

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN (KANSAS CITY) DIVISION

MEDICAL SUPPLY CHAIN, INC.,) Case No. 05-0210-CV-W-ODS
)
Plaintiff,)
)
NOVATION, LLC)
NEOFORMA, INC.)
ROBERT J. ZOLLARS)
VOLUNTEER HOSPITAL ASSOCIATION)
CURT NONOMAQUE)
UNIVERSITY HEALTHSYSTEM CONSORTIUM)
ROBERT J. BAKER)
US BANCORP, NA)
US BANK)
JERRY A. GRUNDHOFFER)
ANDREW CESERE)
THE PIPER JAFFRAY COMPANIES)
ANDREW S. DUFF)
SHUGHART THOMSON & KILROY)
WATKINS BOULWARE, P.C.)
)
Defendants.)
)

**DEFENDANT NEOFORMA, INC.’S MOTION TO DISMISS, COMPLAINT,
OR ALTERNATIVELY TO REQUIRE AMENDMENT,
PURSUANT TO F.R.C.P. RULES 8 AND 9**

Defendant Neoforma, Inc. moves for an Order of this Court dismissing plaintiff’s Complaint in its entirety pursuant to Rules 8 and 9 of the Federal Rules of Civil Procedure. The motion is brought for the following reasons.

1. Rule 8(a)(2) requires that the complaint be a “short and plain statement of the claim showing the pleader is entitled to relief” and Rule 8(e) requires that the pleading be “simple, concise and direct.” The complaint is a rambling document of 115 pages and 613 paragraphs of general allegations, quotations, policy arguments, stories, case citations, opinions

and other superfluous information that does not meet these requirements. Further, it is highly general in each of its claims, lumping every defendant into most every claim, without setting forth specific facts that would support such a treatment. The complaint is so deficient in these respects that it is virtually impossible for this defendant, or any other, to respond in a coherent and organized manner, whether by answer or motion to dismiss under Rule 12, and therefore should be dismissed under Rule 8.

2. Rule 9 requires that allegations of fraud be pleaded with specificity. The complaint is so vague and general with respect to its allegations that it seems to lump every defendant into every claim, without pleading the specific facts required under Rule 9 necessary to allege such claims against this defendant. Accordingly, the complaint should be dismissed pursuant to Rule 9.

3. Alternatively, should the Court not wish to dismiss the complaint without leave to amend, then plaintiff should be ordered to amend the document to conform to Rules 8 and 9, so that defendants can frame a coherent response under Rule 12 or by answer.

4. Defendant Neoforma incorporates its Suggestions in Support of this motion, filed concurrently herewith.

For all these reasons, defendant Neoforma requests that the Court enter an order dismissing the Complaint in its entirety, or alternatively orders plaintiff to amend.

REQUEST FOR ORAL ARGUMENT

Defendant Neoforma hereby requests oral argument on its Motion to Dismiss Complaint, or Alternatively to Require Amendment, Pursuant to F.R.C.P. Rules 8 and 9.

HUSCH & EPPENBERGER, LLC

By: /s/ John K. Power

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BAKER

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2005, 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 following::

Bret D. Landrith landrithlaw@cox.net
Attorney for Plaintiff

/s/ John K. Power
John K. Power