

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 05-14220CIV-LYNCH

LEE McCASKILL, doing business
as BEFORE & AFTER WEIGHT
LOSS CLINIC; BELLY BUSTER
DIET, INC.; BEFORE & AFTER
WEIGHT LOSS CLINIC OF INDIAN
RIVER COUNTY, INC.; BEFORE &
AFTER WEIGHT LOSS CLINIC OF
PORT ST. LUCIE, INC.

Plaintiffs,

vs.

MARGOT L. RAY (a/k/a MEG MOODLEY)
d/b/a VALLEY WEIGHT LOSS

Defendant.

PLAINTIFFS' RESPONSE TO AND MOTION TO
STRIKE DEFENDANT'S MOTION FOR
ATTORNEY FEES AND COSTS

Plaintiffs, LEE McCASKILL, d/b/a BEFORE & AFTER WEIGHT LOSS CLINIC; BELLY
BUSTER DIET, INC.; BEFORE & AFTER WEIGHT LOSS CLINIC OF INDIAN RIVER
COUNTY, INC.; AND, BEFORE & AFTER WEIGHT LOSS CLINIC OF PORT ST. LUCIE, INC.,
by and through the undersigned attorney hereby file this Response to and Motion to Strike
Defendant's Motion for Attorney Fees and Costs and, as grounds, state the following:

1. As discussed in detail below, Plaintiffs are unable to adequately respond to
Defendant's Motion for Attorney Fees and Costs. Defendant's Motion lacks requisite information,

documentation and substantiation such that it should be stricken, or otherwise Defendant's claim for fees and costs should be denied.

2. On April 30, 2007, this Honorable Court entered Orders upon Motions for Summary Judgment, and expressly stated that pursuant to Local Rule 7.3(A), the parties would have thirty days from the date of the Order within which to file any motions for attorney fees and/or costs. (DE 64).

3. Despite being given ample time and direction by the Court, Defendant's Motion for Attorney Fees and Costs does not comply with Local Rule 7.3(A) because it fails to satisfy the Rule's requirements. It fails to provide information including, but not limited to: (1) disclosure of the terms of any agreement with respect to fees to be paid for the services for which the claim is made (i.e., regarding fees of attorneys Lott and Young); (2) description in detail of the number of hours reasonably expended, the bases for those hours, the hourly rate(s) charged, and identity of the timekeeper(s); (3) description in detail of all reimbursable expenses; (4) provision of verification; (5) provision of support by affidavit of an expert witness; and, (6) provision of the requisite certifications.

4. The Motion for Attorney Fees and Costs contains significant irrelevant and immaterial statements, argument and claims including purported compensatory and consequential damages. The majority of exhibits to the Motion has nothing to do with claimed costs or attorney fees, but is a rehash of Defendant's prior motions and filings on the merits. The Defendant attaches a self-created, handwritten spreadsheet of "lawsuit costs" without any supporting documentation. She includes travel expenses, meals, postage, car parking, airline tickets and similar claims. Not a single legal bill, retainer agreement, or affidavit of reasonable fees, hours and hourly rates is attached or otherwise provided.

5. As reflected in Local Rule 7.3(A), an attorney fee applicant must present records detailing the amount of work performed so that the labor involved may be accurately assessed. *See e.g. Becker Holding Corp. v. Becker*, 1994 WL 1877201, *1 (S.D. Fla. 1994), *citing, Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983); *NAACP v. City of Evergreen*, 812 F.2d 1332, 1337 (11th Cir. 1987); *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145, 1150 (Fla. 1985). The general subject matter of the expenditures should be set out with sufficient particularity so a court may assess the fees claimed for each activity undertaken. *Id.* at *1. Further, a fee application should include a summary description of the fees sought. *Id.* at *1-2 (noting that parties moving for attorney fees routinely must file supporting documentation).

