

APPEAL, CLOSED, EAPADMIN

**U.S. District Court
Western District of Missouri (Kansas City)
CIVIL DOCKET FOR CASE #: 4:06-cv-01012-FJG
*Internal Use Only***

Lipari v. US Bancorp, NA et al

Assigned to: Chief District Judge Fernando J. Gaitan, Jr

Case in other court: 8th Circuit Court of Appeals,
08-03087

8th Circuit Court of Appeals,
08-03428

8th Circuit Court of Appeals,
08-03984

Jackson County Circuit Court,
Missouri, 0616-CV32307

Date Filed: 12/13/2006

Date Terminated: 04/04/2007

Jury Demand: Both

Nature of Suit: 190 Contract: Other

Jurisdiction: Diversity

Cause: 28:1332 Diversity-Other Contract

Plaintiff

Samuel K. Lipari

represented by **Samuel K. Lipari**

297 NE Bayview

Lee's Summit, MO 64064

PRO SE

V.

Defendant

US Bancorp, NA

represented by **Andrew M. DeMarea**

Shughart, Thomson & Kilroy, P.C.

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ATTORNEY TO BE NOTICED

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LEAD ATTORNEY

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Defendant

US Bank NA

represented by **Andrew M. DeMarea**
 (See above for address)
LEAD ATTORNEY
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Mark A. Olthoff
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Page	Docket Text
12/13/2006	<u>1</u>		NOTICE OF REMOVAL by US Bancorp, NA, US Bank NA, US Bancorp, NA, US Bank NA from Circuit Court of Jackson County, Missouri, case number 0616-CV32307. (Filing fee \$ 350 receipt number 1408283) filed by Mark A. Olthoff on behalf of US Bancorp, NA, US Bank NA, US Bancorp, NA, US Bank NA. (Attachments: # <u>1</u> State Court Petition# <u>2</u> Civil Cover Sheet)(Olthoff, Mark) (Entered: 12/13/2006)
12/13/2006	<u>2</u>		NOTICE of filing by US Bancorp, NA, US Bank NA re <u>1</u> Notice of Removal, to <i>Plaintiff</i> (Olthoff, Mark) (Entered: 12/13/2006)
12/13/2006	<u>3</u>		DISCLOSURE OF CORPORATE INTERESTS filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA.(Olthoff, Mark) (Entered: 12/13/2006)
12/14/2006	<u>4</u>		NOTICE of filing by US Bancorp, NA, US Bank NA of <i>Certificate of Filing of Notice of Removal in State Court and Proof of Service</i> (Olthoff, Mark) (Entered: 12/14/2006)
12/14/2006	<u>5</u>		Notice of EAP Administrative (Attachments: # <u>1</u> EAP General Order)(Baldwin, Joella) (Entered: 12/14/2006)
12/18/2006	<u>6</u>		MOTION to remand <i>and rely to Notice of Removal</i> filed by Samuel K. Lipari. Suggestions in opposition/response due by 1/2/2007 unless otherwise directed by the court. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4# <u>5</u> Exhibit 5)(Jones, Robin) Modified on 12/19/2006 to attach Letter to Clerk (Jones, Robin). (Entered: 12/18/2006)
12/21/2006	<u>7</u>		ANSWER to Complaint filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA.(Olthoff, Mark) (Entered: 12/21/2006)
12/29/2006	<u>8</u>		SUGGESTIONS in opposition re <u>6</u> MOTION to remand filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 1/16/2007 unless otherwise directed by the court (Related document(s) <u>6</u>) (Olthoff, Mark) (Entered: 12/29/2006)

