

No. _____

In the Supreme Court of the United States

DWIGHT SMITH, CATHERINE SMITH, BRYANT SMITH

Applicant,

v.

DEFENDANT CITY OF JOHNS CREEK, ET. AL.

Respondent.

**APPLICATION OF DWIGHT SMITH, CATHERINE SMITH, AND BRYANT SMITH TO
THE HONORABLE CLARENCE THOMAS TO EXTEND THE TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT**

Dwight Smith, Catherine Smith, Bryant
Smith

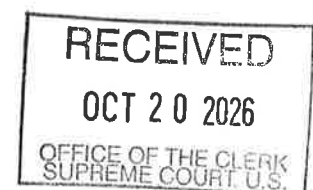
Pro Se Applicants

3691 Peachtree Parkway Ste
E, #372

Suwanee, Ga. 30024

(770) 344-9027

DwightHLsmith@yahoo.com



Pursuant to 28 U.S.C. § 2101I and Rules 13.5, 30.1, and 30.2 of the Rules of this Court, Applicant Dwight Smith, Catherine Smith, and Bryant Smith respectfully requests a 60-day extension of time, up to and including December 30, 2026, to file the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case. The opinion of the court of appeal - 26-11386 (App., *infra*, 1A-3A). An order of the district court. (App., *infra*, 4A-23A).

The court of appeals entered its judgment on August 3, 2026. Unless extended, the time within which to file a petition for a writ of certiorari would expire on October 31, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This application relates to Smith Et. Al vs. City of Johns Creek Et. Al , an action brought in June 2022 by Dwight Smith, Catherine Smith, and Bryant Smith that wrongly alleges 4th Amendment Deprivation against Defendant Respondent Officer Eric Ehrenreich actionable under 42 US 1983.
2. On April 19, 2021, 8-armed officers surrounded the Plaintiffs home for 47 minutes Standoff with Guns Drawn and Pointed directly at the Plaintiff Home. The incident was in response to Respondent Eric Ehrenreich responding to a loose small 5 pound dog. Respondent Eric Ehrenreich came to the back of the Plaintiffs property after not being able to make contact in the front of the property. Immediately after hearing Respondent Eric Ehrenreich yell out “come get your dog”, Catherine Smith told Respondent Eric Ehrenreich to get off the property. Respondent Eric Ehrenreich ran to the front of the property drew his assault rifle with his hand on the trigger, alleged he was being attacked, and call for backup from 8 armed officers. Respondent Ehrenreich told the officers the Plaintiffs did not have any weapon and he was never

touched. But the officer proceeded to threaten the Plaintiffs with gun drawn and pointed direct at the plaintiff home and widow. The officers then proceed to coerce the Plaintiffs to exit the home to for the purposes of obtaining a mental evaluation and to pursue evidence to obtain probable cause to build an case for an arrest.

3. The Plaintiffs filed their initial case in June 2022. The Plaintiffs voluntarily dismissed the case and refiled the case March 2024.
4. The District Court Granted Respondent Eric Ehrenreich Motion to Dismiss and dismissed all claims Against Respondent Officer Eric Ehrenreich March 2026. The Appeal Court Dismissed the Case 2 days prior to the Plaintiffs submitting the Appellant Brief on August 3rd 2026.
5. The Petitioner seeks review because the Appeal court erred in Sua Sponte dismissal of the case by stating the order is not final and did not end litigation on the merits due to remaining defendants and broadly incorrectly applied the Collateral Estoppel Doctrine.
6. These issues involve, without limitation, disagreements with the Eleventh Circuit Precedent Standard and or the application of Rule 4(m), Federal Rules of Civil Procedure and Circuit Court Split. As a result of significant abuse of discretion/errors Petitioners did not have the opportunity to appeal or received adequate notice to respond.
7. Good cause exists for an extension to prepare a petition for a writ of certiorari in this case. Dwight Smith is disabled with Crohn's Disease. Due to chronic inflammation of the intestines and bowel tract over the last few months has been challenging and difficult. Plaintiffs Dwight Smith, Catherine Smith, and Bryant Smith have experienced severe

PTSD following incident on 4/19/2021 resulting in the loss of the rental property, loss of income, and other losses.

8. The Petitioners have several motions that are pending ruling from this case in the District Court 1) Defendant Motion for Summary filed by Officer Wilson and Rosenquist 2) Plaintiffs Motion for Summary Judgement filed against City of Johns City 3) Defendants Motion to Dismiss Defendant Rowe and Massarelli 4) In addition to the current Writ of certiorari, the Petitioner also are working on another Writ of certiorari to be filed against Defendant James Tait from Denial on Appeal on August 14, 2026.
9. The Applicant has not previously requested an extension.
10. Applicant respectfully requests that the time to file a petition for a writ of certiorari in this matter be extended 60 days, up to and including December 30, 2026.

