IN THE UNITED STATES COURT
DISTRICT OF KANSAS

SAMUEL K. LIPARI,	)
	)
Plaintiff,	)
	)
v.	) Case No. 2:07-cv-02146-CM
	)
U.S. BANCORP and	)
U.S. BANK NATIONAL ASSOCIATION,	)
	)
Defendants.	)

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO THE DEFENDANT'S MOTION TO COMPEL

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and makes the following memorandum in opposition to the defendants' motion to compel.

INTRODUCTION

The plaintiff has turned over all names of witnesses known to him and has now supplemented his disclosures to include the addresses he knows. The plaintiff has included the relevant documents to the plaintiff's claims and factual averments in his complaint. The defendant has not yet succeeded in dismissing or striking any portion of the plaintiff's complaint. Conversely, the defendants have turned over none of the central documents described in the complaint and requested by the plaintiff and cited by the defendants' dismissal motions in defending against the plaintiff's claims violating Rule 26. The defendants have also filed a frivolous blanket motion to protect seeking relief from any discovery And from revealing the spoliation of electronic and paper documents they were under notice to preserve. Having conducted themselves in the most open bad faith manner, the defendants through Shughart, Thompson & Kilroy, P.C. now seek this court pervert justice by sanctioning or compelling the plaintiff for his good faith conduct in observance of Rule 26.

STATEMENT OF FACTS

1. The defendants are correct that on April 20, 2007, plaintiff served his initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) and that they are Doc. No. 26.

2. The defendants are incorrect over the styling of the concurrent Missouri federal case *Lipari, et al. v. General Electric, et al*. Circuit Court of Jackson County, Missouri, Case No. 0616-CV07421 is now styled *Lipari, et al. v. General Electric, et al*. Western District of Missouri Case No. 07-0849-CV-W-FJG

Exb 2

previously the same case or controversy was in this court and styled as *Medical Supply Chain, Inc. v. General Electric Company, et al*., case no. 03-2324-CM.

3. An interim order merely dismissing the original federal claims was fraudulently procured in *Medical Supply Chain, Inc. v. General Electric Company, et al*., case no. 03-2324-CM by the GE defendants with the help of US Bank and US Bancorp through their agent Shughart Thomson & Kilroy as revealed in attorney billing records filed with this court and sought in discovery by the plaintiff.

4. The federal antitrust claims in *Medical Supply Chain, Inc. v. General Electric Company, et al*., case no. 03-2324-CM were dismissed by misrepresenting to this court that the plaintiff had not pled a conspiracy between two legally separate actors when the plaintiff had pled a conspiracy and agreement between the GE defendants and GHX LLC and the US Bank and US Bancorp partner Neoforma LLC and had cited the controlling legal authority that the plaintiff was not required to name as defendants the other co-conspirators identified in the complaint. See Exb. 1 GE Amended Complaint.

GE agreement with GHX and Novation assigning hospital market share ¶10 pg. 6, Novation acquiring control over Neoforma and partnering it with its hospital supply competitor GHX creating a monopoly of 80% of the hospital supply market ¶ 15 at pg. 9; GE and "cartel members including Premier, Inc. and Novation, Inc." conspired to increase hospital supply prices in the North American Hospital Supply market injuring US hospitals ¶36 pg. 19. See Exb. 1 GE Amended Complaint

5. The GE complaint in 03-2324-CM stated at ¶37 pg. 20 and 21 that the GE defendants in a cartel with Novation "… preserve their inflated cost structures (the cartel has prevented the annual $23 billion dollar savings identified by US Bancorp Piper Jaffray's 2001 study by maintaining prices regardless of internal efficiencies) and by preventing the entry of competitors to the relevant market. The defendants willfully acquired and maintained that power by forming the cartel GHX, Inc. to buy an inferior electronic marketplace and exchanging ownership interests with suppliers and distributors that previously were competitors. The defendants further acted to maintain that monopoly by repudiating Medical Supply's financing and lease buy out agreement with full knowledge that Medical Supply had been previously prevented from entering the hospital supply e-commerce market by other cartel members of GHX, Inc." See Exb. 1, ¶37 pg. 20 and 21 GE Amended Complaint