01/03/2007	<u>9</u>		ORDER – joint proposed discovery plan and scheduling order due by 2/9/2007. Counsel for defendants, after consultation with plaintiff, shall take the lead in preparing a proposed scheduling order for execution and filing with the court. Signed by Judge Fernando J. Gaitan Jr. on 1/3/07. (Enss, Rhonda) (Entered: 01/03/2007)
01/04/2007	<u>10</u>		MOTION for more definite statement filed by Samuel K. Lipari.Suggestions in opposition/response due by 1/19/2007 unless otherwise directed by the court. (Jones, Robin) (Entered: 01/05/2007)
01/04/2007	<u>11</u>		MOTION to vacate Case Management Order, Document <u>9</u> , filed by Samuel K. Lipari.Suggestions in opposition/response due by 1/19/2007 unless otherwise directed by the court. (Related document(s) <u>9</u>) (Jones, Robin) (Entered: 01/05/2007)
01/04/2007	<u>12</u>		REPLY to answer on behalf of Plaintiff Samuel K. Lipari. (Attachments: # <u>1</u> Exhibit 1)(Related document(s) <u>7</u>) (Jones, Robin) (Entered: 01/05/2007)
01/18/2007	<u>13</u>		SUGGESTIONS in opposition re <u>10</u> MOTION for more definite statement filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 2/5/2007 unless otherwise directed by the court (Related document(s) <u>10</u>) (Olthoff, Mark) (Entered: 01/18/2007)
01/18/2007	<u>14</u>		SUGGESTIONS in opposition re <u>11</u> MOTION to vacate <u>9</u> Order, filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 2/5/2007 unless otherwise directed by the court (Related document(s) <u>11</u>) (Olthoff, Mark) (Entered: 01/18/2007)
01/19/2007	<u>15</u>		MOTION for leave to file excess pages filed by Mark A. Olthoff on behalf of all defendantsSuggestions in opposition/response due by 2/8/2007 unless otherwise directed by the court. (Olthoff, Mark) (Entered: 01/19/2007)
01/19/2007	<u>16</u>		MOTION to dismiss case <i>Or, In the Alternative, Motion to Transfer</i> filed by Mark A. Olthoff on behalf of all defendantsSuggestions in opposition/response due by 2/8/2007 unless otherwise directed by the court. (Olthoff, Mark) (Entered: 01/19/2007)
01/19/2007	<u>17</u>		SUGGESTIONS in support re <u>16</u> MOTION to dismiss case <i>Or, In the Alternative, Motion to Transfer</i> filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Exhibit E)(Related document(s) <u>16</u>) (Olthoff, Mark) (Entered: 01/19/2007)
01/31/2007	<u>18</u>		MOTION to stay further proceedings pending appeal filed by Samuel K. Lipari. Suggestions in opposition/response due by 2/20/2007 unless otherwise directed by the court. (Attachments: # <u>1</u> Notice of Exhibit Attachment)(Carr, Lori) (Entered: 01/31/2007)

