UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 23-cv-23654-BLOOM/TORRES

RICHARD C. MURPHY, III, and
KATHLEEN T. MURPHY,

Plaintiffs,

v.

AIRWAY AIR CHARTER, INC, *et al.*,

Defendants.

_____/

REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION FOR ATTORNEYS' FEES AND COSTS

This cause comes before the Court on Defendant's, Venture Air Solutions, Inc.'s ("Defendant") Motion for Attorneys' Fees and Non-Taxable Costs [D.E. 108], and Bill of Costs. [D.E 102]. Plaintiffs, Robert C. Murphy, III and Kathleen T. Murphy ("Plaintiffs"), timely filed their responses [D.E. 104; 112] to which Defendant replied. [D.E. 106; 119]. The motions, therefore, are ripe for disposition.[1] After careful review of the briefing and relevant authorities, and for the reasons set forth below, we recommend that Defendant's motions be **GRANTED in part** and **DENIED in part**.

[1] Both of the pending motions were referred by the Honorable Beth Bloom to the Undersigned Magistrate Judge for disposition. [D.E. 105; 110].

I. BACKGROUND

This case centers on a plane crash from which Plaintiffs suffered ostensibly severe injuries. The aircraft was owned by Defendant. In the Fourth Amended Complaint, Plaintiffs alleged (among other things) that Defendant was vicariously liable for the pilot's and airline's negligence under a dangerous instrumentality theory, and also that Defendant was liable for loss of consortium.

As to both the dangerous instrumentality claim and the accompanying loss of consortium claim, Defendant prevailed on summary judgment and a final judgment was entered in its favor. [D.E. 67]. In the pending motions, Defendant has timely moved to recover taxable costs, non-taxable costs, and attorneys' fees against Plaintiffs for the successful defense.

II. APPLICABLE LAWS AND PRINCIPLES

A. Attorneys' Fees

In determining an appropriate fee award, we employ the lodestar method. *See City of Burlington v. Dague*, 505 U.S. 557, 562 (1992) ("The 'lodestar figure has, as its name suggests, become the guiding light of our fee-shifting jurisprudence. We have established a 'strong presumption' that the lodestar represents the 'reasonable' fee"). This method allows for a reasonable estimate of the value of an attorney's service because the movant submits evidence "supporting the hours worked and rates claimed." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). If the movant's documentation of hours worked is inadequate, "the district court may reduce the award accordingly." *Id.*

The lodestar method requires the Court to first determine an attorney's reasonable hourly rate, and to multiply that rate by the number of hours reasonably expended. *See, e.g., Loranger v. Stierheim,* 10 F.3d 776, 781 (11th Cir. 1994); *Norman v. Housing Auth. Of Montgomery,* 836 F.2d 1292, 1299 (11th Cir. 1988); *see also Harbaugh v. Greslin,* 365 F. Supp. 2d 1274, 1279 (S.D. Fla. 2005). Following the Court's calculation, "the court must next consider the necessity of an adjustment for results obtained." *Norman*, 836 F.2d at 1302. Accordingly, when awarding fees, the Court must allow meaningful review of its decision and "articulate the decisions it made, give principled reasons for those decisions, and show its calculation." *Id.* at 1304 (citation omitted).

In awarding attorneys' fees, "courts are not authorized to be generous with the money of others, and it is as much the duty of courts to see that excessive fees and expenses are not awarded as it is to see that an adequate amount is awarded." *ACLU of Georgia v. Barnes,* 168 F.3d 423, 428 (11th Cir. 1999). Courts, however, have considerable discretion when determining whether a party to a case should receive a fee award. *See Cullens v. Georgia Dept. Of Transp.,* 29 F.3d 1489, 1492-1493 (11th Cir. 1994) (emphasizing that the district court is "empowered to exercise discretion in determining whether an award is to be made and if so its reasonableness.").

An award must be reasonable and must fall within the guidelines for fee awards promulgated by the Eleventh Circuit. *See Norman*, 836 F.2d at 1299-1302. It is consequently within a court's ultimate discretion to adjust the fees to an amount it deems proper according to the Eleventh Circuit's parameters. *See, e.g., Columbus*

Mills, Inc. v. Freeland, 918 F.2d 1575, 1580 (11th Cir. 1990) ("[T]he *Norman* Court left to the discretion of the district court the decision of whether to prune excessive hours"); *Cullens,* 29 F.3d at 1492 ("[W]e reemphasize that the district court has discretion in determining the amount of a fee award. This is appropriate in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.") (quotation omitted).

