

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN DOE,	:	
	:	Case No. 1:09-cv-00222
Plaintiff,	:	
	:	
	:	Weber, J.
v.	:	Black, M.J
	:	
THE PROCTOR AND GAMBLE	:	
COMPANY,	:	
	:	
Defendant.	:	

**REPORT AND RECOMMENDATION¹ THAT PLAINTIFF’S MOTION FOR
DEFAULT JUDGMENT (Doc. 16) BE DENIED**

This civil action is before the Court on Plaintiff’s motion for default judgment (Doc. 16) and the memorandum *contra* (Doc. 36) of Defendant The Procter and Gamble Company (“P&G”).

Here, P&G has indeed filed an Answer. (*See* Doc. 24.) P&G responded not only to Plaintiff’s *pro se* complaint dated April 29, 2009, but also to the amendments to the complaint dated June 1, 2009. (*Id.*)

The procedure governing the entry of default is provided by Fed. R. Civ. P. 55(a), which states in pertinent part:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

In this case, however, the Defendant has filed an Answer and is indeed defending against Plaintiff’s claims. Moreover, it is a basic tenet of jurisprudence that the law abhors a judgment by default. *See, e.g., Rehab Choice Inc. v. CLC Healthcare, Inc.*, Case No. 4:07-CV-314-Y, 2007 WL 1944344, 2 (N.D. Tex. 2007). Instead, the courts, including

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

the Sixth Circuit, have long indicated a "strong preference for trial on the merits." *See Shepard Claims Serv., Inc. v. William Darrah & Assoc.*, 796 F.2d 190, 193 (6th Cir. 1986).

Here, P&G has not failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure. Thus, pursuant to Fed. R. Civ. P. 55(a), entry of default judgment is improper. Accordingly, it is therefore **RECOMMENDED** that Plaintiff's motion for default judgment (Doc. 16) be **DENIED**.

DATE: September 22, 2009

s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHN DOE,	:	
	:	Case No. 1:09-cv-00222
Plaintiff,	:	
	:	
	:	Weber, J.
v.	:	Black, M.J
	:	
THE PROCTOR AND GAMBLE	:	
COMPANY,	:	
	:	
Defendant.	:	

NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) **within TEN DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections **within TEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).