			02/01/2007)
02/08/2007	<u>19</u>		SUGGESTIONS in opposition re <u>18</u> MOTION to stay <i>Defendants' Suggestions in Opposition to Plaintiff's Motion to Stay</i> filed by Mark A. Olthoff on behalf of Defendants US Bancorp, NA, US Bank NA. Reply suggestions due by 2/26/2007 unless otherwise directed by the court (Related document(s) <u>18</u>) (Olthoff, Mark) (Entered: 02/08/2007)
02/09/2007	<u>20</u>		REPORT of Rule 26(f) planning meeting. (Olthoff, Mark) (Entered: 02/09/2007)
04/04/2007	<u>21</u>	7	ORDER denying <u>6</u> plaintiff's motion to remand; denying <u>10</u> plaintiff's motion for more definite statement; denying as moot <u>11</u> plaintiff's motion to reconsider Court's case management order; granting <u>15</u> defendants' motion for leave to file excess pages; granting <u>16</u> defendant's motion to transfer case to District Court of KS; and denying as moot <u>18</u> plaintiff's motion to stay. Signed by Judge Fernando J. Gaitan Jr. on 4/4/07. (Enss, Rhonda) (Entered: 04/04/2007)
04/09/2007			TRANSFER documents mailed to USDC – District of Kansas. This is a text entry only – no document is attached. (Jones, Robin) (Entered: 04/09/2007)
09/05/2008	<u>22</u>		NOTICE OF APPEAL as to <u>21</u> ORDER denying <u>6</u> plaintiff's motion to remand; denying <u>10</u> plaintiff's motion for more definite statement; denying as moot <u>11</u> plaintiff's motion to reconsider Court's case management order; granting <u>15</u> defendants' motion for leave to file excess pages; granting <u>16</u> defendant's motion to transfer case to District Court of KS; and denying as moot <u>18</u> plaintiff's motion to stay, filed by Samuel K. Lipari. Filing fee \$ 455, receipt number NOT PAID. (Carr, Lori) (Entered: 09/08/2008)
09/08/2008	<u>23</u>		TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>22</u> Notice of Appeal,, (Crespo, Wil) (Entered: 09/08/2008)
09/15/2008	<u>24</u>		USCA Case Number from 8th Circuit Court of Appeals is 08–3087 for <u>22</u> Notice of Appeal,, filed by Samuel K. Lipari. Briefing schedule entered by the Court of Appeals is attached. (Attachments: # <u>1</u> Schedule)(Crespo, Wil) (Entered: 09/15/2008)
09/16/2008			Appeal Remark re <u>22</u> Notice of Appeal: Mailed this date to Movant a copy of the docket sheet and NOA (Crespo, Wil) (Entered: 09/16/2008)
10/10/2008	<u>25</u>		USCA Judgment as to <u>22</u> Notice of Appeal,, filed by Samuel K. Lipari This is a preliminary judgment of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. The motion of appellee for dismissal of this appeal is granted. The appeal is hereby

		dismissed. (Crespo, Wil) (Entered: 10/10/2008)
10/16/2008	<u>26</u>	NOTICE OF APPEAL as to <u>21</u> Order on Motion to Remand, Order on Motion for More Definite Statement, Order on Motion to Vacate, Order on Motion for Leave to File Excess Pages, Order on Motion to Dismiss Case, Order on Motion to Stay by Samuel K. Lipari. Filing fee \$ 455, receipt number NOT PAID. (Carr, Lori) (Entered: 10/17/2008)
10/20/2008	<u>27</u>	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>26</u> Notice of Appeal., (Crespo, Wil) (Entered: 10/20/2008)
10/24/2008	<u>28</u>	USCA Case Number from 8th Circuit Court of Appeals is 08-3428 for <u>26</u> Notice of Appeal, filed by Samuel K. Lipari. No briefing schedule entered by the Court of Appeals. (Crespo, Wil) (Entered: 10/24/2008)
10/28/2008		RECEIPT number 271634 in the amount of \$455.00 issued to Samuel Lipari. (Carr, Lori) (Entered: 10/29/2008)
10/30/2008	<u>29</u>	MANDATE of US COURT OF APPEALS as to <u>22</u> Notice of Appeal., filed by Samuel K. Lipari with mandate issued on 10/30/08. (Crespo, Wil) (Entered: 10/30/2008)
11/12/2008	<u>30</u>	USCA Judgment as to <u>26</u> Notice of Appeal, filed by Samuel K. Lipari This is a preliminary judgment of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. The motion of appellee for dismissal of this appeal is granted. The appeal is hereby dismissed. (Crespo, Wil) (Entered: 11/12/2008)
12/02/2008	<u>31</u>	MANDATE of US COURT OF APPEALS as to <u>26</u> Notice of Appeal, filed by Samuel K. Lipari with mandate issued on 12/2/08. (Crespo, Wil) (Entered: 12/02/2008)
12/05/2008		***Remark: Plaintiff's Second Amended Notice of Appeal was received by this court and then forwarded this date to the District of Kansas for processing at the instruction of chambers. (Carr, Lori) (Entered: 12/05/2008)
12/17/2008	<u>32</u>	NOTICE OF APPEAL as to <u>21</u> Order on Motion to Remand, Order on Motion for More Definite Statement, Order on Motion to Vacate, Order on Motion for Leave to File Excess Pages, Order on Motion to Dismiss Case, Order on Motion to Stay, by Samuel K. Lipari. Filing fee \$ 455, receipt number Not paid. (Attachments: # <u>1</u> Dismissal Order, # <u>2</u> Letter from 8th Circuit, # <u>3</u> Answer to Show Cause Order of 12/5/08, # <u>4</u> Memorandum & Order, # <u>5</u> 2nd Notice of Appeal, # <u>6</u> Docket entry regarding 2nd Notice of Appeal, # <u>7</u> Docket Sheet regarding Show Cause, # <u>8</u> Civil Docket 07-849, # <u>9</u> Jackson County Docket 0816-CV04217, # <u>10</u> Financial Disclosure Report FY2004, # <u>11</u> Article)(Carr, Lori) (Entered: 12/19/2008)

