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December 9, 2022

**VIA ELECTRONIC FILING**

The Honorable Edward S. Kiel  
United States District Court for the District of New Jersey  
Frank R. Lautenberg U.S. Post Office & Courthouse Building  
2 Federal Square, Courtroom 8  
Newark, NJ 07102

RE: *Kent v. Galvin, et al.*, No.2:21-cv-13105 (D.N.J.)  
Application to Strike Counterclaims

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Dear Judge Kiel:

In follow-up to this Court's Order of October 13, 2022 (ECF No. 36) and in accordance with the telephone status conference that took place on December 7, 2022, Plaintiff respectfully submits this letter application to strike the Counterclaims asserted by Counterclaim Plaintiff Galvin Investment Company, LLC ("GIC") (ECF No. 23). Likewise, Plaintiff respectfully requests that the Answer and Affirmative Defenses filed by and asserted on behalf of corporate defendants Galvin Investment Company, LLC, Gilman Metals Company, LLC, Galvin Metals Company, LLC and RG Coastal LLC (collectively, the "corporate defendants") be stricken due to their failure to secure replacement counsel by the deadlines imposed by this Court.<sup>1</sup>

Defendants originally filed the Amended Answer and Counterclaims on April 15, 2022. (ECF No. 23). The Counterclaims were asserted on behalf of corporate defendant GIC only. *Id.* Plaintiff filed a Motion to Dismiss GIC's Counterclaims on May 6, 2022. (ECF No. 25).

On September 23, 2022, counsel for Defendants filed a motion to withdraw as counsel. (ECF No. 33). Following a hearing that occurred on October 11, 2022, the Court granted the motion to withdraw on October 13, 2022. (ECF No. 36). Pursuant to the October 13, 2022 Order, the corporate defendants were "ordered to obtain substitute counsel who shall enter an appearance as counsel for the corporate defendants by **November 30, 2022.**" (ECF No. 36) (emphasis original). No substitute counsel entered their appearance on behalf of the corporate defendants by the deadline imposed by the Court.

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<sup>1</sup> The Amended Answer was also filed on behalf of individual defendant Richard C. Galvin, who is proceeding *pro se*. The Amended Answer should not be stricken to the extent the answer and affirmative defenses are asserted on behalf of Mr. Galvin individually, as opposed to the corporate defendants.

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Following a telephone status conference, on December 7, 2022, the Court entered an Order staying GIC's counterclaim pending further order of the Court, and directed the Clerk of Court to terminate Plaintiff's Motion to Dismiss. (ECF No. 39).

While Richard C. Galvin may appear *pro se* on his own behalf as an individual defendant, he cannot appear or participate in this litigation on behalf of the corporate defendants. Corporate defendants cannot be represented by anyone not licensed to practice law. *See U.S. v. Cocivera*, 104 F.3d 566, 572 (3d Cir. 1996) ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel") (quoting *Rowland v. Cali. Men's Colony*, 506 U.S. 194, 201-02 (1993)); *see also Colony Ins. Co. v. Kwasnik, Kanowitz & Assocs., P.C.*, 288 F.R.D. 340, 342, n.2 (D.N.J. 2012) (same); *Simbraw, Inc. v. United States*, 367 F.2d 373, 373 (3d Cir. 1966) ("[A] corporation [must], to litigate its rights in a court of law, employ an attorney at law to appear for it and represent it in the court."). The Court explained this to Mr. Galvin during the October 11, 2022 hearing. Since the corporate defendants have failed to secure substitute counsel by the November 30, 2022 deadline imposed by the Court, Plaintiff respectfully requests that the Counterclaim asserted by Galvin Investment Company, LLC, and the Answer and Affirmative Defenses asserted by Galvin Investment Company, LLC, Gilman Metals Company, LLC, Galvin Metals Company, LLC and RG Coastal LLC be stricken.

This Court's October 13, 2022 Order further provides that "[i]f substitute counsel does not appear for the corporate defendants by November 30, 2022, plaintiff is granted leave to request default against the corporate defendants." (ECF No. 36). Plaintiff interprets this to mean that he now has authority, without requesting further leave, to file a Request for Entry of Default against the corporate defendants with the Clerk of Court, in accordance with Fed. R. Civ. P. 55 (a), and intends to proceed in this fashion. Plaintiff's basis for requesting the entry of default against the corporate defendants is as follows:

Rule 55 provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55 (a). The Court of Appeals for the Third Circuit has held that the "or otherwise defend" clause in Rule 55 "is broader than the mere failure to plead." *MicroBilt Corp. v. Bail Integrity Solutions, Inc.*, No. 19-637, 2002 WL 2910462 at \*2 (D.N.J. July 21, 2022) (quoting *Hoxworth v. Blinder, Robinson & Co.*, 980 F.2d 912, 917 (3d Cir. 1992)). "Thus, a default may be imposed because a party has 'fail[ed] to comply with [the Court's] unambiguous orders to obtain substitute counsel. . . ." *Id.* (citing *Hoxworth*, 980 F.2d at 918). In *MicroBilt Corp.*, the corporate defendant filed originally filed an answer, but then remained without legal counsel after their counsel withdrew their appearance. *Id.* at \*3. This Court held that the Clerk of Court appropriately entered a default against the corporate defendant under the circumstances, since it could not proceed *pro se* and it was warned by the court that the plaintiff could seek appropriate relief without further leave if it did not secure substitute legal counsel. *Id.* The Court emphasized that "Courts in this District have long held that the failure of a corporation or LLC to be represented by counsel . . . is an appropriate basis for the entry of default judgment against the entity." *Id.* (citing *Price Home Grp., LLC v.*

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*Ritz-Craft Corp. of Pa.*, No. 16-668, 2017 WL 5191807, at \*3 (D.N.J. Nov. 8, 2017)); *see also Mendelsohn, Drucker, & Assocs., P.C. v. Titan Atlas Mfg., Inc.*, No. 12-0453, 2013 WL 1842124, at \*5 (E.D. Pa. May 2, 2013) (“Because a corporation cannot represent itself pro se in federal court, a corporate defendant’s failure to retain counsel after being ordered to do so is a failure to ‘otherwise defend’ under Rule 55 that justifies a default.”). Given the failure of Galvin Investment Company, LLC, Gilman Metals Company, LLC, Galvin Metals Company, LLC and RG Coastal LLC to secure substitute counsel by the November 30, 2022 deadline, and that they have been warned that a failure to do so could result in a request for the entry of default, an entry of default against these corporate defendants is appropriate and warranted.

Respectfully submitted,



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Robin S. Weiss

cc: Richard C. Galvin

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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<b>KEVIN D. KENT, in his capacity as</b>	:	
<b>Receiver for Broad Reach Capital, LP, et</b>	:	<b>Civil Action</b>
<b>al.,</b>	:	
	:	<b>No. 2:21-cv-13105</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>RICHARD C. GALVIN, et al.,</b>	:	<b>CERTIFICATE OF</b>
	:	<b>SERVICE</b>
<b>Defendants.</b>	:	

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I hereby certify, this 9<sup>th</sup> day of December, 2022, that I caused to be served a true and correct copy of the foregoing upon Richard Galvin, on behalf of all defendants, by first class and electronic mail pursuant to Fed. R. Civ. P. 5(b), as follows:

Richard C. Galvin  
4645 E. Lake Ave  
Centennial, CO 80121  
[rbutler691@aol.com](mailto:rbutler691@aol.com)

*s/ Robin S. Weiss*  
Robin S. Weiss, Esq.

*Counsel for Plaintiff, Kevin  
Dooley Kent, Receiver*