UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

JANE DOE NO. 5,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

EPSTEIN'S REPLY IN SUPPORT OF
MOTION [DE 9] TO SET ASIDE CLERK'S DEFAULT

Discovery on service of process would be extraordinary,[1] unnecessary and a waste of resources.

Mr. Barnett's affidavit is dispositive: He was the one who received the summons at Epstein's house, but he did not reside there. If the plaintiff had offered some evidence (*e.g.*, a phone-book entry, a Google search-result, an affidavit, etc.) that Mr. Barnett ***did*** reside there, or that some other person, who ***did*** reside there, received the summons - - and if we were contesting service altogether

[1] *See* Fed. R. Civ. P. 26(d)(1) ("A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.").

- - perhaps discovery would be appropriate. Instead, the plaintiff ventures a wild guess (unsupported by affidavit or other evidence) that Mr. Epstein "instructed [Barnett] to answer the door on May 7, 2008 and take service anonymously" (DE 14 at 2).

Such rank speculation is insufficient to warrant "pre-discovery discovery" on service of process. To conclude otherwise would create a rule that any plaintiff who could not identify the person who answered the door would be entitled to pre-discovery discovery. *Cf. Patterson v. Brown*, No. 3:06cv476, 2008 WL 219965, at *8 (W.D.N.C. Jan. 24, 2008) (refusing discovery where information sought was irrelevant to the issue of whether service of process was valid); *Centennial LLC v. Becker*, No. Civ.A. 3:97-CV-1126, 2000 WL 35508748, at *5 n.2 (D.S.C. Nov. 14, 2000) (stating that "Plaintiff's speculation, grounded in nothing but a 'hunch' or a prayer, is simply insufficient to thwart the court's finding [based on the defendant's uncontroverted sworn statement]," and adding that "Plaintiff[, instead of] provid[ing an] affidavit" to challenge the defendant's position, put forth an "entire argument . . . grounded in nothing more substantial than idle and baseless speculation").

As explained in our motion, because Mr. Barnett did not reside at Mr. Epstein's house, substitute service on Mr. Barnett was effective only under New York rules. They gave Mr. Epstein until June 23 to respond. Mr. Epstein timely

responded on June 20, by filing a motion to stay (DE 11). Accordingly, he is not in default and the clerk's default should be set aside.

Respectfully submitted,

LEWIS TEIN, P.L.
3059 Grand Avenue, Suite 340
Coconut Grove, Florida 33133
Tel: 305 442 1101
Fax: 305 442 6744

By: /s/ Michael R. Tein
GUY A. LEWIS
Fla. Bar No. 623740
lewis@lewistein.com
MICHAEL R. TEIN
Fla. Bar No. 993522
tein@lewistein.com

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 July 7, 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 all counsel of record identified on the following service list via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Michael R. Tein
Michael R. Tein

SERVICE LIST

Jeffrey M. Herman, Esq.
Stuart S. Mermelstein, Esq.
Adam D. Horowitz, Esq.
HERMAN & MERMELSTEIN, P.A.
182 Biscayne Blvd., Suite 2218
Miami, FL 33160
Phone: (305) 931-931-2200