6. The GE complaint in 03-2324-CM describes the conduct of US Bank and US Bancorp breaching the

presently litigated contracts with the plaintiff and stated at ¶3 pg. 4 that:

> "GE appeared to be acting independently of Neoforma, when it accepted Medical Supply's proposal for a lease buy out and financing, but similarly repudiated a contract for essential facilities, preventing entry into the hospital supply market at great sacrifice when Medical Supply was not in a position to find an alternative. (Neoforma's financial partner, **US Bancorp** Piper Jaffray, has attested to a threat of filing a Suspicious Activity Report or "SAR," against Medical Supply under the USA PATRIOT Act, which would destroy Medical Supply's ability to process hospital and supplier purchasing transactions. In an affidavit by Piper Jaffray Vice President and Chief Counsel submitted in Medical Supply vs. **US Bancorp** et al No. 02-3443 (10th Cir.), Piper Jaffray argues to file a "SAR" at any time it sees fit. Medical Supply is seeking to be protected from Piper Jaffray's extortion and any malicious use of the USA PATRIOT Act. The October 2002 and June 2003, distinct antitrust injuries to Medical Supply prevented it from beginning its operations each time and realizing the expectations of its investors and stakeholders." [Emphasis added]

7. The GE complaint in 03-2324-CM stated at ¶15 pg. 9

> "**US Bancorp helped Novation acquire control of Neoforma and partner it with GHX, L.L.C. creating a monopoly of over 80% of healthcare e-commerce market).** GE repudiated a contract, sacrificing $15 million dollars on June 15th, 2003 to keep Medical Supply from being able to compete against GHX, L.L.C. and Neoforma. The healthcare market is worth 1.3 trillion dollars. GE acted on the tremendous windfall to preserve its monopoly." [Emphasis added]

8. Shughart, Thompson & Kilroy, P.C. has failed to research its factual assertions before signing the Motion to Compel and is incorrect in implying the disclosures should be different when both cases cover the same events and rely on the same determination of Medical Supply Chain, Inc.'s income if US Bank and US Bancorp had not breached their contracts with Medical Supply Chain, Inc. and then if US Bank and US Bancorp had not again tortiously interfered with Medical Supply Chain, Inc.'s attempt to mediate its losses and replace the lost escrow funds through a real estate contract with General Electric, preventing Medical Supply Chain, Inc from entering the nationwide hospital supply market.

9. The dismissal of federal antitrust claims against the defendants US Bank and US Bancorp in *Medical Supply Chain, Inc. v. Neoforma, et al*., case no. 05-2299 was obtained through the extrinsic fraud filing of Novation, LLC, VHA Inc., University Healthsystem Consortium Robert Baker And Curt Nonomaque's Motion To Set Oral Hearing On Motion To Dismiss , (Doc 76-1) filed on 02/21/2006 in *Medical Supply Chain, Inc. v. Neoforma, et al* by John K. Power, # 70448 of Jeffrey Immelt and the GE defendants' law firm Husch Blackwell Sanders LLP.[1]

[1] Husch & Eppenberger LLC appeared to no longer be insurable and ceased to exist after following the professional example of Shughart Thomson & Kilroy P.C. in obtaining outcomes in litigation through the extrinsic fraud of misrepresentation of law and ex parte communication. Their web site stated it is now called Husch Blackwell Sanders LLP

10. The GE Defendants obtained the ruling in *Medical Supply Chain, Inc. v. Neoforma, et al*., case no. 05-2299 where their cartel co-conspirators Novation LLC and Neoforma, Inc were at risk by filing a fraudulent pleading by John K. Power of Husch Blackwell Sanders LLP (Exb. 2) Motion for Hearing while knowing the Kansas District Court had been persuaded through *ex parte* communication to not even read the petitioner's filing in response.

11. The fraud is readily discernable on its face because the petitioner's complaint stated all the requisite elements for each federal count. See Exb 3. Plaintiff's Response to Motion for Oral hearing

12. The elements for the antitrust and RICO claims are referenced by element and paragraph number in the complaint in the plaintiff's appeal brief statement of facts at pgs. 19-32. See Exb 4 Lipari Neoforma Appeal Brief Statement of Facts and Exb 5 Neoforma complaint.