Respectfully submitted

October 16, 2026,

Dwight Smith



Catherine Smith



Bryant Smith



Pro Se Applicants

3691 Peachtree Parkway Ste E, #372

Suwanee, Ga. 30024

(770) 344-9027

DwightHLsmith@yahoo.com

APPENDIX

Order of the United States Court of Appeals for the Eleventh Circuit denying the Appeal Sua Sponte (August 3, 2026).....	1A
Denial of Motion to Dismiss (March 2026).....	4A

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NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-11386
Non-Argument Calendar

DWIGHT SMITH,
CATHERINE SMITH,
BRYANT SMITH,

Plaintiffs-Appellants,

versus

CITY OF JOHNS CREEK,
a Municipality in the State of Georgia,
ERIC EHRENREICH,
BRADLEY ROSENQUIST,
MICHAEL BACON,
JAMES TAIT, et al.,

Defendants-Appellees.

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Opinion of the Court

26-11386

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:24-cv-01163-SEG

Before GRANT, LAGOA, and KIDD, Circuit Judges.

PER CURIAM:

This appeal is DISMISSED, sua sponte, for lack of jurisdiction. The appellants, proceeding pro se, appeal from the district court's order dismissing their claims against Eric Ehrenreich and dismissing Ehrenreich from the case.

The appealed order is not final because it did not end the litigation on the merits. 28 U.S.C. § 1291; *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1327 (11th Cir. 2000) (explaining that a final judgment leaves nothing for the district court to do but execute the judgment); *Supreme Fuels Trading FZE v. Sargeant*, 689 F.3d 1244, 1246 (11th Cir. 2012) (explaining that an order disposing of fewer than all claims is not final). The appellants' claims against several other defendants remain pending. The order is not immediately appealable under the collateral order doctrine because it is effectively reviewable on appeal from a final judgment, as delaying review until then would not imperil a substantial interest. *Acheron Cap., Ltd. v. Mukamal*, 22 F.4th 979, 989 (11th Cir. 2022) (explaining that, among other requirements, an order must be effectively unreviewable on appeal from a final judgment to be appealable under the collateral order doctrine); *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107 (2009) (explaining that the collateral

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26-11386

Opinion of the Court

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order doctrine applies when delayed review of an order “would imperil a substantial public interest or some particular value of a high order”).

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DWIGHT SMITH, CATHERINE
SMITH, and BRYANT SMITH,

Plaintiffs,

v.

CITY OF JOHNS CREEK, et al.,

Defendants.

CIVIL ACTION NO.

1:24-CV-1163-SEG

ORDER

This matter is before the Court on Defendants Eric Ehrenreich, Tomario Rowe, and Victor Massarelli's first motion to dismiss. (Doc. 47.) Defendant Ehrenreich has also filed second and third motions to dismiss. (Docs. 60, 64.) After due consideration, the Court enters the following order.

I. Background

This is a § 1983 action in which *pro se* Plaintiffs Dwight Smith, Catherine Smith, and Bryant Smith have sued the City of Johns Creek (the "City") and several Johns Creek law enforcement officers. It is one in a constellation of lawsuits the Smiths have filed in (or removed to) this Court, all stemming from a protracted feud between Plaintiffs and their neighbors, the Rajhans.¹ The

¹ See, e.g., *Smith v. Lifeline Animal Project, Inc.*, No. 1:22-CV-2325-SEG, 2024 WL 1243022 (N.D. Ga. Feb. 16, 2024), *aff'd sub nom. Smith v. City of Johns Creek*, No. 24-10815, 2025 WL 313165 (11th Cir. Jan. 28, 2025); *Smith v. Fulton Cnty.*, No. 1:22-CV-2471-SEG, 2023 WL 10325341 (N.D. Ga. Mar. 7, 2023), *reconsideration denied in part sub nom. Smith v. Lall*, No. 1:22-CV-

SA

instant dispute concerns the Smiths' pet chihuahua, the Rajhans' complaints about the chihuahua to animal control authorities, and an ensuing series of alleged threats, 911 calls, and police responses to the Smiths' home. In the present action, Plaintiffs allege, *inter alia*, that the City and its law enforcement officers violated Plaintiffs' First, Fourth, and Fourteenth Amendment rights and various state laws when officers reported to the Smiths' home on June 19, 2020, and April 19, 2021, to investigate complaints about the Smiths' dog. (Doc. 28.) The procedural history of this matter is summarized below.