B. Costs

Under Fed. R. Civ. P. 54(d)(1), a prevailing party is entitled to recover costs as a matter of course unless directed otherwise by a court or statute. A strong presumption exists in favor of awarding costs. *Id*. A court may tax as costs those expenses enumerated in 28 U.S.C. § 1920. *See Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987) (absent explicit statutory or contractual authorization, federal courts are bound by the limitations set out in § 1920). "To defeat the presumption and deny full costs, a district court must have a sound basis for doing so." *Chapman v. AI Transp.*, 229 F.3d 1012, 1039 (11th Cir. 2000).

Pursuant to section 1920, a court may award the following costs:

> (1) Fees of the clerk and marshal;
> (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
> (3) Fees and disbursements for printing and witnesses;
> (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
> (5) Docket fees under section 1923 of this title; and

> (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

III. ANALYSIS

First, we will assess Defendant's Motion for Attorneys' Fees and Non-Taxable Costs before analyzing Defendant's Bill of Costs.

A. Attorneys' Fees

Defendant seeks $28,359.75 in attorneys' fees for its successful defense against two claims of Plaintiffs' Fourth Amended Complaint: vicarious liability under a dangerous instrumentality theory, and loss of consortium.

i. Entitlement

Defendant, as the prevailing party, asserts entitlement to fees under § 768.79, Fla. Stat. Specifically, on June 1, 2023, Defendant sent to Plaintiffs a proposal for settlement that went unanswered and was thus rejected. Because Defendant later prevailed on the relevant claims, Defendant now seeks attorneys' fees and costs.

Plaintiffs, meanwhile, challenge Defendant's entitlement to fees. They aver that Florida substantive law may not serve as the basis for attorneys' fees in this federal litigation.

As an initial matter, Plaintiffs do not dispute that a proposal for settlement was properly served upon them. Plaintiffs also do not dispute that they rejected the proposal for settlement. The only dispute, then, is whether § 768.79 properly confers entitlement to fees and costs regarding the claims on which Defendant prevailed.

We find that it does. Plaintiffs mistakenly assert that Defendant "prevail[ed] solely on a federal claim." [D.E. 112 at 2]. But in fact, Defendant prevailed on two Florida law claims. As to the dangerous instrumentality claim, Plaintiffs specify in their complaint under no uncertain terms that Defendant "is liable under Florida law." [D.E. 35 at ¶ 38]. The loss of consortium claim, meanwhile, was an accompaniment to Plaintiffs' state law negligence claim. [*Id.* at ¶ 45]. Accordingly, Plaintiffs' argument that Defendant prevailed on federal claims, rather than state claims, is wholly without merit. The fact that Defendant invoked a federal statute to insulate itself from liability does not alter the fact that Defendant prevailed on state law claims. And Plaintiffs provide no authority to suggest the invocation of a federal defense transforms a state law claim to a federal claim for purposes of fees and costs.

If Defendant's pending motion sought fees for prevailing on the federal claims in the case, rather than state claims, we would likely agree with Plaintiffs that § 768.79 does not apply. But because Defendant's motion seeks fees for prevailing on only state law claims, we recommend that Plaintiffs' argument be rejected and Defendant be entitled to fees and costs. *See Illoominate Media, Inc. v. CAIR Fla., Inc.*, No. 9:19-CV-81179-RAR, 2021 WL 4030008, at *5 (S.D. Fla. Aug. 4, 2021), *aff'd*, 2022 WL 708754 (S.D. Fla. Feb. 3, 2022), *aff'd*, No. 22-10718, 2022 WL 4589357 (11th Cir. Sept. 30, 2022) (holding that § 768.79 applied where the movant prevailed on a state law claim in federal court); *see also Design Pallets, Inc. v. Gray Robinson, P.A.*, 583 F. Supp. 2d 1282, 1287 (M.D. Fla. 2008) (finding that "where the Court has both a

federal question and supplemental or diversity jurisdiction over Florida claims, § 768.79 applies only to the Florida claims").[2]

ii. Hourly Rates

Next, we assess hourly rates. Defendant seeks $225.00 per hour for Juan R. Serrano, Esq. (a partner) and $175.00 per hour for Cecilia Torello, Esq. (an associate). "Plaintiffs have no objection to the rates for [Defendant's] counsel, Ms. Torello and Mr. Serrano." [D.E. 112 at 1, n.1]. In light of no objection from Plaintiffs, and because those rates are reasonable in this market, we recommend that Defendant's counsel's hourly rates be awarded in the amount of $225.00 per hour for Mr. Serrano and $175.00 per hour for Ms. Torello. *See Barthco Int'l, Inc. v. DIJFO do Brasil, Ltda.*, No. 12-21221-CIV, 2014 WL 12861825, at *3 (S.D. Fla. May 20, 2014), *report and recommendation adopted*, 2014 WL 12861826 (S.D. Fla. Oct. 24, 2014) (awarding

