

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

XXXXXXXXXXXXXXXXXXXXXXXXXX,	)	CASE NO. CV
	)	
Plaintiff,	)	JUDGE
	)	
vs.	)	
	)	
XXXXXXXXXXXXXXXXXX, et al.,	)	<b>DEFENDANTS' MOTION IN</b>
	)	<b>OPPOSITION TO PLAINTIFF'S</b>
Defendants.	)	<b><u>MOTION FOR DEFAULT JUDGMENT</u></b>
	)	

Now come the Defendants, by and through undersigned counsel, and file this Motion in Opposition to Plaintiff's Motion for Default Judgment. For the reasons stated in the attached Memorandum in Support, Defendants request that this Honorable Court deny Plaintiff's motion for default judgment.

Respectfully submitted,

Attorney for Defendants

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

XXXX,	)	CASE NO. CV
	)	
Plaintiff,	)	JUDGE
vs.	)	
	)	<b>MEMORANDUM IN SUPPORT TO</b>
XXXX, et al.,	)	<b>DEFENDANTS' MOTION IN</b>
	)	<b>OPPOSITION TO PLAINTIFF'S</b>
Defendants.	)	<b><u>MOTION FOR DEFAULT JUDGMENT</u></b>
	)	

A default judgment would be wholly improper in this matter. The Defendants filed their Answer within twenty-eight (28) days of receiving proper service of the complaint; and therefore, this Court should deny the Plaintiff's motion for default judgment. This matter should be decided on the merits, not on a flawed procedural argument by the Plaintiff.

**Default Judgment Is Not Favored In Ohio.**

It is well settled in Ohio that default judgments are not favored and that cases should be decided on their merits rather than on technical grounds. *See CEI v. Finesilver* (Apr. 25, 1996), Cuyahoga App. No. 69363, *citing Perotti v. Ferguson*(1983), 7 Ohio St.3d 1. This Court should deny Plaintiff's motion for default judgment and decide this case on the merits.

**Defendants Filed Their Answer Within Twenty-Eight (28) Days.**

It is well-established that "[c]ourts will presume service to be proper in cases where the civil rules are followed unless the defendant rebuts the presumption by sufficient evidence." *Bank One Cincinnati, N.A. v. Wells* (Sept. 18, 1996), Hamilton App. No. C-950279, *citing In re Estate of Popp* (Cuyahoga 1994), 94 Ohio App.3d 640, 650,

641 N.E.2d 739. An affidavit stating that the affiant did not receive service of process is enough to require that a default judgment be held void *ab initio*. *Gullia v. Gullia* (Cuyahoga 1994), 93 Ohio App.3d 653, *citing Rafalski v. Oates* (1984), 17 Ohio App.3d 65, 17 OBR 120, 477 N.E.2d 1212.

Defendants did not receive notice of this suit until Defendant signed for the certified mailed amended complaints at the post office on June 30, 2008. (See affidavits attached herewith as Exhibit A and Exhibit B). Therefore, by filing their Answer on July 25, 2008, the Defendants complied with the Ohio Rules of Civil procedure and default judgment is not proper in this matter.

Even if this Court finds that the Defendants did not file their answer within twenty-eight (28) days, Plaintiff's motion for default judgment should still be denied because default judgment is disfavored in Ohio. Furthermore, the Defendants have filed their Answer in this case; the Defendants are represented by counsel; and the Defendants have meritorious defenses and arguments that should be heard. This case should be decided on the merits.

For all these reasons, default judgment would be improper and therefore Plaintiff's motion for default judgment should be denied.

Respectfully submitted,

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Attorney for Defendants

CERTIFICATE OF SERVICE

A copy of this Notice of Change of Address has been sent by regular U.S. Mail on August 13, 2008 to: