

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

MEDICAL SUPPLY CHAIN, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-CV-0210-CV-ODS
)	
NOVATION, LLC, et al.,)	
)	
Defendants.)	

**NOVATION, LLC, VHA INC., AND
UNIVERSITY HEALTHSYSTEM CONSORTIUM’S
MOTION TO TRANSFER VENUE OR ALTERNATIVELY MOTION TO DISMISS
COMPLAINT FOR FAILURE TO STATE A CLAIM**

TO THE HONORABLE JUDGE OF THIS COURT:

Defendants Novation, LLC (“Novation”), VHA Inc. (“VHA”), and University Healthsystem Consortium (“UHC”) (collectively, “Defendants”) respectfully request that the Court transfer this case to the District Court of Kansas pursuant to 28 U.S.C. § 1404(a), or alternatively dismiss Plaintiff’s Complaint with prejudice pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure.

INTRODUCTION

1. Plaintiff’s Complaint seeks several billions of dollars in damages arising from Plaintiff’s inability to lease desired office space, to obtain financing, and to establish escrow accounts allegedly necessary to enter into the market to provide hospital supplies in e-commerce. Plaintiff asserts that these harms flowed from a vast conspiracy involving, *inter alia*, various entities and individuals in the nationwide hospital supply market, venture capital firms, a bank, a law firm, the owner of an office building, and a magistrate of the U.S. District Court for Kansas.

PRIOR ACTIONS

2. This is not the first time Plaintiff has raised these claims. Indeed, this lawsuit is substantially similar to claims asserted in two prior suits, both of which were dismissed on the pleadings. Plaintiff originally filed a lawsuit against many of these same defendants in the United States District Court for the District of Kansas in 2002, styled *Medical Supply Chain, Inc. v. US Bancorp, NA, et al.*, Civil Action No. 02-2539-CM (Judge Carlos Murguia) (the “US Bancorp Case”). In that case, Plaintiff asserted virtually identical claims arising out of the same transactions and same set of operative facts as are alleged here even though Plaintiff was warned by the District Court in its order dismissing the complaint in that case “to take greater care in ensuring that the claims he brings on his clients’ behalf are supported by the law and the facts.” See Memorandum and Order, at p. 11 (attached as Exhibit 1). Indeed, the district judge noted, with regard to Plaintiff’s USA Patriot Act violations (which are also made here) that “plaintiff’s allegation [is] so completely divorced from rational thought that the court will refrain from further comment” See Exhibit 1 at pp. 14-15. The Tenth Circuit affirmed the District Court’s dismissal. Because the Tenth Circuit concluded that Plaintiff’s appeal was not supported by the law or the facts, it ordered Plaintiff and its counsel to show cause why it should not be sanctioned for filing a frivolous appeal. *Medical Supply Chain, Inc. v. US Bancorp, NA*, 2004 WL 2504653, *1 (10th Cir. 2004).

4. In June of 2003, Plaintiff filed suit in the District Court of Kansas against many of the GE-related parties alleged to be unnamed co-conspirators in this action. That case was styled *Medical Supply Chain, Inc. v. General Electric Company, et al.*, Civil Action No. 03-2324-CM (Judge Carlos Murguia) (the “GE case”). That case also involved many of the same factual and legal allegations as alleged here. In the District Court’s order dismissing that suit, the Court

noted that the federal antitrust claims failed “at the most fundamental level.” *See* Memorandum and Order, at p. 5 (attached as Exhibit 2).

TRANSFER OF VENUE

5. Defendants join in the motion to transfer venue of this proceeding to the U.S. District Court in Kansas pursuant to 28 U.S.C. § 1404(a) filed by Defendants US Bancorp, U.S. Bank National Association, Piper Jaffray Companies, Jerry A. Grundhofer, Andrew Cesare, and Andrew S. Duff. Because the Kansas District Court has already twice-dealt with this Plaintiff and these allegations, it is the most efficient use of judicial resources for that court to consider this case. Further, transfer to Kansas ensures that Plaintiff cannot forum shop his deficient Complaint to this Court in an effort to avoid incurring additional sanctions imposed by the Kansas court for filing frivolous and harassing lawsuits.