A. Plaintiffs' First Action (*Smith I*)

On June 10, 2022, Plaintiffs filed a 26-count complaint, asserting various claims against numerous defendants, including the City of Johns Creek, Fulton County, Eric Ehrenreich, Michael Bacon, James Tait, Bradley Rosenquist, and Derrick Wilson. (See Complaint, *Smith, et al. v. City of Johns Creek, et al.*, No. 1:22-CV-2325-SEG ("*Smith I*"), Doc. 3). The allegations in *Smith I* concerned the same June 2020 and April 2021 events that are the subject of the instant case. (Am. Compl., *Smith I*, Doc. 39 ¶¶ 17, 65.) In *Smith I*, Plaintiffs amended their complaint twice, (*Smith I*, Docs. 3, 39), and

2471-SEG, 2024 WL 1007424 (N.D. Ga. Feb. 20, 2024); *Devlin Rajhans v. Smith*, No. 24-cv-197-SEG (N.D. Ga.); *Mandeep Rajhans v. Smith*, No. 1:23-cv-3250-SEG (N.D. Ga.); *Devlin Rajhans v. Smith*, No. 1:23-cv-3251-SEG (N.D. Ga.); *Mandeep Rajhans v. Smith*, No. 1:23-cv-4889-SEG (N.D. Ga.).

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Defendants City of Johns Creek, Ehrenreich, Bacon, Tait, Rosenquist, and Wilson moved to dismiss both pleadings. (*Smith I*, Docs. 4, 12, 51.)

Before the Court ruled on these motions, Plaintiffs voluntarily dismissed their claims against the City and its law enforcement officers, leaving only the Lifeline Animal Project, Inc. (“Lifeline”) as a defendant. (*Smith I*, Doc. 72.) On September 20, 2023, the Clerk of Court approved and entered Plaintiffs’ voluntary dismissal as to these defendants, (*Smith I*, Doc. 73), and the case proceeded through judgment and appeal as to Lifeline. *See Smith v. Lifeline Animal Project, Inc.*, No. 1:22-CV-2325-SEG, 2024 WL 1243022 (N.D. Ga. Feb. 16, 2024), *aff’d sub nom. Smith v. City of Johns Creek*, No. 24-10815, 2025 WL 313165 (11th Cir. Jan. 28, 2025).

B. Plaintiffs’ Renewed Action (*Smith II*)

On March 19, 2024, Plaintiffs filed the instant case as a renewal action against the City, Eric Ehrenreich, Bradley Rosenquist, Michael Bacon, James Tait, and Derrick Wilson. (Doc. 1.) In this action, Plaintiffs focus their complaints on the alleged actions of the City and its officers in responding to the Smiths’ home on June 19, 2020, and April 19, 2021.

On June 7, 2024, Plaintiffs filed affidavits purporting to show proof of service on four of the five individual defendants (Bacon, Tait, Rosenquist, and Wilson). (Docs. 8, 9, 10, 11.) Plaintiffs, however, filed no proof of service on the docket as to Defendant Ehrenreich, and there was no other evidence that

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he was served. The docket reflects that Plaintiffs obtained a summons for Defendant Ehrenreich from the Clerk of Court for the first time on June 7, 2024. (Doc. 12.)

On June 24, 2024, Plaintiffs filed an amended complaint as a matter of course. (Doc. 14.) The amended complaint deleted reference to the individual defendants in the case caption and description of the parties. (*Id.*) The body of the complaint, however, appeared to contemplate (at least in some places) that the individual defendants remained in the case.

On July 12, 2024, all Defendants filed a motion to dismiss, (Doc. 16), directed towards the amended complaint. Defendants argued that Plaintiffs failed to serve the City within the 90 days prescribed by Rule 4(m) of the Federal Rules of Civil Procedure, and that Plaintiffs failed to state a claim upon which relief may be granted.² (Doc. 16-1.) Defendants interpreted Plaintiffs' amended complaint as "seemingly dismissing [Plaintiffs'] claims against the individual defendants, leaving the City as the sole defendant." (*Id.* at 6.)

On March 17, 2025, the Court issued an order in which it (1) denied the City's motions to dismiss (Docs. 16, 23) for insufficient service of process; (2)

² Defendants' motion also suggested that Plaintiffs failed to effect service on the individual defendants, (Doc. 16-1 at 6-7), but did not offer argument on the matter.

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struck Plaintiffs' amended complaint (Doc. 14) as a shotgun pleading; (3) directed Plaintiffs to file by April 7, 2025, a second amended complaint; and (4) directed Plaintiffs to show cause by April 7, 2025, why this case should not be dismissed without prejudice as to Defendant Ehrenreich. (Doc. 26.)

