

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

**PLAINTIFF'S MOTION FOR ORDER COMPELLING CLERK TO
ENTER DEFAULT AGAINST DEFENDANT, OR ALTERNATIVELY,
FOR AN ENLARGEMENT OF TIME TO SERVE PROCESS,
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, Jane Doe No. 2, by and through her undersigned counsel, and pursuant to Federal Rules of Civil Procedure 55(a) and 4(m), and S.D. Fla. L.R. 7.1, hereby files this Motion for Order Compelling Clerk to Enter Default Against Defendant, or Alternatively, for an Enlargement of Time to Serve Process, and Incorporated Memorandum of Law, as follows:

1. This action was filed on February 6, 2008. On May 7, 2008, Defendant Jeffrey Epstein was served with the Summons and Complaint. A copy of the Affidavit of Service was filed with the Court. (D.E. 4).

2. Pursuant to Fed.R.Civ.P. 12(a)(1), Defendant Jeffrey Epstein was required to answer or otherwise serve a response to the Complaint on or before May 27, 2008. Defendant failed to do so.

3. On May 29, 2008, Plaintiff moved for entry of a Clerk's Default against Defendant pursuant to Fed.R.Civ.P. 55(a).

4. On June 6, 2008, the Clerk denied Plaintiff's Motion for Entry of Default, for

improper service. (D.E. 8).¹

5. The Affidavit of Service filed in this case, states that the process server made five separate attempts at service at the Defendant's New York residence over a two week period, at various times of day and night; on the fifth attempt, on May 7, 2008 at 7:45 a.m., the process server served an "Assistant and House Staff Employee" in Defendant's residence who refused to identify himself.

6. According to press reports, Defendant Jeffrey Epstein is a billionaire with multiple residences; his principal residence is a 45,000 square foot townhouse in Manhattan, where the above-described service was made. Mr. Epstein began receiving extensive press coverage approximately two years ago when allegations first surfaced that he sexually molested young girls. There are presently pending criminal charges against Mr. Epstein in Palm Beach County relating to such allegations, in which Mr. Epstein is represented by Jack A. Goldberger, Esq. (See Herman Aff., Exhibit "A" hereto ¶¶ 3-5). The Defendant's receipt of notice of this lawsuit is based on correspondence and communications between Plaintiff's counsel and Defendant's attorney, Mr. Goldberger, regarding both the criminal case and this civil case, and the extensive press coverage of the instant lawsuit when it was filed in February, 2008, as well as the May 7, 2008 service of process at his New York residence. (See Herman Aff., Exhibit "A" hereto, ¶¶ 3, 4).

7. Under Fed.R.Civ.P. 4(e)(2)(B), service of process can be made on the defendant by "leaving a copy . . . at the individual's dwelling or usual place of abode with someone of suitable age

¹ At the same time service of process was attempted in this case, it was also attempted in related cases in this Court against Defendant Epstein, Jane Doe 3 v. Epstein, case no. CASE NO.: 08-CV-80232-MARRA/JOHNSON, Jane Doe No. 4 v. Epstein, case no., 08-CV-80380-MARRA/JOHNSON, and Jane Doe No. 5 v. Epstein, case no. 08-80381-CIV-MARRA. Unlike the instant case, Clerk's defaults were entered in Jane Doe 4 and Jane Doe 5, based on affidavits of service identical to that filed in this case. Plaintiff filed a Motion for Entry of Default in Jane Doe

and discretion who resides there.”²

8. A filed Affidavit of Service constitutes prima facie evidence of valid service. Home-Stake Production Co. v. Talon Petroleum, C.A., 907 F.2d 1012 (10th Cir. 1990). In Home-Stake, the declaration of the process server stated only that the person served identified herself as the cook working for the defendant for the past twenty years. Id. at 1016. The Court held that the defendant’s affidavit challenging the validity of that service was insufficient to overcome the presumption of valid service created by the process server’s affidavit and return of service. Id. at 1017. In other words, it was the defendant’s burden to show that the cook did not reside in his home, and he failed to meet that burden.³ Id. See also National Development Co. v. Triad Holding Corp., 930 F.2d 253, 256-58 (2d Cir. 1991) (upholding service on the defendant’s housekeeper, where the defendant, like Defendant Jeffrey Epstein, was a wealthy individual with more than one residence, on the basis that, “if not the most likely method of ensuring that he received the summons and complaint, [the service] was reasonably calculated to provide actual notice of the action”).