6. In this case, in contravention of Local Rule 7.3(A), Defendant has provided no such information or documentation to show entitlement to or substantiation of fees for work completed by attorneys Joseph Lott and Wendy Young for their brief appearances in this lawsuit. Defendant has failed to provide even the slightest detail or documentation. Accordingly, Plaintiffs cannot respond and this Court may not examine or review the claimed services.

7. Additionally, regarding the attorney fees claimed by Defendant, there is authority indicating that pro se litigants are not entitled to collection of attorney fees, even if the pro se litigant is an attorney. *See e.g. Celeste v. Sullivan*, 988 F.2d 1069, 1070-1071 (11th Cir. 1992). Thus, the only fees that could be claimed, if properly documented, would be for the attorneys Lott and Young.

8. The burden is also on the movant to show any costs claimed are recoverable. *See e.g. Becker Holding Corp.*, 1994 WL 1877201 at *2. A court may only award costs that are adequately described and documented. *See e.g. Barrington v. Lockheed Martin*, 2007 WL 13033032, *1 (M.D. Fla. 2007).

9. In this case, Defendant did not adequately describe nor adequately document any of the costs claimed. Further, Defendant included costs that are not taxable. *See e.g.* 28 U.S.C. § 1920 (2006); 5 Fla. Prac., Civil Practice § 13.3 (2007 ed.)(discussing and setting forth Florida’s Statewide Uniform Guidelines for Taxation of Costs in Civil Actions); *Barrington*, 2007 WL 13033032, *2 (finding that postage, travel, lodging, meals, computerized legal research, mediation and other alleged costs were not recoverable).

10. To the extent, if any, it were to be deemed that Defendant has provided sufficient information, documentation and substantiation concerning the costs alleged in Defendant’s Motion, Plaintiffs respectfully submit that the only costs potentially recoverable would be for photocopies of papers, and only those necessarily obtained for use in the case as defined by legal authority. *See e.g.* 28 U.S.C. § 1920 (2006). However, Plaintiffs respectfully maintain that Defendant has not provided adequate information and substantiation of any taxable costs, such that Defendant’s Motion should be denied.

11. Further, Local Rule 7.3(A) mandates that the party specify the statute, rule or other grounds entitling the moving party to the award of attorney fees and costs. *See also, Armstrong v. The Cadle Co.*, 2006 WL 540330 (S.D. Fla., 2006)(indicating that the “American Rule” governing the award of attorney fees in litigation in the federal court is that such fees are not ordinarily recoverable in the absence of statute or enforceable contract provision providing therefor, and discussing Local Rule 7.3); *State Farm Fire & Cas. Co. v. Palma*, 629 So.2d 830 (Fla. 1993)(providing that Florida also follows the “American Rule” regarding award of attorney fees).

12. In this case, the only basis alleged by Defendant for imposition of costs and attorney fees is a provision in the parties’ employment agreement. (See employment agreement attached

to Defendant's Motion and labeled as Exhibit "K"). Defendant cites no other statute, rule, contract or other grounds for imposition of fees and costs against Plaintiff.

13. Therefore, to the extent, if any, it is deemed that Plaintiff has provided adequate documentation and substantiation in the Motion for entitlement to an award of costs and/or fees, such award should be limited solely to the defense upon the breach of employment agreement and no other counts in the Complaint. The Defendant would be required to establish by appropriate documentation and detail such awards, fees, hours, services and amounts as Defendant has failed to do so.

14. Overall, Plaintiffs respectfully maintain that Defendant's failure to comply with Local Rule 7.3(A), and the failure to provide requisite information, documentation and substantiation to support the claim for costs and attorney fees warrants the striking of Defendant's Motion, or in the alternative the denial of such Motion.

WHEREFORE, Plaintiffs move the Court to strike Defendant's Motion for Costs and Attorney Fees, or in the alternative to deny the Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. Mail on June 20, 2007 to Defendant, Margot L. Ray a/k/a Meg Moodley, 1310 SE San Sovina Terrace, Port St. Lucie, FL 34952.

Robert J. Gorman, Esquire
Kristin Helser, Esquire