

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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**CHARLES NOVINS, ESQ., P.C. and
CHARLES NOVINS, personally**

Plaintiffs

v.

**KEVIN A. CANNON, KEVIN
MICHAEL FRIES, JIM KELSO,
RHONDA LEA KIRK FRIES,
VINCENT LAMB, CARL R.
OSTERWALD, ET AL.**

Defendants

Civil Action: 3:09-CV-5354

**MOTION TO VACATE
DEFAULT AND REINSTATE
PLAINTIFF'S ANSWER TO
COUNTERCLAIM OF
DEFENDANT LAMB
PURSUANT TO FRCP 55(c)
AND TO AMEND PLEADING**

TO DEFENDANTS AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 2, 2010, or as soon as counsel may be heard by the Court, Plaintiffs CHARLES NOVINS, ESQ., P.C. and CHARLES NOVINS, personally, shall move before the Honorable Anne E. Thompson, in room 4000 of the United States District Court, District of New Jersey, Clarkson S. Fischer Federal Building & U.S. Courthouse, 402 E. State Street, Trenton, New Jersey, for an Order to Vacate Default, and Reinstate and Amend Plaintiff's Answer to Counterclaim of defendant Richard "Vince" Lamb. Oral argument is not requested unless demanded by any adversary. Plaintiffs will rely on the attached Declaration of Charles Novins, exhibits attached, and a brief which will be filed with the Court before July 9, 2010, so that the motion may be properly considered per the District Court's specified motion calendar.

/S/ Charles Novins, Esq.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been filed with the Clerk of Court on July 7, 2010 and served upon the following counsel of record and/or *pro se* parties:

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PROCEDURAL HISTORY

1. Plaintiffs filed the Complaint in the above referenced matter on February 13, 2009. Plaintiff was then served with an Answer and Counterclaim by counsel for Defendant Richard "Vince" Lamb which had been filed on June 12, 2009.
2. On June 24, 2009, Plaintiff served an Answer to said Counterclaim
3. On July 24, 2009, counsel for Defendant Lamb sought and obtained a Default respecting the Counterclaim based upon the omission of the corporate Plaintiff from the caption. The default was entered by the clerk on September 8, 2009. Counsel for Defendant Lamb never notified Plaintiffs he was seeking a default.
4. Counsel for Defendant Lamb never notified Plaintiffs of the entry of default. The only time the default was referenced in the case was its inclusion along with the hundreds of pages appended to the Notice of Removal to Federal Court. Said removal was filed shortly subsequent to October 20, 2009.
5. On May 14, 2010, Plaintiffs moved for vacation of default which had been obtained by Defendant Osterwald. That application was denied, and will be the subject of a separate motion. On or about the time of that application, Counsel for Defendant Lamb explicitly stated - for the first time, and not in any writing - that a default had been entered.

This motion followed

RELIEF REQUESTED

Wherefore, Plaintiffs ask the Court for an Order:

1. Reinstating Plaintiffs' Answer to Counterclaim of Defendant Lamb and permitting the amended counterclaim which sets forth expanded responses as attached.

Respectfully submitted,

/S/ Charles Novins, Esq.

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Dated: July 7, 2010