**IN THE UNITED STATES COURT**
**DISTRICT OF KANSAS**

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

**PLAINTIFF'S ANSWER TO MAGISTRATE'S PROTECTIVE ORDER TO SHOW CAUSE**

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and makes the following answer to the magistrate's order to show cause.

**STATEMENT OF FACTS**

1. The defendants had filed "automatic" protective orders that facially were in bad faith.

2. This court refused to rule on the orders when challenged by the plaintiff with the clearly established and controlling of this jurisdiction barring such blanket protective orders as unlawful.

3. The deprivation of discovery for the plaintiff by the defendants' unlawful use of "automatic" blanket orders prevented the plaintiff from a fair and complete opportunity to bring his contract, fraud and trade secret claims which were fraudulently removed from Missouri State court and transferred to this jurisdiction by the defendants' counsel Mark A. Olthoff during the pendency of exclusive federal jurisdiction over the subject claims in the Tenth Circuit Court of Appeals.

4. The plaintiff was forced to dismiss with prejudice his remaining claims because the defendants' unlawful "automatic" blanket orders breached the parties' case management agreement supervised by Hon. Magistrate David J. Waxse.

5. The Hon. Magistrate David J. Waxse reacted to this additional proof of the damages resulting from obstruction of justice of his own court through his actions in combination with the defendants' counsel Jay E. Heidrick by ordering the plaintiff to show cause, a necessary requisite to sanctioning the plaintiff and ordering the plaintiff's property to be taken from him.

6. The plaintiff has repeatedly given notice to the Hon. Magistrate David J. Waxse that this court never obtained subject matter jurisdiction over the present proceedings and that the orders of the court have been *ultra vires*.

7. The Hon. Magistrate David J. Waxse and the defendants' counsel Jay E. Heidrick appear to be arranging to continue this proceeding or to make further orders on discovery despite the dismissal of remaining claims by the plaintiff and the extinguishing of Article III jurisdiction for this court. See exb. 1 Email between Heidrick and the Hon. Magistrate David J. Waxse to set a dispositive order date and the plaintiff's reply (exb. 2).

**MEMORANDUM OF LAW**

The plaintiff as repeatedly briefed this court that federal jurisdiction over the concurrent state claims of the plaintiff did not exist at the time the action was *removed* from the 16th Circuit Missouri State Court and jurisdiction did not exist at the time the action was transferred to the Kansas District Court. The law is clearly established that diversity jurisdiction did not exist, the transferor federal court did not have jurisdiction to make the transfer while the Tenth Circuit had exclusive jurisdiction over the case or controversy in appeal and could not transfer the action while the Medical Supply Chain case benefited from the first to file rule. See exb. 3. Plaintiff's Brief on Appellate Court Jurisdiction.

The show cause order of Hon. Magistrate David J. Waxse is unlawful in that it seeks to sanction the plaintiff for what is now represented as the plaintiff's discovery violation (under the controlling precedent of this jurisdiction the defendants' blanket "automatic" protective orders were the violation) but this sanctioning is initiated when Hon. Magistrate David J. Waxse had repeated notice of the absence of subject matter jurisdiction:

> "*Marrese v. American Academy of Orthopaedic Surgeons*, supra, involved a civil defendant held in criminal contempt for failure to obey a discovery order. The defendant resisted on the ground that the action against it was barred by *res judicata*. The Seventh Circuit agreed and ordered the suit dismissed, a ruling subsequently reversed by the Supreme Court, 470 U.S. 373, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985). In a passage not affected by the Supreme Court's reversal, the Seventh Circuit observed that "if it turns out that [a] lawsuit should not have been pending because it was barred at the outset by *res judicata* we think it follows logically and practically that the discovery order exceeded the judge's authority." 726 F.2d at 1158. That passage may well be correct with respect to discovery directed against a party, a point we need not resolve on this appeal. It is surely correct with respect to discovery directed at a party that is resisted on the ground that the court lacks subject matter jurisdiction over the lawsuit involving the party. *United States v. Morton Salt Co*., 338 U.S. 632, 642, 70 S.Ct. 357, 363, 94 L.Ed. 401 (1950)."
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> *U.S. Catholic Conference, In re*, 824 F.2d 156 at 164-165 (C.A.2 (N.Y.), 1987).

The Hon. Magistrate David J. Waxse is also aware that the court was not free to adopt the defendants' arguments that the plaintiff's affidavit of bias need not be answered because it does not include a statement by the plaintiff's counsel that the affidavit was made in good faith under 28 U.S.C. § 144;

"§ 144. Bias or prejudice of judge

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied **by a certificate of counsel of record** stating that it is made in good faith." [Emphasis added]

28 U.S.C. § 144.

Clearly the plaintiff is without counsel and not subject to the provision in the statute for represented parties. Furthermore the court and the defendants' counsel colluded in bad faith (as detailed in the procedural history of the present complaint) to deprive the plaintiff of his counsel through a fraudulent disbarment where federal judicial branch officials operated with State of Kansas officials through *ex parte* communications to deprive the plaintiff's first attorney of Due Process in the state disciplinary hearing and during the minutes before the Kansas Supreme Court oral arguments for the purpose of depriving the plaintiff of counsel under color of state law for the pretext reason of representing two members of a protected class and most strongly having the plaintiff's former counsel Bret D. Landrith condemned for bringing their claims to federal court[1]) in an open and notorious violation of 42 USC § 1981 to demonstrate the power of the defendants and their judicial branch allies to defy the Rule of Law in their own Kansas District Court.

The Hon. Judge Carlos Murguia repeatedly sanctioned the plaintiff's counsel and threatened sanctions based on facially frivolous sanction motions by the defendants against the plaintiff's replacement counsel Dennis Hawver and the plaintiff himself for the naked purpose of furthering the obstruction of justice in Hon. Judge Carlos Murguia's own Kansas District Court. These are the acts of a prohibited bias or prejudice of this court that the Hon. Magistrate David J. Waxse is responsible for having knowledge of. Furthermore the Hon. Magistrate David J. Waxse directly participated with the defendants' counsel Jay E. Heidrick in the acts to obstruct justice in this court through the manufacture of a fraudulent dismissal over false discovery violations that was the subject of the plaintiff's 28 U.S.C. § 144.

[1] http://judicial.kscourts.org:7780/Archive/2005%20court%20hearings/Oct/94,333.mp3

The order upholding the "automatic" protective order and the order to show cause following the voluntary dismissal of the remaining claims with prejudice is the further embodiment of the prohibited bias and prejudice of this court against the plaintiff and unlawful not only for the absence of subject matter jurisdiction in this proceeding but also for violating 28 U.S.C. § 144's requirement "…such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." Furthermore this court is not free t again use sanctions in an attempt to deter review."*Webster v. Sowders*, 846 F.2d 1032, 1040 (CA6 1988) ('Appeals of district court orders should not be deterred by threats [of Rule 11 sanctions] from district judges')"*Cooter Gell v. Hartmarx Corporation*, 496 U.S. 384 at 408, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990).

Respectfully Submitted,

S/ Samuel K. Lipari
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**CERTIFICATE OF SERVICE**

I certify I have sent a copy to the undersigned opposing counsel via electronic filing on 11/24/08.

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S/ Samuel K. Lipari
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