[2] The Court also rejects Plaintiffs' argument in passing that the Court never affirmatively invoked supplemental jurisdiction. Indeed, Plaintiffs, of course, are the ones who filed this lawsuit. "A complaint that is filed in (or removed to) a federal district court and … includes state-law as well as federal claims doesn't have to cite 28 U.S.C. § 1367 to invoke supplemental jurisdiction; that can be assumed—why would the state-law claims be included in the complaint if the plaintiff didn't want the court to decide them?" *Townsquare Media, Inc. v. Brill*, 652 F.3d 767, 774 (7th Cir. 2011). And while it may be a best practice for courts to *sua sponte* consider supplemental jurisdiction, it is not a requirement and does not impact the Court's jurisdiction over Plaintiffs' state law claims. *See Innova Inv. Grp., LLC v. Vill. of Key Biscayne*, No. 21-11877, 2024 WL 2748480, at *5 (11th Cir. May 29, 2024) (citing *Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1000 (9th Cir.) (en banc), supplemented, 121 F.3d 714 (9th Cir. 1997), *as amended* (Oct. 1, 1997)) (holding that district court had no duty to affirmatively invoke supplemental jurisdiction); *Acri*, 114 F.3d at 1000 ("Thus, while a district court must be sure that it has federal jurisdiction under § 1367(a), once it is satisfied that the power to resolve state law claims exists, the court is not required to make a § 1367(c) analysis unless asked to do so by a party.").

$300.00 per hour for a partner and $230.00 for an associate in a breach of contract case that did "not require a specialized or sophisticated level of skill"); *see also Ford as Next Friend of Doe v. NCL Bahamas Ltd.*, No. 17-CV-24404, 2020 WL 11563866, at *6 (S.D. Fla. June 5, 2020) (awarding a $500.00 hourly rate to a partner in a negligence action in light of no objection from the non-movant); *AM Crespi Miami, LLC v. Century Sur. Co.*, No. 22-23346-CIV, 2024 WL 2979889, at *2 (S.D. Fla. May 28, 2024), *report and recommendation adopted*, 2024 WL 2976770 (S.D. Fla. June 13, 2024) (awarding $250.00 per hour for partner and $215.00 for associate in light of no objection from the non-movant).

iii. Hours Expended

Turning now to the hours expended, Defendant seeks to recover 154.19 hours: 27.53 expended by Mr. Serrano, and 126.66 expended by Ms. Torello. This amounts to $28,359.75. In support, Defendant contends that each of these time entries aided its defense, and supported its summary judgment effort, against Plaintiffs' two relevant claims.

In response, Plaintiffs lodge one objection, which seeks to invalidate "any time entry not specifically aimed towards the preparation of the motion for summary judgment." [D.E. 112 at 1].

As an initial matter, we are under no duty to consider Plaintiffs' vague, insufficient objection because it is far from "specific and 'reasonably precise.'" *See American Civil Liberties Union of Georgia v. Barnes,* 168 F.3d 423, 437 (11th Cir. 1999) (quoting *Norman*, 836 F.2d at 1303) (requiring that "'[o]bjections and proof from

fee opponents concerning hours that should be excluded must be specific and 'reasonably precise'"). Indeed, Plaintiffs make no effort to specify which time entries they believe to be unreasonable; thus, it is not this Court's duty to "rummage through" exhibits and make Plaintiffs' argument on their behalf. *See Rubinstein v. Keshet Inter Vivos Tr.*, No. 17-61019-CIV, 2019 WL 8275157, at *3 (S.D. Fla. Dec. 17, 2019), *report and recommendation adopted*, No. 17-61019-CIV, 2020 WL 1445472 (S.D. Fla. Jan. 24, 2020) (noting that the Court is "under no independent obligation to rummage through the ... exhibits submitted ... in search of some excerpt that might bolster [Plaintiffs'] point") (*quoting Shaw v. City of Selma*, 241 F. Supp. 3d 1253, 1280 (S.D. Ala. 2017), *aff'd*, 884 F.3d 1093 (11th Cir. 2018)); *see also Am. Charities for Reasonable Fundraising Regul., Inc. v. Pinellas Cnty.*, 278 F. Supp. 2d 1301, 1314 (M.D. Fla. 2003) (noting that "generalized statements that the time spent was unreasonable or unnecessary are not particularly helpful and not entitled to much weight. Accordingly, a fee opponent's failure to explain exactly which hours he views as unnecessary or duplicative is generally viewed as fatal."); *Gray v. Lockheed Aeronautical Sys. Co.*, 125 F.3d 1387, 1389 (11th Cir. 1997) (citing *Norman*, 836 F.2d at 1389) (holding that the district court did not abuse its discretion in awarding fees where the non-movant "lodged only conclusory objections to the hours submitted").

After nonetheless conducting an independent review of the record, the Court has found no blatantly improper time entries among Defendant's exhibits. Thus, we recommend that Defendant be awarded $28,359.75 in attorneys' fees.

B. Non-Taxable Costs

We now turn to Defendant's motion for non-taxable costs. Those costs, $6,206.48 in all, are comprised of six subpoenas ($58.30), a mediator fee ($555.55), a rebuttal expert witness fee for Keith Major ("Mr. Major") ($833.33), and a rebuttal expert witness fee for Dave Stetson ("Captain Stetson") ($4,759.30).

In response, Plaintiffs do not meaningfully challenge the subpoenas or mediator fees. Rather, Plaintiffs challenge only the costs sought for Mr. Major and Captain Stetson. In a pre-trial order, the Court in part struck the rebuttal expert testimony of both Mr. Major and Captain Stetson. [D.E. 111 at 27–30]. Thus, Plaintiffs argue that Defendant should not be entitled to recover costs for these partially-stricken experts.

In its reply, Defendant does not address Plaintiffs' objection, and does not provide (in either its motion or reply) authority to suggest that costs for stricken experts are recoverable under § 768.79 (or even that costs for expert witnesses in general are recoverable under § 768.79). Additionally, the Court has found no authority in which those fees were awarded despite the witness's testimony being stricken (even partially). Thus, Plaintiffs' objection is well taken; the Court is hesitant to consider these costs as "reasonable" where the testimony was partially stricken, and where no authority is provided deeming those costs recoverable. *See Wilshire Ins. Co. v. Casablanca on the Bay, Inc.*, No. 15-21644-CIV, 2018 WL 4829215, at *6 (S.D. Fla. July 20, 2018) (denying motion to tax expert witness costs under Section 768.79).

The Court also recommends that Defendant not be awarded mediation costs. "Federal courts can only tax costs outside of 18 U.S.C. § 1920 where a statute 'explicitly' authorizes it to do so, or a court explicitly declares that the statute creates a substantive right to costs." *Guzy v. QBE Specialty Ins. Co.*, No. 20-23169-CIV, 2023 WL 2244829, at *8 (S.D. Fla. Feb. 9, 2023), *report and recommendation adopted*, 2023 WL 2240456 (S.D. Fla. Feb. 27, 2023) (quoting *Kearney v. Auto-Owners Ins. Co.*, No. 8:06-CV-00595-T-24, 2010 WL 3062420, at *2 (M.D. Fla. Aug. 4, 2010)).

In the same vein, numerous courts in this Circuit have held that a movant cannot "receive any costs under Florida Statutes § 768.79 beyond those already award[able] under § 1920." *Kearney*, 2010 WL 306420, at *2; *Illoominate Media, Inc.*, 2021 WL 4030008, at *7 ("As a preliminary matter, costs not enumerated under 28 U.S.C. § 1920, such as travel expenses and expert fees, are not allowed, even under Section 768.79."); *Moody v. Integon Nat'l Ins. Co.*, No. 18-23094-CIV, 2019 WL 4731983, at *5 (S.D. Fla. July 30, 2019), *report and recommendation adopted*, No. 18-23094-CIV, 2019 WL 7943750 (S.D. Fla. Oct. 7, 2019) ("Non-taxable costs are not recoverable under Section 768.79 because the statute does not explicitly authorize courts to award such costs.").