On April 7, 2025, Plaintiffs responded to the show-cause order as to Defendant Ehrenreich. (Doc. 27.) Specifically, Plaintiffs represented that they "served Defendant Erich Ehrenreich on June 3, 2024. However, the Clerk did not stamp the Service and Summons and Plaintiff did not realize the service was defective because the Service and Summons was not stamped." (*Id.* at 1.) Plaintiffs further stated that they

then moved to change the complaint to an official capacity complaint on the First Amend[ed] Complaint and remove[d] the name of the officer and replace their name with the officer titles, such as First Officer, Second Officer to distinguish the officer. . . . Therefore, Plaintiffs did not serve Defendant Eric Ehrenreich again because the complaint was changed to an official capacity complaint.

(*Id.*) In other words, Plaintiffs acknowledged that after over a year of litigation, Plaintiffs had not served Defendant Ehrenreich in compliance with the Federal Rules of Civil Procedure.

Simultaneously, on April 7, 2025, Plaintiffs filed a second amended complaint in which they named as defendants the City of Johns Creek, and seven individuals: Michael Bacon, Eric Ehrenreich, Tomario Rowe, James Tait, Derrick Wilson, Victor Massarelli, and Bradley Rosenquist. (Doc. 28.) That is,

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the second amended complaint renamed Defendants Ehrenreich, Rosenquist, Bacon, Tait, and Wilson, as well as two additional individuals, Defendants Rowe and Massarelli. On April 11, 2025, another summons was issued with respect to Defendant Ehrenreich. (Doc. 29.) Plaintiffs filed an affidavit detailing attempted but unsuccessful service on Defendant Ehrenreich on July 3, 2025. (Doc. 35.)

On August 20, 2025, Defendants Ehrenreich, Rowe, and Massarelli filed the instant motion to dismiss seeking to dismiss the claims against them for failure to effect service of process. (Doc. 47-1 at 10-16.) In the motion, Defendants Rowe and Massarelli also contend that this renewal action is improper with respect to them and that Plaintiffs' claims against them are time-barred under the applicable statutes of limitations. (*Id.* at 5-10.)

Following the filing of Defendants' first motion to dismiss, Plaintiffs appear to have made further attempts to serve Defendant Ehrenreich. On November 12, 2025, Defendant Ehrenreich filed a second motion to dismiss for lack of service. (Doc. 60.) In a declaration attached to the motion, Defendant Ehrenreich averred that he had received a request for waiver of service from Plaintiffs in the mail on October 22, 2025. (Doc. 60-2 ¶¶ 3-4.) However, at that time, Defendant Ehrenreich had still not been served.

Finally, on December 29, 2025, Plaintiffs filed proof of service on Defendant Ehrenreich reflecting that he was served on December 20, 2025.

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(Doc. 63.) Shortly thereafter, Defendant Ehrenreich filed a third motion to dismiss acknowledging service but seeking to dismiss Plaintiffs' claims on the ground that service was untimely. (Doc. 64.) Defendants' three motions to dismiss have been fully briefed and are ripe for resolution.

II. Discussion

A. Untimely Service of Process as to Defendant Ehrenreich

The Court first considers Defendant Ehrenreich's argument that Plaintiffs failed to perfect service upon him within the 90-day timeframe set forth in Federal Rule of Civil Procedure 4(m). (Doc. 47-1 at 10-16.)

"Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when that defendant has not been served." *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990). Because a court does not have personal jurisdiction over a defendant who has neither been properly served nor waived service, whenever a court finds insufficient service, it is "improper for the district court to . . . reach[] the merits in th[e] case." *Jackson v. Johns*, 259 F. App'x 181, 183 (11th Cir. 2007).

As this Court has previously explained to Plaintiffs, Rule 4(m) provides a 90-day service period and states:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

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But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m); *see also Lepone-Dempsey v. Carroll Cnty. Comm'rs*, 476 F.3d 1277, 1281 (11th Cir. 2007) (quoting Fed. R. Civ. P. 4(m)). In addition, Rule 4(l)(1) requires that “[u]nless service is waived, proof of service must be made to the court.” Fed. R. Civ. P. 4(l)(1). With certain exceptions that do not apply here, “proof must be [made] by the server’s affidavit.” *Id.*

“A Rule 12(b)(5) motion is the proper vehicle for challenging the mode of delivery, the lack of delivery, or the timeliness of delivery of the summons and complaint.” Wright & Miller, 5B Fed. Prac. & Proc. Civ. § 1353 (4th ed.) (footnotes omitted). A defendant challenging the sufficiency of service has the burden of showing that the service was improper. *Ritts v. Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1478 (N.D. Ga. 1997). The challenge “must specifically describe the defect under Rule 4.” *T-12 Entm’t, LLC v. Young Kings Enterprises, Inc.*, 36 F. Supp. 3d 1380, 1391-92 (N.D. Ga. 2014).

