

DJW/bh

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**CHRISTOPHER N. QUEEN, et al.,**

**Plaintiffs,**

**v.**

**Case No. 04-2607-JWL-DJW**

**F. FEDEN, et al.,**

**Defendants.**

**ORDER**

This matter is before the Court on Plaintiffs' Motion to Request the Court to Issue the Rule Requiring Respondents to Show Cause for Failure to Waive Service (doc. 50). Plaintiffs state that they have "provided the waiver of service of summons" to Patrick Carney, Paul Morrison, Target Stores, Inc., Choo Lee, "Unknown Staff of Target Loss prevention," and Gary Moody.<sup>1</sup> Plaintiffs move the Court pursuant to Federal Rule of Civil Procedure 4 "to show cause as to their failure to reduce costs through waiver of service of summons, and why they should be not be required to bear the cost of the service."<sup>2</sup>

Federal Rule of Civil Procedure 4(d) provides a procedure for a plaintiff to notify a defendant of the commencement of an action and to request that the defendant waive formal service of process. Under subsections (d)(2) and (d)(5), the defendant is liable for the costs of follow-up service when the plaintiff's attempt to secure the waiver of formal service is refused, in addition to the costs any of any motion the

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<sup>1</sup>Plfs.' Mot. (doc. 50) at p. 1.

<sup>2</sup>*Id.* at p. 2.

plaintiff files in order to collect the costs of the follow-up service.<sup>3</sup> A defendant located in the United States who fails to comply with the plaintiff's request for waiver of formal service may avoid liability for these costs by showing good cause for its failure to comply.<sup>4</sup>

Here, Plaintiffs have not moved to recover costs under these provisions. Even if the Court were to construe the present motion as one seeking costs, Plaintiffs have not provided the Court with any evidence of the costs they have incurred in effecting formal service on these parties. Thus, it is premature for the issue of good cause to be determined by the Court. The Court will therefore deny Plaintiffs' Motion.

**IT IS THEREFORE ORDERED** that Plaintiffs' Motion to Request the Court to Issue the Rule Requiring Respondents to Show Cause for Failure to Waive Service (doc. 50) is denied.

**IT IS SO ORDERED.**

Dated in Kansas City, Kansas on this 29th day of June 2005.

s/ David J. Waxse \_\_\_\_\_  
David J. Waxse  
U.S. Magistrate Judge

cc: All counsel and *pro se* parties

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<sup>3</sup>Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure* §1092 at p. 498 (3d ed.).

<sup>4</sup>*Id.* at p. 499; Fed. R. Civ. P. 4(d)(2)(G).