Mediator fees are certainly not enumerated under § 1920; in fact, there is a plethora of authority that mediator fees are not recoverable costs. Thus, we decline to award Defendant costs for mediation. *See Marjam Supply Co. of Fla., LLC v. Pliteq, Inc.*, No. 1:15-CV-24363, 2021 WL 1200422, at *23 (S.D. Fla. Mar. 5, 2021), *report and recommendation adopted*, 2021 WL 1198322 (S.D. Fla. Mar. 30, 2021)

("Mediation expenses are not recoverable under Section 1920."); *see also Incarcerated Ent., LLC v. Cox*, No. 18-21991-CIV, 2019 WL 8989846, at *1 (S.D. Fla. Nov. 4, 2019) (holding that a "mediator's fee cannot be awarded even by default"); *Moody*, 2019 WL 4731983, at *6 (holding that "Defendant cannot recover the requested costs [for mediation] pursuant to Section 768.79" because those "costs are not … taxable under Section 1920").

Defendant should, however, be able to recover subpoena costs. Generally, those costs are recoverable and here, they are unopposed. Thus, on that score, we recommend Defendant's motion be granted. *See Jacques v. Wal-Mart Stores E., L.P.*, No. 18-60072-CIV-JEM, 2020 WL 5027358, at *4 (S.D. Fla. Jan. 13, 2020), *report and recommendation adopted*, 2020 WL 5027410 (S.D. Fla. Jan. 31, 2020) (awarding subpoena costs because they "are taxable and the [movant] has provided documentation to support each of its claimed costs").

In sum, we recommend that Defendant's motion for non-taxable costs be granted in part (as to the unopposed costs for subpoenas) and denied in part (as to the expert witness fees and the mediator fees), for a non-taxable costs award of $58.30.

C. Bill of Costs

Lastly, we analyze Defendant's Bill of Costs. Defendant seeks $2,073.78 in costs incurred for depositions and accompanying transcripts.

In response, Plaintiffs reiterate their argument that Defendant should not be entitled to costs because it did not prevail on any state law claims. Additionally,

Plaintiffs argue that Defendant has not shown that its defense in this case required the subject depositions, and therefore the costs accompanying those depositions should not be recoverable.

As an initial matter, we (again) reject Plaintiffs' entitlement argument. For one, we rely on our analysis above that, even if these costs were being pursued only under § 768.79, Defendant would be entitled to pursue those costs because Defendant prevailed on state law claims. But more importantly, Defendant seeks these costs under either § 768.79 or § 1920; because Defendant (undisputedly) is entitled to pursue costs under § 1920 as the prevailing party, any argument regarding the application of § 768.79 is effectively moot.

As to the reasonableness of the costs incurred for depositions, Defendant contends that Plaintiffs bear the burden of proving that the deposition costs are *not* taxable. And because Plaintiffs' objection to the deposition costs was conclusory, Defendant argues that Plaintiffs' objection should be overruled.

Defendant is correct in that "[w]hen challenging whether costs are taxable, the losing party bears the burden of demonstrating that a cost is not taxable, unless the knowledge regarding the proposed cost is within the exclusive knowledge of the prevailing party." *Seijo v. Casa Salsa, Inc.*, No. 12-CIV-60892-CIV, 2014 WL 11531564, at *1 (S.D. Fla. Mar. 3, 2014), *report and recommendation adopted*, 2014 WL 11531565 (S.D. Fla. Apr. 11, 2014). Moreover, "a deposition taken within the proper bounds of discovery will normally be deemed to be 'necessarily obtained for use in the case' and its costs will be taxed unless the opposing party interposes a

specific objection that the deposition was improperly taken or unduly prolonged." *Helms v. Wal-Mart Stores, Inc.*, 808 F. Supp. 1568, 1571 (N.D. Ga. 1992), *aff'd*, 998 F.2d 1023 (11th Cir. 1993) (citing *George R. Hall, Inc. v. Superior Trucking Co.*, 532 F.Supp. 985, 994 (N.D. Ga. 1982)).