12/19/2008	<u>33</u>		TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>32</u> Notice of Appeal, Mailed this date to Movant a copy of the docket sheet and NOA. (Crespo, Wil) (Entered: 12/19/2008)
12/29/2008	<u>34</u>		USCA Case Number from 8th Circuit Court of Appeals is 08-3984 for <u>32</u> Notice of Appeal,, filed by Samuel K. Lipari. Briefing schedule entered by the Court of Appeals is attached. (Crespo, Wil) (Entered: 12/29/2008)
01/21/2009			RECEIPT number 272670 in the amount of \$455 issued to Samuel K. Lipari. (Wheeler, LaTandra) (Entered: 01/21/2009)
01/23/2009	<u>35</u>		USCA Judgment as to <u>32</u> Notice of Appeal,, filed by Samuel K. Lipari This is a preliminary judgment of U.S. Court of Appeals; jurisdiction is not recovered until the Mandate is issued by the U.S Court of Appeals. The motion to dismiss this appeal for lack of jurisdiction has been considered by the Court and is granted. (Crespo, Wil) (Entered: 01/23/2009)
02/19/2009	<u>36</u>		MANDATE of US COURT OF APPEALS as to <u>32</u> Notice of Appeal,, filed by Samuel K. Lipari with mandate issued on 2/18/09. (Crespo, Wil) (Entered: 02/19/2009)
09/16/2009	<u>37</u>	13	NOTICE OF APPEAL as to <u>21</u> Order on Motion to Remand,, Order on Motion for More Definite Statement,, Order on Motion to Vacate,, Order on Motion for Leave to File Excess Pages,, Order on Motion to Dismiss Case,, Order on Motion to Stay, by Samuel K. Lipari. Filing fee \$ 455, receipt number Not Paid. (Attachments: # <u>1</u> Exhibit)(Carr, Lori) (Entered: 09/18/2009)
09/18/2009	<u>38</u>	18	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>37</u> Notice of Appeal,. (Crespo, Wil) (Entered: 09/18/2009)

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

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 06-1012-CV-W-FJG
)	
U.S. BANCORP and)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

ORDER

Currently pending before the Court is plaintiff’s Motion to Remand (Doc. # 6); plaintiff’s Motion for a More Definite Statement (Doc. # 10); plaintiff’s Motion to Vacate Case Management Order (Doc. # 11); defendants’ Motion for Leave to File Excess Pages (Doc. # 15); defendant’s Motion to Dismiss or in the Alternative to Transfer (Doc. # 16) and plaintiff’s Motion to Stay Further Proceedings Pending Appeal (Doc. # 18).