“Once the defendant describes a defect in service, the plaintiff must make a prima facie showing of proper service by presenting enough evidence to survive a motion for judgment as a matter of law.” *GunUp, Inc. v. Urvan*, No. 1:20-CV-02340-LMM, 2021 WL 2547662, at *2 (N.D. Ga. Feb. 24, 2021) (internal quotations omitted). “If the plaintiff can establish that service was proper, then the burden shifts back to the defendant to bring strong and

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convincing evidence of insufficient process.” *Auto-Owners Ins. Co. v. Smith*, No. 1:18-cv-05737-SCJ, 2019 WL 5701294, at *1 (N.D. Ga. Apr. 9, 2019) (internal quotations omitted). In resolving a motion to dismiss for insufficient service of process, a court may make factual findings necessary to resolve the motion. *Bryant v. Rich*, 530 F.3d 1368, 1376 (11th Cir. 2008).

Turning to facts present here, there is no dispute that Plaintiffs failed to perfect service on Defendant Ehrenreich within the 90-day service period set forth in Rule 4(m). Plaintiffs filed their original complaint, which named Defendant Ehrenreich, on March 19, 2024. (Doc. 1.) Although Plaintiffs represent that they served Defendant Ehrenreich on June 3, 2024, Plaintiffs concede that the summons that was delivered to Defendant Ehrenreich had not been signed by the Clerk of Court and did not bear the Court’s seal. (Doc. 27 at 1, 5.) Moreover, the docket reflects that the first time the Clerk of Court issued a summons for Defendant Ehrenreich was on June 7, 2024. (Doc. 12.) Thus, the summons that was delivered to Defendant Ehrenreich on June 3, 2024, was invalid and service was not completed on him. *See* Fed. R. Civ. P. 4(a)(1) (“A summons must . . . be signed by the clerk; and . . . bear the court’s seal.”); *Grant v. Romero*, No. CV 112-107, 2013 WL 1743883, at *1 (S.D. Ga. Mar. 11, 2013), *report and recommendation adopted*, No. CV 112-107, 2013 WL 1743881 (S.D. Ga. Apr. 23, 2013) (“[T]hose summons forms are unsigned and lack the Court’s seal, and they are therefore invalid.”).

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Rather, the docket reflects that Plaintiffs only completed service on Defendant Ehrenreich on December 20, 2025, (Doc. 63), over 21 months after Plaintiffs filed their original complaint. Plaintiffs therefore did not effect service on Defendant Ehrenreich within the 90-day period stated in Rule 4(m). Accordingly, the Court finds that service was untimely.

This finding, however, does not end the inquiry. If a plaintiff shows good cause for his untimely service, the court must extend the time for service for an appropriate period. *See* Fed. R. Civ. P. 4(m). “Good cause exists ‘only when some outside factor[,] such as reliance on faulty advice, rather than inadvertence or negligence, prevented service.’” *Lepone-Dempsey*, 476 F.3d at 1281 (quoting *Prisco v. Frank*, 929 F.2d 603, 604 (11th Cir. 1991)).

In response to Defendant Ehrenreich’s three motions to dismiss, Plaintiffs argue that there is good cause to extend the time for service upon Defendant Ehrenreich. Plaintiffs argue that they served Defendant Ehrenreich on June 3, 2024, but “did not realize” the unsigned summons was defective. (Doc. 27 at 1; Doc. 51 at 7; Doc. 61 at 4 n.2; Doc. 65 at 2.) Further, Plaintiffs assert that their process server attempted to serve Defendant Ehrenreich on April 25, 2025, and May 2, 2025, but that the process server was told that Defendant Ehrenreich no longer worked at the City of Johns Creek. (Doc. 51 at 7; Doc. 61 at 3.) Plaintiffs also indicate that, following those attempts at service, Plaintiffs undertook efforts to find Defendant Ehrenreich

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and serve him. (Doc. 51 at 8; Doc. 61 at 3-4; Doc. 65 at 4.) In short, Plaintiffs contend that they have made a “good faith effort” to serve Defendant Ehrenreich and that the Court should extend the time for service as a result. (Doc. 51 at 8; Doc. 61 at 6; Doc. 65 at 5-6.)

