs seek costs jointly and severally from the Defendants Maria T. Sanchez, Rogelio Rodriguez, and M. Sanchez & Son, Inc. Finally, the Plaintiffs' counsel has devoted 2.0 hours in preparation of this motion and the accompanying memorandum and affidavit. Id. ¶ 5.

Rule 4(d)(2) mandates the award of costs "[u]nless good cause for the failure be shown." These costs properly include attorney's fees. Fed.R.Civ.P. 4(d)(5). As the Advisory Committee Note observes, "[i]n the absence of such a provision, the purpose of the rule would be frustrated by the cost of enforcement, which is likely to be high in relation to the small benefit secured by the plaintiff." See also Ferguson v. Interpublic Group, Inc., 1998 WL 150661 (S.D.N.Y. 1998). Costs akin to those sought by the Plaintiffs in this motion have been routinely awarded by courts under Rule 4(d)(2). Double "S" Truck Line, Inc. v. Frozen Food Express, 171 F.R.D. 251, 253 (D. Minn. 1997) (costs totaling \$1277.51 awarded, including \$1200 in attorney's fees); Ferguson v. Interpublic Group, Inc. (awarding costs for personal service, copying and \$500 in attorney's fees); Stapo Industries, Inc. v. M/V Henry Hudson Bridge, 190 F.R.D. 124, 126 (S.D.N.Y. 1999) (costs of \$653.60 awarded, including expense of personal service, postage and attorney's fees).

In this case, the Plaintiffs seek a total of \$250 under Rule 4(d), as follows:

Attorney's fees (2.0 hours @ \$125)	\$ 250.00
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Respectfully submitted,



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by fax and first class United States mail, postage prepaid, to the below listed counsel this 30th day of January, 2002:

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