I. BACKGROUND

On October 22, 2002, Medical Supply Chain, Inc. (“Medical Supply”) filed an action in the United States District Court for the District of Kansas alleging both state and federal claims Medical Supply Chain, Inc. V. U.S. Bancorp, N.A. et al., Case 02-2539, (“Medical Supply I”). On June 16, 2003, Judge Murguia dismissed the federal claims with prejudice and dismissed the state claims without prejudice. This decision was affirmed by the Tenth Circuit. The second case brought by plaintiff was Medical Supply Chain Inc. v. General Electric Company et al., Case No. 03-2324 which was filed on June 18, 2003 (“Medical Supply II”). On January 29, 2004, the Court granted

defendants' Motions to Dismiss. The Tenth Circuit affirmed the dismissal of these claims on July 26, 2005. Medical Supply then filed an identical action in the Western District of Missouri on March 9, 2005 captioned Medical Supply Chain, Inc. v. Neoforma, Inc. (05-210-CV-W-ODS) ("Medical Supply III"). In that case, U.S. Bancorp and U.S. Bank National Association were named again as defendants in the Complaint which also alleged violations of state and federal law. On June 15, 2005, Judge Ortrie Smith transferred Medical Supply III to the District of Kansas. On March 7, 2006, Judge Murguia granted defendants' motion to dismiss. Medical Supply appealed this order to the Tenth Circuit where it remains pending. On November 28, 2006, Samuel Lipari filed the instant action in Jackson County Circuit Court against U.S. Bancorp, NA and U.S. Bank NA (Jackson County Case No. 0616-CV-32307). On December 13, 2006, the defendants removed the action to this Court on the basis of diversity. Defendants now move to dismiss plaintiff's case or alternatively to transfer it to the District of Kansas pursuant to 28 U.S.C. § 1404 (a). Plaintiff did not respond to the Motion to Dismiss or Alternatively to the Motion to Transfer.

II. STANDARD

28 U.S.C. § 1404(a) provides, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." The Court in Houk v. Kimberly-Clark Corp., 613 F.Supp. 923, 927 (W.D.Mo. 1985), stated that "[i]n any determination of a motion to transfer under § 1404(a), the plaintiff's choice of a proper forum is entitled to great weight, and will not be lightly disturbed." The Court also observed:

It is incumbent upon the party seeking transfer to make a clear showing

that the balance of interests weighs in favor of the proposed transfer, and unless that balance is strongly in favor of the moving party, the plaintiff's choice of forum should not be disturbed. . . . Where the balance of relevant factors is equal or only slightly in favor of the movant, the motion to transfer should be denied.

Id. at 927 (internal citations omitted).

In Enterprise Rent-A-Car Co. v. U-Haul International, Inc., 327 F.Supp.2d 1032

(E.D.Mo. 2004) the Court stated:

In determining whether or not to transfer venue, the Court must consider the three general categories of factors stated in §1404(a): (1) the convenience of the parties, (2) the convenience of the witnesses, and (3) whether the transfer would be in the interest of justice.

Id. at 1045 citing Terra Int'l, Inc. v. Mississippi Chem. Corp., 119 F.3d 688, 691 (8th Cir.), cert. denied, 522 U.S. 1029, 118 S.Ct. 629, 139 L.Ed.2d 609 (1997).

III. DISCUSSION

A. Motion to Transfer

Defendants state that this is the third lawsuit stemming from the same operative facts where Medical Supply Chain or Mr. Lipari have named U.S. Bancorp and U.S. Bank as the defendants.¹ Defendants state that federal courts have consistently and uniformly ordered section 1404(a) transfers to other federal district courts when related lawsuits are pending in the transferring court. In Prudential Insurance Co. of America v. Rodano, 493 F.Supp. 954 (E.D.Pa. 1980), the Court stated:

The most compelling reason for transfer is that it would best serve the interests of justice. The presence of two related cases in the transferee forum is a substantial reason to grant a change of venue. The interests of justice and the convenience of the parties and witnesses are ill-served

¹Neither U.S. Bancorp nor U.S. Bank Association were named as defendants in Case 03-2323.

when federal cases arising out of the same circumstances and dealing with the same issues are allowed to proceed separately. The substantial likelihood that this case will be consolidated with the two related cases pending in the United States District Court of Maryland, sitting at Baltimore, weighs heavily in favor of transfer.

Id. at 955.