Here, Plaintiffs' objection was conclusory—not "specific." Additionally, this is not an instance where the knowledge regarding the proposed costs is exclusive to Defendant; to the extent that the Court has been informed, all depositions were duly noticed. Thus, because Plaintiffs have provided no reason for why the depositions were *not* necessarily obtained for use in the case, we overrule Plaintiffs' insufficient objection and find that the costs should be recoverable. *See Helms*, 808 F. Supp. at 1571 ("[S]ince both parties should be aware of the reasons to take a deposition, this court holds that the non-prevailing party should explain why the court should not grant that cost."); *see also Home Design Servs., Inc. v. Turner Heritage Homes, Inc.*, No. 4:08-CV-355-MCR-GRJ, 2018 WL 4381294, at *11 (N.D. Fla. May 29, 2018), *report and recommendation adopted*, 2018 WL 6829047 (N.D. Fla. Sept. 28, 2018) ("District courts are afforded great latitude in determining whether a deposition was 'necessarily obtained' for use in the case. Deposition costs are taxable even if a prevailing party's use of a deposition is minimal or not critical to that party's ultimate success, unless the losing party shows that the deposition was not related to an issue present in the case at the time of the deposition.").

Accordingly, we recommend that Defendant's motion to tax $2,073.78 for costs related to depositions be granted. *See Stevenson v. Frontier Fla., LLC*, No. 8:19-CV-

1462-CEH-JSS, 2023 WL 3587691, at *2 (M.D. Fla. May 4, 2023), *report and recommendation adopted*, 2023 WL 3584110 (M.D. Fla. May 22, 2023) (granting motion to tax deposition costs in light of no objection because such deposition costs are "normally deemed" to be necessarily obtained unless a specific objection suggests otherwise).

D. Post-Judgment Interest

Defendant also requests post-judgment interest both as to its Motion for Attorneys' Fees and Non-Taxable Costs and its Bill of Costs. With no opposition, that request should be granted at the federal post-judgment interest rate. *See G.M. Brod & Co. v. U.S. Home Corp.*, 759 F.2d 1526, 1542 (11th Cir. 1985) (holding that, in a diversity suit, "the federal interest statute" was properly applied for post-judgment interest); *Sanford v. Omni Hotels Mgmt. Corp.*, No. 3:16-CV-1578-J-34PDB, 2020 WL 5260191, at *20 (M.D. Fla. Aug. 19, 2020), *report and recommendation adopted*, 2020 WL 5255122 (M.D. Fla. Sept. 3, 2020) (awarding post-judgment interest at the federal rate for fees and costs recovered under § 768.79); *Ramirez v. Scottsdale Ins. Co.*, No. 1:20-CV-22324-JEM, 2022 WL 4096728, at *7 (S.D. Fla. Aug. 18, 2022), *report and recommendation adopted*, 2022 WL 4094562 (S.D. Fla. Sept. 7, 2022) (awarding post-judgment interest at the federal rate on a costs award recovered under § 768.79).

Here, Final Judgment was entered on June 26, 2024. [D.E. 67]. The federal post-judgment interest rate applicable for the week before the date of judgment is 4.86%. Thus, a post-judgment interest rate of 4.86% should be applied to Defendant's total fees and costs award of $30,491.83. *See* 28 U.S.C. § 1961(a) (Post-judgment

"interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding.").

IV. CONCLUSION

For the reasons set forth above, we recommend that Defendant's Bill of Costs [D.E. 102] be **GRANTED**, and Defendant's Motion for Attorneys' Fees and Non-Taxable Costs [D.E. 108] be **GRANTED in part:**

A. Defendant's motion for attorneys' fees should be granted in the amount of $28,359.75;

B. Defendant's motion for non-taxable costs should be granted in part in the amount of $58.30;

C. Defendant's Bill of Costs should be granted in the amount of $2,073.78; and

D. Post-judgment interest shall apply at a rate of 4.86%.

Pursuant to Local Magistrate Rule 4(b) and Fed. R. Civ. P. 73, the parties have fourteen (14) days from service of this Report and Recommendation within which to file written objections, if any, to the District Judge. Failure to timely file objections shall bar the parties from *de novo* determination by the District Judge of any factual or legal issue covered in the Report *and* shall bar the parties from challenging on appeal the District Judge's Order based on any unobjected-to factual or legal conclusions included in the Report. 28 U.S.C. § 636(b)(1); 11th Cir. Rule 3-1; *see, e.g.,*

Patton v. Rowell, 2017 WL 443634 (11th Cir. Feb. 2, 2017); *Cooley v. Commissioner of Social Security,* 2016 WL 7321208 (11th Cir. Dec. 16, 2016).

DONE AND SUBMITTED in Chambers in Miami, Florida, this 2nd day of October, 2024.

/s/ *Edwin G. Torres*
EDWIN G. TORRES
United States Magistrate Judge