

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 07-21221-CIV-ALTONAGA/TURNOFF

RENEE BLASZKOWSKI, AMY
HOLLUB, PATRICIA DAVIS, *et al.*,
individually and on behalf of others
similarly situated,

Plaintiffs,

vs.

MARS, INCORPORATED, *et al.*,

Defendants.

JURISDICTIONAL DEFENDANTS' MOTION FOR RECONSIDERATION

Defendants, Nestlé S.A.; Meijer Inc.; Pet Supplies “Plus”; Pet Supplies PLUS/USA, Inc.; H.E. Butt Grocery Company; The Kroger Co. of Ohio; New Albertsons, Inc.; Safeway Inc.; and The Stop & Shop Supermarket Company LLC (collectively the “Jurisdictional Defendants”), hereby move this Court to reconsider that portion of its order dated October 19, 2007 (D.E. 243) which allows Plaintiffs to commence jurisdictional discovery prior to filing an appropriate motion such that Jurisdictional Defendants have an opportunity to respond.¹

Plaintiffs filed their Corrected Amended Class Action Complaint (“Amended Complaint”) on July 27, 2007 (D.E. 156). On October 9, 2007, Plaintiffs’ counsel, for the first time, requested that four of the Jurisdictional Defendants -- Nestlé S.A., H.E. Butt Grocery Company, The Kroger Co. of Ohio, and New Albertsons, Inc. -- agree to jurisdictional discovery.

¹ The Jurisdictional Defendants are specially appearing for the limited purpose of filing the Consolidated Motion to Dismiss on jurisdictional and other grounds, and related matters such as this Motion, and without submitting to the jurisdiction or venue of this Court.

These four Jurisdictional Defendants, one of which (Nestlé S.A.) also had a pending motion to quash for insufficient service,² objected to the request. Plaintiffs' counsel did not make a similar request of the other five Jurisdictional Defendants.

On October 19, 2007, Plaintiffs filed their Motion for Enlargement of Time to Respond to Defendants' Motion to Dismiss (D.E. 240) in which Plaintiffs state that they "are contemporaneously filing a motion for leave to conduct personal jurisdiction discovery." D.E. 240, at 2. Plaintiffs did not file, and the Jurisdictional Defendants did not receive, Plaintiffs' motion for leave to conduct personal jurisdictional discovery. However, in the Court's Order partially granting Plaintiffs' Motion for Enlargement of Time to Respond to Defendants' Motion to Dismiss (D.E. 243), the Court also granted Plaintiffs leave to commence jurisdictional discovery.

Jurisdictional discovery is not warranted because Plaintiffs have failed to make the threshold showing that is necessary. Plaintiffs have completely failed to allege any basis for personal jurisdiction over the Jurisdictional Defendants. While a plaintiff may have a qualified right to jurisdictional discovery, it must "explain[] how such discovery would bolster its contentions" regarding personal jurisdiction. *Instabook Corp. v. Instantpublisher.com*, 469 F.Supp.2d 1120, 1127 (M.D. Fla. 2006); *see also Mother Doe I v. Maktoum*, 2007 WL 2209258 * 12 (S. D. Fla. July 30, 2007) (citing *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727 (11th Cir. 1982)); *Homes Design Services, Inc. v. Banyan Constr. and Dev., Inc.*, 2007 WL 1752435 (M.D.Fla. June 15, 2007)(denying jurisdictional discovery because "the request is wholly speculative and amounts simply to the request to conduct a fishing expedition."). Thus, when "a

² Nestlé S.A.'s motion to quash service, filed as part of the Consolidated Motion to Dismiss, presents an issue of law requiring no discovery, and should be decided before Nestlé

plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery.” *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 402 (4th Cir. 2003).

Here, Plaintiffs have not only failed to allege any basis for personal jurisdiction over the Jurisdictional Defendants in the Amended Complaint, they have entirely failed to explain how such jurisdictional discovery would bolster their contentions concerning personal jurisdiction over the Jurisdictional Defendants. Allowing Plaintiffs to conduct discovery into the contacts of foreign defendants without even alleging the basis for personal jurisdiction would result in an inappropriate (and costly) fishing expedition.

WHEREFORE the Jurisdictional Defendants respectfully request the opportunity, including on an expedited basis, to fully present their objections and be heard on the issue of whether Plaintiffs have met their threshold showing in the Amended Complaint entitling them to a qualified right to commence jurisdictional discovery.

Respectfully submitted,

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S.A. is subject to any jurisdictional discovery.

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Undersigned counsel certifies that on October 22, 2007, counsel for Safeway Inc. and The Stop & Shop Supermarket Company LLC, and Catherine MacIvor, counsel for Plaintiffs, conferred about the relief sought by this motion but were unable to reach an agreement.

/s/ Robert J. Alwine II
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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the counsel so indicated on the attached Service List.

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