Defendants do not discuss whether it would be more convenient for the witnesses and parties if this case were transferred to the District of Kansas. However, because the locations of the two courthouses are relatively close, the Court does not find that transferring this case would play a major factor for either the parties or the witnesses. Additionally, the Court finds that the interests of justice would be better served if this case were transferred to the District of Kansas. That district has become extensively familiar with the plaintiff and his various lawsuits over the years. Transfer of this case would conserve judicial resources and avoid the risk of potentially conflicting rulings from different courts.

As mentioned previously, the plaintiff's choice of forum is entitled to great deference. However, the Court finds that the balance of interests in this case weighs strongly in favor of transferring this case due to the extensive previous history that plaintiff has had with his various cases in the District of Kansas. Therefore, because the District of Kansas is a proper alternative forum, this Court hereby **GRANTS** defendants' Motion to Transfer this case to the District Court of Kansas (Doc. # 16).

B. Motion to Remand

Plaintiff moves to remand this case because he states that the Kansas District

Court still has jurisdiction over his state law claims². Plaintiff also states that diversity jurisdiction does not exist. Plaintiff does concede that the Supreme Court has determined that national bank associations are to be treated as residents of the state in which they have their main office, but he argues that this does not save the defendants' removal from being frivolous. He states that diversity jurisdiction still does not exist, despite the movement of the pendant claims to state court. Plaintiff states that claims were filed against the Missouri domiciled defendant Shugart, Thompson & Kilroy as a defendant. Thus, he argues that the presence of this defendant destroys diversity jurisdiction.

Defendants state in opposition that the Motion to Remand should be denied because diversity jurisdiction exists between the parties and the removal was proper. Defendants note that there is no Missouri defendant who was named in plaintiff's state court petition. In his state court petition filed on November 28, 2006, plaintiff named only U.S. Bancorp and U.S. Bank, both of whom are considered Minnesota residents. Additionally, defendants note that the District Court in Kansas did not retain jurisdiction over plaintiff's state law claims, but rather dismissed these claims without prejudice.

The Court agrees with defendants and finds that the removal was proper and diversity jurisdiction exists between the parties. Accordingly, the Court finds no basis for remanding this action and therefore **DENIES** plaintiff's Motion to Remand (Doc. # 6).

² It is unclear how this argument would support remanding this case to the Jackson County court.

III. CONCLUSION

The Court **GRANTS** defendants' Motion for Leave to File Excess Pages (Doc. # 15); **DENIES** as **MOOT** plaintiff's Motion to Reconsider the Court's Case Management Order (Doc. # 11); **DENIES** as **MOOT** plaintiff's Motion to Stay (Doc. # 18); **DENIES** plaintiff's Motion for a More Definite Statement (Doc. # 10); **DENIES** plaintiff's Motion to Remand (Doc. # 6) and **GRANTS** defendants' Motion to Transfer this Case to the District Court of Kansas (Doc. # 16).

Date: 4/4/07
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY, MISSOURI

SAMUEL K. LIPARI)
(Assignee of Dissolved)
Medical Supply Chain, Inc.))
<i>Plaintiff</i>) Case No. 06-1012-CV-W-FJG
) State Court No. 0616-CV32307
)
vs.) (Properly Case No. 05-0210-
) CV-W-ODS)
US BANCORP, NA)
US BANK, NA)
<i>Defendants</i>)

NOTICE OF APPEAL

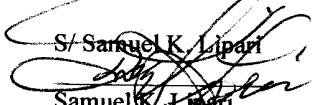
Comes now the plaintiff Samuel K. Lipari, the assignee of the dissolved Missouri corporation Medical Supply Chain, Inc., appearing *pro se* and makes the following notice of appeal from this court's order to transfer the concurrent jurisdiction state claims to the Kansas District Court when the removal from state court was obtained through fraud on this court and federal jurisdiction was exclusively in the US Tenth Circuit Court of Appeals where there was a lack of complete diversity at the time of transfer. The plaintiff also appeals this court's refusal to abstain under the "first to file" rule.

The plaintiff stipulated to dismissal with prejudice of his remaining claim for violation of Missouri State Trade Secret Act on October 15, 2008.