GROUND FOR DISMISSAL

6. Undeterred by the Tenth Circuit’s and the Kansas District Court’s admonitions regarding Plaintiff’s attorney’s Rule 11 responsibilities, that same attorney has now filed this Complaint which is substantially similar to his defective actions in the US Bancorp and GE cases. The Complaint is incoherent, *e.g.* Complaint at p. 114 (seeking an injunction during the “pungency [sic] of this action” and damages for Plaintiff’s stakeholders including the town of Blue Springs, Missouri and “the injury of the 2000 hospitals losing [sic] money due to high supply costs”), and irrational, *e.g.* Complaint at ¶ 89 (blaming the deaths of “at least 41,206 Americans” on the increasing health care costs due to the Defendants’ actions in foreclosing Plaintiff’s entry into the market).

7. What is clear upon a reading of the Complaint, however, is that it states no legally viable claim. In fact, the new Complaint repairs none of the fundamental legal defects and

pleading insufficiencies of the prior cases, and adds some new ones. Moreover, many claims are now foreclosed by collateral estoppel grounds. As is explained further in the accompanying Suggestions in Support of Novation, LLC, VHA, Inc., and University Healthsystem Consortium's Motion To Dismiss Complaint For Failure To State A Claim, Plaintiff's claims should be dismissed by this Court with prejudice on the following grounds:

- Plaintiff's federal and state antitrust claims should be dismissed because: (1) Plaintiff is collaterally estopped from asserting such claims; (2) Plaintiff wholly fails to allege concerted action; (3) Plaintiff fails to sufficiently allege monopoly power or the elements of attempt to monopolize; (4) Plaintiff fails to adequately allege harm to competition, rather than merely harm to Plaintiff, a single competitor; (5) Plaintiff lacks standing to assert the claims; and, (6) Plaintiff fails to plead any of the required elements for a claim for interlocking directors.
- Plaintiff fails to plead the existence of a misleading statement or omission made by Defendants to Plaintiff; therefore, Plaintiff's fraud claim should be dismissed.
- Plaintiff fails to plead that Defendants knew about or intentionally interfered with the contracts with which Plaintiff claims Defendants tortiously interfered.
- Plaintiff's allegations actually contradict the basis for recovery under the theory of prima facie tort.
- Plaintiff's RICO claim fails due to the lack of a viable claim of a racketeering act or pattern and an injury that can be remedied under RICO.

- Plaintiff's USA Patriot Act claim against Defendants must be dismissed because: (1) there is no private right of action under the USA Patriot Act; (2) that claim is barred by principles of collateral estoppel; and, (3) Plaintiff has failed to plead facts sufficient to show that Defendants had any involvement with or knowledge of a filing under that statute.

INSUFFICIENCY OF SERVICE OF PROCESS

8. Plaintiff filed Return of Service forms with this Court purporting to establish valid service of process on Defendants. However, service of process was ineffective to obtain jurisdiction over Defendants because: (1) service by mail is insufficient under the Federal Rules of Civil Procedure and the Missouri Rules of Civil Procedure unless the defendant returns the acknowledgement form (that Plaintiff failed to include in the served papers); and, (2) the mailing was not directed at the appropriate officer or agent of Defendants. Nevertheless, counsel for Defendants contacted Plaintiff's counsel, noted the deficiency in service, and offered to execute waiver of service forms as is contemplated by Federal Rule of Civil Procedure 4. Plaintiff's counsel rejected that offer, stating instead that this is a "bloody battle" for which no agreements can be considered. Rather than delay consideration of the patent insufficiency of this Complaint by resting on a challenge to service of process, Defendants are now filing their Rule 12(b)(6) motion according to the deadline that would have applied if service had been proper.

PRAYER

WHEREFORE, for all of these reasons, Defendants request that the Court transfer this case to the U.S. District Court in Kansas, or alternatively enter an Order dismissing with

prejudice Plaintiff's Complaint and granting Defendants all other relief to which they are entitled.

REQUEST FOR ORAL ARGUMENT

Defendants Novation, LLC, VHA Inc., and University Healthsystem Consortium hereby requests oral argument on its Motion to Transfer Venue or Alternatively Motion to Dismiss Complaint for Failure to State a Claim.

HUSCH & EPPENBERGER, LLC

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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::

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/s/ John K. Power
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