Given Plaintiffs’ severe delay in serving Defendant Ehrenreich, the Court cannot find good cause here. While the Smiths are *pro se* litigants, they are familiar with the requirements of Rule 4(m) from their many other lawsuits. They have also demonstrated that they were able to procure valid summonses from the Clerk of Court and properly serve four of the five originally named individual defendants. (Docs. 8, 9, 10, 11.) Although Plaintiffs suggest that they “did not realize” that their June 3, 2024, service was defective, “inadvertence or negligence” does not constitute good cause for failing to perfect service. *Lepone-Dempsey*, 476 F.3d at 1281; *see also Reis v. Comm’r of Soc. Sec.*, 710 F. App’x 828, 829 (11th Cir. 2017) (finding that “a lawyer’s negligence” does not constitute good cause for purposes of Rule 4).³ Moreover, even after the Court alerted Plaintiffs about their failure to file proof of service as to Defendant Ehrenreich in its March 17, 2025, order, Plaintiffs

³ The Court also notes that after service on Defendant Ehrenreich with the defective summons on June 3, 2024, Plaintiffs did not file proof of service on the docket until the Court ordered Plaintiffs to show cause why their claims against Defendant Ehrenreich should be dismissed. If Plaintiffs “did not realize” the June 3, 2024, service was defective until the Court’s show cause order, they should have filed proof of that service on the docket.

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waited over five weeks before attempting to serve Defendant Ehrenreich on April 25, 2025. Plaintiffs finally served Defendant Ehrenreich on December 20, 2025, (Doc. 63), over a year and a half after the deadline for service elapsed.

The Court also considers that Plaintiffs' filing of the first and second amended complaints did not extend the 90-day period for service under Rule 4(m). As several courts have held, "[t]he ninety-day deadline imposed by Rule 4(m) does not restart by filing an amended complaint except as to those defendants newly added in the amended complaint." *Gray v. Equifax Info. Services, LLC*, No. 19-62425-CIV, 2021 WL 1292695, at *2 (S.D. Fla. Feb. 5, 2021) (citing *Lindley v. City of Birmingham, Ala.*, 452 F. App'x 878, 880 (11th Cir. 2011)); *see Bolden v. City of Topeka, Kan.*, 441 F.3d 1129, 1148 (10th Cir. 2006) ("[T]he 120-day period provided by Rule 4(m) is not restarted by the filing of an amended complaint except as to those defendants newly added in the amended complaint."); *Campbell v. High Tech Rail & Fence, LLC*, No. 3:18-CV-4-TCB, 2018 WL 11440993, at *3 n.2 (N.D. Ga. May 17, 2018) ("Filing an amended complaint does not restart the Rule 4(m) time period."). In any event, even if the second amended complaint had restarted the 90-day period, Plaintiffs' service would have been untimely. Plaintiffs filed their second amended complaint on April 7, 2025, (Doc. 28), but only perfected service on Defendant Ehrenreich on December 20, 2025. (Doc. 63.)

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Even in the absence of good cause, courts retain discretion to extend the time for service of process. *See Lepone-Dempsey*, 476 F.3d at 1282; *Horenkamp v. Van Winkle & Co., Inc.*, 402 F.3d 1129, 1132 (11th Cir. 2005). Indeed, where no good cause is shown, “the district court *must* still consider whether any other circumstances warrant an extension of time based on the facts of the case.” *Lepone-Dempsey*, 476 F.3d at 1282 (emphasis added). For instance, “[r]elief may be justified . . . if the applicable statute of limitations would bar the refiled action, or if the defendant is evading service or conceals a defect in attempted service.” *Id.* (quoting Fed. R. Civ. P. 4(m), Advisory Committee Note, 1993 Amendments).

Here, most of Plaintiffs’ claims against Defendant Ehrenreich are subject to Georgia’s two-year statute of limitations for personal injury claims, O.C.G.A. § 9-3-33, one of their claims is subject to the one-year statute of limitations set forth in 42 U.S.C. § 1986, and one of their claims is subject to the four-year limitations period for state law trespass claims. (*See infra* at 17-18.) The events that give rise to Plaintiffs’ claims are alleged to have occurred on June 19, 2020, and April 19, 2021. Therefore, should the Court dismiss Plaintiffs’ claims for failure to timely effect service of process, the applicable statute of limitations will bar Plaintiffs from pursuing their claims against Defendant Ehrenreich.

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Notwithstanding that the applicable statute of limitations will bar Plaintiffs from refiling their claims, the Court determines that a discretionary extension is not warranted based on the circumstances of this case. First, the Court considers that it has repeatedly instructed Plaintiffs on the deadline for effecting service of process and the procedures that must be followed in perfecting service. For instance, in *Smith I*, the Court explained the required contents of a summons and the procedure for obtaining a summons from the Clerk of Court. (See February 16, 2024, Order, *Smith I*, Doc. 77 at 2-3.) The Court reminded Plaintiffs that they were responsible for serving defendants within 90 days of filing the complaint. (See *id.* at 2.) Further, the Court noted that pursuant to Rule 4(l)(1), “[u]nless service is waived, proof of service must be made to the court.” (See *id.* at 4 n.2.) The Court has also instructed Plaintiffs on the procedures for service of process in several other cases. (See, e.g., February 20, 2024, Order, *Smith et al v. Lall et al*, 1:22-cv-2471-SEG, Doc. 86 at 6-7; July 26, 2022, Order, *Smith et al v. AMH 2014-1 Borrower, LLC et al*, 1:22-cv-805-SEG, Doc. 19 at 4-5.)