The plaintiff was not able to appeal the transfer at law until the transferee court relinquished jurisdiction. On September 15, 2009 the transferee court terminated the case.

The plaintiff now timely appeals.

Respectfully submitted,


 S/ Samuel K. Lipari
 Samuel K. Lipari
 803 S. Lake Drive
 Independence, MO 64053
 saml@medicalsupplychain.com
Pro se

Certificate of Service

I certify that on September 16th, 2009 I have served the opposing counsel with a copy of the foregoing notice using email:

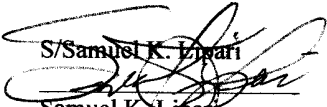
John K. Power, Husch Blackwell Sanders LLP, 4801 Main St, Ste 1000 Kansas City, MO 64112 Attorney for NOVATION LLC, VHA INC., UNIVERSITY HEALTHSYSTEM CONSORTIUM, VHA MID-AMERICA LLC, THOMAS SPINDLER, ROBERT BEZANSON, GARY DUNCAN, MARYNARD OLIVERIUS, SANDRA VAN TREASE, CHARLES ROBB, MICHAEL TERRY, COX HEALTH CARE SERVICES OF THE OZARKS INC., ST LUKE'S HEALTH SYSTEM INC., STORMONT-VAIL HEALTHCARE INC., ROBERT BAKER, CURT NONOMAQUE, GHX LLC, NEOFORMA INC.

Michael J. Thompson, 4801 Main St, Ste 1000, Kansas City, MO 64112 Attorney for HUSCH BLACKWELL SANDERS LLC

William E. Quirk, Polsinelli, Shughart / Shughart Thomson & Kilroy, P.C. 120 W 12TH ST, Ste 1600, Kansas City, MO 64105 Attorney for SHUGHART, THOMSON & KILROY

Mark A. Olthoff, Polsinelli, Shughart / Shughart Thomson & Kilroy, P.C. 120 W 12TH Street, Ste 1700, Kansas City, MO 64105 Attorney for PIPER JAFFRAY COMPANIES and ANDREW DUFF
Jay E. Heidrick, Polsinelli, Shughart / Shughart Thomson & Kilroy, P.C. 6200 College Blvd., Suite 500, Overland Park, Kansas 66211 Attorney for JERRY GRUNDHOFER, RICHARD DAVIS, ANDREW CECERE,

William G. Beck, Peter F. Daniel, J. Alison Auxter, Lathrop & Gage LC, 2345 Grand Boulevard, Suite 2800, Kansas City, MO 64108 Attorney for LATHROP & GAGE


S/Samuel K. Lipari
Samuel K. Lipari
803 Lake Drive
Independence, Missouri 64053
sam1@medicalsupplychain.com
Pro se

Tuesday, September 15, 2009 1:34 PM

Subject: Re: 2:07-cv-02146-CM-DJW Lipari v. US Bancorp N A et al
Date: Tuesday, September 15, 2009 9:50 AM
From: KSD_Murguia_Chambers@ksd.uscourts.gov
To: "Samuel K. Lipari MSC" <Saml@MedicalSupplyChain.com>

Mr. Lipari,

The case is closed.

Thank you.

Samuel Lipari
<Saml@MedicalSupplyChain.com>
09/14/2009 09:06 PM
To
<ksd_murguia_chambers@ksd.uscourts.gov>
cc
<ksd_waxse_chambers@ksd.uscourts.gov>, Sean Tassi
<sean.tassi@huschblackwell.com>, Michael Thompson
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<jheidrick@polsinelli.com>, Mark Olthoff <molthoff@polsinelli.com>, William Quirk
<bquirk@polsinelli.com>
Subject
2:07-cv-02146-CM-DJW Lipari v. US Bancorp N A et al

Dear Honorable Judge Carlos Murguia and Magistrate Judge Waxse:

I am calling to your attention that case # 07-cv-02146-CM-DJW Lipari v. US Bancorp N A et al has not been closed. I am awaiting the close so that I may file my appeal in the 8th Circuit Court of Appeals for the removal of that cases from the Missouri State Court.