9. “Courts have liberally construed [Rule 4] and found valid service of process when a defendant has actual notice of a lawsuit filed against him.” Frank Keevan & Son, Inc. v. Callier Steel Pipe & Tube, Inc., 107 F.R.D. 665, 671 (S.D. Fla. 1985) (denying motion to set aside default). “If the court finds that the defendant received notice of the complaint and the plaintiff made a good

No. 3, but to date there has been no action taken on that Motion.

² Service can also be made on the Defendant in this case under Florida law or under the law of New York, where the service was made. Fed.R.Civ.P. 4(2)(A). Florida law is substantially the same as federal law, as it allows service on a person 15 years or older who resides at the defendant’s usual place of abode. Florida Statute §48.031(1)(a).

³ Under Florida law, like federal law, “[a] presumption of valid service arises from evidence of a return of service which is regular on its face. The party challenging the service must overcome that presumption by clear and convincing evidence.” Magazine v. Bedoya, 475 So.2d 1035 (Fla. 3d DCA 1985).

faith effort to serve the defendant pursuant to the Rule, then the court will most likely find that service of process has been effective.” Id. Here, it may fairly and reasonably be inferred that Defendant Epstein had actual notice of the filing of the Complaint, and the Plaintiff has exercised diligence and good faith in attempting to serve Defendant Epstein with process. Accordingly, entry of default is appropriate.

10. If the Court does not agree that service on Defendant Jeffrey Epstein was valid, then Plaintiff requests an enlargement of time to effect service. Pursuant to Fed.R.Civ.P. 4(m), the Court shall extend the 120-day period⁴ for service for an appropriate period where good cause on behalf of Plaintiff is shown. Here, Plaintiff was diligent in seeking service of process through numerous attempts, until Plaintiff reasonably believed that service had been effectuated on May 7, 2008. (Golub Aff., Exhibit “B” hereto (attempts at service made in February and March, 2008); Affidavit of Service, D.E. 4 (attempts at service made in April and May, 2008, after Defendant Epstein returned from Israel); see also Herman Aff. ¶¶ 5-6). Within days of the expiration of time for Defendant to answer or respond to the Complaint based on the May 7, 2008 service date, Plaintiff filed a Motion for Clerk’s Default. Not until June 6, 2008, when Plaintiff’s counsel received the Clerk’s denial of the Motion for Entry of Default, did a need to take further action become apparent, and Plaintiff then promptly filed the instant Motion. Accordingly, Plaintiff has been diligent in attempting to serve process on Defendant Epstein. Additionally, for a significant portion of the 120-day period, Defendant Epstein was out of the country, in the State of Israel, and not amenable to service. (Herman Aff., ¶ 5).

WHEREFORE, Plaintiff, JANE DOE NO. 2, respectfully requests that this Court enter an

⁴This action was filed on February 6, 2008. The 120-day period to serve the Defendant with process ran on June 5, 2008, one day before the Clerk denied Plaintiff’s Motion for Entry of Default.

Order compelling the Clerk to enter a default against Defendant Jeffery Epstein pursuant to Fed.R.Civ.P. 55(a), or in the alternative, for an enlargement of time to serve process on Defendant Epstein.

Dated: June 11, 2008.

Respectfully submitted,

By: s/ Adam D. Horowitz.

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 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 to all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Adam D. Horowitz .

SERVICE LIST
DOE vs. JEFFREY EPSTEIN
CASE NO.: 08-CV-80119-MARRA/JOHNSON
United States District Court, Southern District of Florida

Jeffrey Epstein (Via Regular Mail)
9 East 71st Street
New York, NY 10021

/s/ Adam D. Horowitz