Second, Plaintiffs’ delay in effecting service on Defendant Ehrenreich was egregious. Service was perfected over 21 months after Plaintiffs filed their original complaint and over 18 months after the 90-day deadline set by Rule 4(m) expired.

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Third, there is nothing in the record that suggests that Defendant Ehrenreich attempted to evade service in this case. Instead, Plaintiffs represent that Defendant Ehrenreich bought a house in Texas in August 2023 and began living at that residence at some unknown time. (Doc. 61 at 3.) Plaintiffs state that their process server discovered this fact on October 10, 2025, but they do not explain why the same investigative steps that led to this discovery could not have been carried out sooner. (*Id.*)

Fourth, although Plaintiffs represent that they served Defendant Ehrenreich with a defective summons on June 3, 2024, their claim that they “did not realize” the summons was defective is difficult to credit. As stated above, the Court has repeatedly instructed Plaintiffs on the procedures for effecting service of process. Moreover, Plaintiffs have demonstrated that they were able to procure valid summonses from the Clerk of Court and properly serve four of the five originally named individual defendants. (Docs. 8, 9, 10, 11.) It is also puzzling, given Plaintiffs’ representation that they “did not realize” the June 3, 2024, service on Defendant Ehrenreich was defective until the Court’s show cause order, that they did not file proof of that service on the docket, when they did so for the other four individual defendants named in the original complaint. The Court’s previous orders in other cases, including the original suit upon which this renewal action is based, gave Plaintiffs sufficient notice that they were required to file proof of service.

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After weighing the foregoing circumstances, the Court exercises its discretion to deny an extension for service of process on Defendant Ehrenreich. Plaintiffs' claims against Defendant Ehrenreich are therefore dismissed without prejudice for failure to timely effect service of process. *See, e.g., Melton v. Wiley*, 262 F. App'x 921, 924 (11th Cir. 2008) (affirming denial of extension for service of process despite the plaintiff's "mistaken but seemingly good faith effort to effect service, timely notice to Defendant Wiley despite the lack of valid service, and the prejudicial consequence of dismissal without prejudice because of the statute of limitations"); *Yaruro v. United State*, No. 7:22-CV-39 (WLS), 2023 WL 137458, at *4 (M.D. Ga. Jan. 9, 2023) ("While the statute of limitations factor weighs in favor of a discretionary extension, this Court finds that a discretionary extension is not warranted based on the facts of this case."); *Kimbrough v. City of Cocoa*, No. 6:05-CV-471-ORL-31, 2006 WL 1643364, at *2-3 (M.D. Fla. June 6, 2006) (denying extension for service of process notwithstanding the expiration of the statute of limitations).

B. Untimely Service of Process as to Defendants Rowe and Massarelli

Defendants Rowe and Massarelli also contend that Plaintiffs have not served them within the 90-day deadline set forth in Federal Rule of Civil Procedure 4(m). (Doc. 47-1 at 10-16.) Plaintiffs first asserted claims against Officers Rowe and Massarelli in this action in their second amended complaint,

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which was filed on April 7, 2025. (Doc. 28.) The docket does not yet reflect proof of service on either Officer Rowe or Officer Massarelli. However, Plaintiffs have presented evidence plausibly suggesting that Defendants may be evading service.

With respect to Defendant Rowe, Plaintiffs have filed affidavits from their process servers indicating that Plaintiffs have attempted service on Defendant Rowe at his place of employment, the City of Johns Creeks Police Department, on nine separate occasions—April 16, 2025, April 25, 2025, May 8, 2025, June 26, 2025, June 27, 2025, July 3, 2025, September 4, 2025, September 9, 2025, and September 17, 2025. (Docs. 34, 37, 55.) Moreover, Plaintiffs’ process servers aver that they attempted to call and email Defendant Rowe, and left messages with others at the Police Department, to arrange service, but to no avail. (*Id.*)

Likewise, as to Defendant Massarelli, Plaintiffs have filed affidavits detailing nine different service attempts at the City’s Police Department on April 16, 2025, April 25, 2025, May 5, 2025, June 26, 2025, June 27, 2025, July 3, 2025, September 4, 2025, September 8, 2025, and September 17, 2025. (Doc. 33, 36, 54.) As with Defendant Rowe, Plaintiffs’ process servers indicate that they attempted to call and email Defendant Massarelli, and left messages with others at the Police Department, in an effort to facilitate service. (*Id.*)

