

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80381-MARRA-JOHNSON

JANE DOE NO. 5,

Plaintiff,

vs.

JEFFREY EPSTEIN,  
Defendant.

/

**DEFENDANT'S RESPONSE IN OPPOSITION  
TO MOTION FOR DEFAULT JUDGMENT (DE #7)**

In accordance with Local Rule 7.1(C), Defendant Jeffrey Epstein submits the following response in opposition to Plaintiff's Motion (DE #7) for Judgment Upon Default, and respectfully states as follows:

1. Jeffrey Epstein has filed a motion (DE #9) to set aside the clerk's default (DE #6) that would serve as the basis of a default judgment (DE #7-2).
2. For the reasons detailed in that motion (DE #9 at 3), the clerk's default was entered prematurely because substituted service was effected on June 2, not May 7. Thus, in accordance with Rule 12(a)(1)(A)(i) of the Federal Rules of Civil Procedure, Mr. Epstein has until ***June 23*** to respond to the complaint.
3. Apart from the prematurity of the plaintiff's motion, “[t]he law does not favor defaults, and any doubts as to whether a party is in default should be

decided in favor of the defaulting party.” *E.g., Marschauser v. Travelers Indem. Co.*, 145 F.R.D. 605, 610 (S.D. Fla. 1992) (Highsmith, J.) (*citing* 10 Charles A. Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice and Procedure* § 2681 at 402–03 (2d ed. 1983)). *Cf. id.* (noting that “[t]he Court’s entry of an Order of Default is within the discretion of the Court”).

4. Because the default (DE 8) was premature, any default judgment at this point would also be premature. *See Franklin v. Scribner*, No. 07cv438 BTM (LSP), 2007 WL 2326085, at \*1 (S.D. Cal. Aug. 9, 2007) (denying motion for default judgment where the answer deadline had not yet passed); *see also id.* (characterizing the motion for default judgment as “deficien[t]”).

WHEREFORE, based on the foregoing, defendant Jeffrey Epstein opposes the plaintiff’s motion for entry of default judgment.

Respectfully submitted,

ATTERBURY, GOLDBERGER &  
WEISS, P.A.  
250 Australian Avenue South, Suite 1400  
West Palm Beach, Florida 33401  
Tel: 561 659 8300  
Fax: 561 835 8691

By: /s/ Jack A. Goldberger  
Jack A. Goldberger  
Fla. Bar No. 262013  
jgoldberger@agwpa.com

*Attorneys for Defendant Jeffrey Epstein*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 19, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record identified below by facsimile and U.S. Mail.

Jeffrey M. Herman, Esq.  
Stuart S. Mermelstein, Esq.  
Adam D. Horowitz, Esq.  
Herman & Mermelstein, P.A.  
18205 Biscayne Blvd, Suite 2218  
Miami, Florida 33160  
Fax: 305 931 0877

/s/ Jack A. Goldberger  
Jack A. Goldberger