Thank you for your attention to this matter. Sincerely, Samuel K. Lipari

Page 1 of 2

Medical Supply Chain
Saml@MedicalSupplyChain.com
<http://www.MedicalSupplyChain.com/news.htm>

12/19/2008	<u>176</u>	CERTIFIED MAIL RECEIPT returned re <u>171</u> Memorandum & Order, <u>172</u> Docket Annotation, addressed to Samuel K. Lipari. Signed for by Samuel K. Lipari on 12/17/2008. (jw) (Entered: 12/19/2008)
12/19/2008	<u>177</u>	ORDER of 10CCA as to Notices of Appeal filed by Samuel K. Lipari (Appeal Nos. 08-3287, 08-3338, 08-3345). The appeals are consolidated for purposes of record preparation, briefing, and court consideration. See Order for further details. (kao) (Entered: 12/22/2008)
01/05/2009		APPEAL FEES PAID re Notice of Appeal <u>148</u> , Notice of Appeal <u>163</u> , Notice of Appeal <u>173</u> filed by Samuel K. Lipari. Receipt No. K4631015807. (Appeal Nos. 08-3287, 08-3338, 08-3345) (THIS IS A TEXT ONLY ENTRY-NO DOCUMENT IS ASSOCIATED WITH THIS TRANSACTION) (kao) (Entered: 01/05/2009)
01/09/2009	<u>178</u>	CONSOLIDATED RECORD ON APPEAL transmitted to 10CCA via email (Volumes I-VI) re <u>148</u> Notice of Appeal, <u>163</u> Notice of Appeal, <u>173</u> Notice of Appeal. (Appeal Nos. 08-3287, 08-3338, 08-3345). (kao) (Entered: 01/09/2009)
08/18/2009	<u>179</u>	APPEAL MANDATE from 10CCA: AFFIRMING decision of the District Court. (Appeal Nos. 08-3287, 08-3338, 08-3345) (Attachment: # <u>1</u> Transmittal letter)(kao) (Entered: 08/18/2009)
09/15/2009		***Civil Case Terminated.(yh) (Entered: 09/15/2009)

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U. S. COURT OF APPEALS - EIGHTH CIRCUIT
NOTICE OF APPEAL SUPPLEMENT

MISSOURI WESTERN DISTRICT - KANSAS CITY

Please note any additions or deletions to the style of the case from the style listed on the docket sheet (or attach an amended docket sheet with the final style of the case).

Case Caption: Lipari v. US Bancorp, NA et al	Case No. 06-cv-01012-FJG
Appellant: Samuel K. Lipari	Appellee: US Bancorp, NA
Appellant's Attorney(s):	Appellee's Attorney(s):
Samuel K. Lipari 297 NE Bayview Lee's Summit, MO 64064 PRO SE	Andrew M. DeMarea Shughart, Thomson & Kilroy, P.C. 9225 Indian Creek Parkway Suite 1100 Overland Park, KS 66210 (913) 451-3355 Fax: (913) 451-3361 Email: ademarea@stklaw.com
Court Reporter(s):	Please return files and documents to:
None	United States District Court 400 East 9th Street, Room 1510 Kansas City, MO 64106
	Contact Person for Appeal: Willie Crespo 816-512-5068

Length of Trial: 0	Fee: Not paid	IFP: No	Pending IFP Motion: No
Counsel: Pro-Se	Pending Motions? No	Local Interest? No	Simultaneous Release? No

Special Comments: This is the 4th appeal. Appeal #08-3087, 08-3428, and 08-3984.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

ACCESS DISTRICT COURT DOCKET SHEET

Appeal No. 09-3203 Samuel Lipari v. US Bancorp, NA, et al

Date: September 21, 2009

A link to the District Court's docket sheet is provided here for your convenience. You must have a PACER account to access the docket sheet.

Click the link to the right to view docket sheet: [VIEW DOCKET](#) For Dist. No.: 06-1012