13. Since the US Bancorp litigation and the GE litigation stem from the US Bancorp and GE defendants acting through breaching contracts in a concerted effort (documented in the attorney billing records filed with this court) to prevent the plaintiff from entering the market for hospital supplies on the same $350,000.00 market entry capital first in a contract with US Bank then mitigated through a contract with GE breached only because US Bancorp and GE operate a cartel monopolizing hospital supplies in the US market, the plaintiff sought to join the two actions. See Exb 6 Motion to Consolidate.

14. Hon. Carlos Murguia denied consolidation and the action continues as *Lipari, et al. v. General Electric, et al*. Western District of Missouri Case No. 07-0849-CV-W-FJG where the GE defendants committed subsequent violations of federal statutes to obstruct the lawful resolution of the plaintiff's real estate contract claims against the GE defendants.

15. Shughart, Thomson & Kilroy PC is a defendant along with US Bancorp's chief officers who had interests separate from their corporations in *Lipari v. Novation LLC* Circuit Court of Jackson County, Missouri, Case No 0816-cv-04217.

16. Shughart, Thompson & Kilroy, P.C. is incorrect in its description of the plaintiff's litigation as "similar lawsuits" is the same case as *Medical Supply Chain, Inc. v. Neoforma, et al*., case no. 05-2299 under Article III of the U.S. Constitution and 28 U.S.C. § 1367 but Hon. Carlos Murguia via the fraudulently procured interim dismissal order concluded pendent federal jurisdiction over the state antitrust claims, *Medical Supply Chain, Inc. v. Neoforma, et al*., was just the damages portion of *Medical Supply I*

also the same case or controversy which did not dismiss all the plaintiff's claims including the present state law contract claims.

17. *Medical Supply Chain, Inc. v. Neoforma, et al* where the defendants, fresh from their success at evading an injunction, decided under the advisement of Shughart, Thompson & Kilroy, P.C to commit the antitrust violations the plaintiff sought to enjoin making them ripe for litigation under the controlling US Supreme Court case law never refuted by Shughart, Thompson & Kilroy, P.C. See Exb. 4.

18. Shughart, Thompson & Kilroy, P.C is incorrect about the status of the plaintiff who is clearly under Rule 17 of the Rules of Civil Procedure and controlling Missouri State law the rightful party plaintiff in this case despite Shughart, Thompson & Kilroy, P.C.'s extrinsic fraud in misrepresenting the applicable law of their own state to the court in *Medical Supply Chain, Inc. v. Neoforma, et al*., and Shughart, Thompson & Kilroy, P.C.'s embarrassment of the District of Kansas.

19. Shughart, Thompson & Kilroy, P.C's participation with Husch & Eppenberger LLC in obtaining through extrinsic fraud the dismissal of federal claims in *Medical Supply Chain, Inc. v. Neoforma, et al.* was in error because Shughart, Thompson & Kilroy, P.C. had failed to even research their home State of Missouri's contract case law and did not know that under the Missouri version of the UCC, breach of contract includes the breach of the inherent duty of good faith and fair dealing making each act of misconduct preventing the plaintiff from obtaining the benefit of his bargain and from mitigating the damages is evidence required by the plaintiff to prove his state contract related claims and to justify the substantial punitive damages resulting from the same misconduct.

MEMORANDUM IN OPPOSITION

The defendant has produced the documents related to the launch of his business and his claims against the defendants that the plaintiff will likely be using in court before a jury. The plaintiff has to prove the same likelihood that had not US Bancorp and the GE defendants taken their concerted actions breaching their contracts after discovering the plaintiff was attempting to compete with their Novation LLC cartel, the plaintiff would have realized his business plan expectation profits which are clearly established to be his damages for breach under Missouri law.

The defense firm Shughart, Thompson & Kilroy, P.C. has clearly tried to keep from the court the implications of Missouri contract case law and that after causing the dishonor of the Kansas District Court

to fraudulently procure the dismissals of the plaintiff's federal claims in *Medical Supply Chain, Inc. v. Neoforma, et al*., and thereby conceal the crimes committed in attempting to prevent the plaintiff from presenting his evidence through extrinsic fraud, Shughart, Thompson & Kilroy, P.C. has found that their misconduct and that of their clients is still relevant and discoverable.