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Based on Plaintiffs' numerous and extensive attempts to serve Defendants Rowe and Massarelli, the Court exercises its discretion to extend the deadline for service on Defendants Rowe and Massarelli until 60 days after the entry of this order. *See, e.g., Miller v. Tr. Props.*, No. 1:21-CV-3187-CAP-CCB, 2021 WL 9638542, at *2 (N.D. Ga. Dec. 20, 2021) (“[G]iven Beasley’s apparent efforts to evade service, the Court exercises its discretion to extend the time for Plaintiff to effectuate service.”); *Scottsdale Indem. Co. v. 1st Choice Title, LLC*, No. 2:21-CV-36-JLB-NPM, 2021 WL 12303398, at *2 (M.D. Fla. July 26, 2021) (“Due to the indication that Fior is evading service, Plaintiff’s request for an extension of time to complete service is granted.”); *Madison v. BP Oil Co.*, 928 F. Supp. 1132, 1137 (S.D. Ala. 1996) (“[C]ourts have found that factors outside a plaintiff’s control, such as . . . evasion of service of process,” constitute good cause for extending the time for service.); *see also Lepone-Dempsey*, 476 F.3d at 1282 (noting that “relief may be justified” from Rule 4(m)’s 90-day deadline for service “if the defendant is evading service” (cleaned up)). **Defendants Rowe and Massarelli, and their counsel, are urged to take steps to facilitate service of process.** If they fail to do so, the Court will entertain requests from Plaintiffs for alternative means of serving Defendants.

Moreover, the Court notes that, at present, it cannot consider Defendants Rowe and Massarelli’s argument that Plaintiffs’ claims against

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them are time-barred because the applicable statutes of limitations have run and further, that Plaintiffs cannot avail themselves of Georgia's renewal statute. That argument goes to the sufficiency of Plaintiffs' legal claims, *see United States v. Bretz*, 988 F.2d 122 (9th Cir. 1993) ("A statute of limitations defense is a defense on the merits"), which cannot be addressed where there is a pending challenge to the sufficiency of service on a defendant, *see Jackson*, 259 F. App'x at 183. Accordingly, Defendants' motion to dismiss (Doc. 47) is denied without prejudice as to Defendants Rowe and Massarelli.

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III. Conclusion

For the forgoing reasons, Defendants Ehrenreich, Rowe, and Massarelli's first motion to dismiss (Doc. 47) is **GRANTED IN PART** and **DENIED IN PART without prejudice**. The motion is granted with respect to Plaintiffs' claims against Defendant Ehrenreich but denied without prejudice as to Plaintiffs' claims against Defendants Rowe and Massarelli. Plaintiffs' claims against Defendant Ehrenreich are **DISMISSED without prejudice**. Further, Defendant Ehrenreich is **DISMISSED** from this case.

Plaintiffs' deadline for effecting service of process on Defendants Rowe and Massarelli pursuant to Rule 4(m) is extended to 60 days after the entry of this order. **Defendants Rowe and Massarelli, and their counsel, are urged to take steps to facilitate service of process.**

Defendant Ehrenreich's second and third motions to dismiss (Docs. 60, 64) are **DEEMED MOOT**.

SO ORDERED, this 23rd day of March, 2026.


SARAH E. GERAGHTY
United States District Judge

IN THE SUPREME COURT OF THE UNITED STATES

No.

Dwight Smith, Catherine Smith, Bryant
Smith Petitioners,

v.

City of Johns Creek Et. Al, Respondent

CERTIFICATE OF SERVICE

I, Dwight Smith, Catherine Smith, and Bryant Smith, Petitioners', hereby certify that all parties required to be served, have been served, on this 16th day of October, 2026, in accordance with U.S. Supreme Court Rule 29.3, three (3) copies of the foregoing APPLICATION OF DWIGHT SMITH, CATHERINE SMITH, AND BRYANT SMITH TO EXTEND THE TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI by placing said copy in the U.S. mail, Priority Mail postage prepaid, to the addressed as listed below for the opposing counsel:

Venus Esfandiari

Venus.Esfandiari@fmglaw.com

Sun S. Choy

schoy@fmglaw.com

770-818-0000

Freeman, Mathis, & Gary, LLP

100 Galleria Parkway Suite 1600

Atlanta, GA 30339

Dwight Smith



Catherine Smith



Bryant Smith



Dwighthmsith@yahoo.com

3651 Peachtree Pkwy, Suite E, #372

Suwanee, GA 30024

(c) 770-344-9027