In their motion to compel the court can see their same deceptions being continued. The defendants on page 2 of their memorandum state that the plaintiff merely claims standing, the previous cases were similar and now the plaintiff has brought this case after failing previously,etc. etc. Just as the defendants have used these arguments to fraudulently procure dismissals against controlling US Supreme Court law on false res judicata arguments knowingly made to deceive Hon. Carlos Murguia or worse yet in the corrupt belief that the judge will use these false arguments as cover for participating in the defendants scheme to keep the plaintiff out of the national market for hospital supplies.

This court recognizes that the plaintiff's prior claims are not preclusive of this action. Shughart, Thompson & Kilroy, P.C's motion to compel is a naked invitation for Hon. Judge Carlos Murguia to violate his oath of office and further injure the plaintiff. However, by dismissing Medical Supply's state claims without prejudice, a determination not opposed or appealed at the time by the defendants, the trial court elected not to make a preclusive final judgment: "A final judgment embodying the dismissal would eventually have been entered if the state claims had been later resolved by the court." *Avx Corp. v. Cabot Corp*., 424 F.3d 28 at pg 32 (Fed. 1st Cir., 2005). As a non- final judgment, the Memorandum & Orders previously granting dismissals were mere interim orders. *Id*.

The plaintiff quite simply will have the full and fair opportunity to litigate his claims and present his relevant evidence to meet the requirements of proving his damages under Missouri State Law or this proceeding will not conclude.

The disclosures of documents related to GE's breach of the real estate deal providing as a byproduct $350,000.00 in operating cash to enter the market for hospital supplies exactly like the plaintiff's business plan specified to replace the $350,000.00 lost to the US Bank and US Bancorp breach denying the plaintiff the operating cash to enter the market for hospital supplies as the plaintiff's business plan specified would look exactly like those that the plaintiff is required to furnish US Bank and US Bancorp under Rule 26. If that were not enough to expose the basest frivolity of the defendants' objection, the fact that the GE defense

and the US Bancorp defenses acted in concert to oppose the plaintiff's claims against each other in circumstances where State of Missouri courts under tortuous interference law would find the required element of no interest and would find a second liability of $450 million dollars makes the GE contract damages relevant to US Bank and US Bancorp who managed under Shughart, Thompson & Kilroy, P.C.'s guidance to supplement the breach liability of $450 million dollars to a total of $900 million while building resulting patient deaths in the hospital supply market to over 100,000 by General Electric's calculations.

Since the plaintiff has served the documents to the defendants in indexed form on a conveniently searchable disc, with an informative description of each, a nonfrivolous motion to compel would not be a blanket objection.

The plaintiff has complied with Rule 26 and furnished the names and contact information for each witness known to the plaintiff. The majority of witnesses however come from the defendants. Specifically the defendants' cartel and its litigation in courts outside of the Tenth Circuit became aware of the majority of named witnesses along with their address and contact information. The plaintiff is seeking this information from the defendants' cartel in discovery and has not yet obtained it.

The defendant US Bancorp's CEO Richard K. Davis has chosen to keep Shughart, Thompson & Kilroy, P.C. in the dark about the felonies committed through US Bancorp Piper Jaffray and US Bancorp' securities reporting. In this way, Shughart, Thompson & Kilroy, P.C. may be able to assert some false defenses the law firm would not otherwise be able to under the rules of professional conduct. However, since US Bancorp is publicly traded, this is no longer the case under the Sarbanes-Oxley Act and Shughart, Thompson & Kilroy, P.C. is required to find out what officials created liability for US Bancorp.

The plaintiff and the defendant will have to prepare final exhibit lists and documents will be subjected to the Rules of Evidence and the discretion of the court in determinations of relevance. This is where courts under the Rules of Civil procedure and the case management order accomplish what the defendants seek in their motion to compel.

The plaintiff has filed for an extension on discovery in part to seek the court's guidance in resolving the dispute over the scope which if the defendant succeeds in his protective order will be narrowed, however currently the scope under the impending punitive damages amendment, the existing UCC Good

Faith and Fair Dealing Duty, and the fiduciary of the defendants include all their misconduct delaying the plaintiff's realization of his bargain. The plaintiff's response to the motion for protective order clearly shows that the objected evidence is relative and discoverable.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via email, on this 30th day of April, 2008 to:

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