

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

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

**PLAINTIFF’S RESPONSE TO DEFENDANTS ASSERTION SHOW CAUSE
ORDER OVER DISCOVERY PRODUCTION HAS NOT BEEN COMPLIED WITH**

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and makes the following response to defendants’ assertion the plaintiff has failed to comply with this court’s show cause order.

1. The plaintiff sought to obtain instruction from the defendants regarding what additional disclosures were required:

From: Samuel Lipari [mailto:Saml@MedicalSupplyLine.com]
Sent: Monday, July 14, 2008 8:25 AM
To: Jay Heidrick
Subject: First set of Interrogatories?

Jay, I am under the impression I have already complied with your requests? Will you send me the original request so I can comply with the Magistrate order. Thanks, S~

Subject: Re: First set of Interrogatories?
Date: Tuesday, July 15, 2008 9:09 AM
From: Samuel Lipari <Saml@MedicalSupplyLine.com>
To: Jay Heidrick <jheidrick@stklaw.com>

Hi Jay, any request you feel I have not complied with and that the Magistrate ordered. I already have the paragraph numbers from the order but need to know what specific request you feel I have not complied with. The settlement brief and exhibits I submitted to the magistrate are conclusive but if you need me to extract the information I will. Best regards, S~

See exb. 1 email to defendants.

2. The defendants only responded:

“On 7/14/08 9:56 PM, "Jay Heidrick" <jheidrick@stklaw.com> wrote:

Sam-

Are you wanting the original interrogatories I sent you?”
See exb. 1 email to defendants.

And in response to the plaintiff's further clarification:

"Subject: FW: Lipari v. US Bank...
Date: Wednesday, July 16, 2008 8:40 AM
From: Jay Heidrick <jheidrick@stklaw.com>
To: Samuel Lipari Saml@MedicalSupplyChain.com
Cc: Jay Heidrick jheidrick@stklaw.com
Conversation: Lipari v. US Bank...
Sam-

Per your request, attached are the Interrogatories and Requests for Production we served. The deficiencies in your responses were outlined in the Memorandum that accompanied our Motion to Compel. You should have a copy of that document, but I'll resend if necessary. Let me know.

Thanks.

Jay "

See exb. 2 email to defendants.

3. The plaintiff's responses to the interrogatories are the plaintiff's responses in full. A misunderstanding that persists despite the plaintiff's repeated briefing and the clearly stated averments of his complaint is that the emails are the written and signed contract between the parties for US Bank and US Bancorp to provide escrow accounts. That is why everyone receiving the email from Kabbes has a signed copy of the agreement. The emails were required to be preserved by the defendants after receiving notice in the original case management conference from 2003. Instead they committed spoliation and now have only the documents produced by the plaintiffs.

4. The defendants have not produced any of their Rule 26 required disclosure documents or witness information and have also failed to produce documents specifically requested by the plaintiff (see exb. 3) using frivolous assertions of protective orders this court refuses to rule on in order to covertly grant the defendants the immunity from Rule 26 this court cannot lawfully give.

4. The signed document the defendants are demanding is actually one of the ten escrow deposit agreements the complaint expressly states were sent out to the candidates on the approval of Kabbes but then US Bancorp subsequently repudiated their agreement to provide escrows, as the complaint avers no deposits were ever made. This is the blank document furnished the defendants in the plaintiff's Rule 26 production as proof of the plaintiff's complaint. See exb 4.

5. The defendants having destroyed their email in deliberate spoliation then sought and fraudulently procured sanctions against the plaintiff for producing Rule 26 discovery and now seek to have the

plaintiff sanctioned for not producing a signed deposit agreement when the complaint alleges the deposits were never made.

6. The plaintiff had originally sought an injunction in 2002 requiring the defendants to accept the deposits and to receive the \$6000 fee from the plaintiff but the defendants prevailed and have used the denial of the injunction to fraudulently procure subsequent rulings sanctioning and denigrating the plaintiff.

7. This court does not have jurisdiction over concurrent action state claims that were erroneously removed from Independence, Missouri and currently the court has lost jurisdiction over the federal action where these state claims are pendant due to the appeal in *Medical Supply Chain, Inc. v. US Bancorp et al.*

Respectfully Submitted,

S/ Samuel K. Lipari

Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064
816-365-1306
saml@medicalsupplychain.com
Pro se

CERTIFICATE OF SERVICE

I certify I have sent a copy to the undersigned opposing counsel via electronic filing on 8/18/08.

Mark A. Olthoff, Esq.,
Jay E. Heidrick, Esq.
Shughart Thomson & Kilroy, P.C.
Twelve Wyandotte Plaza
120 W. 12th Street
Kansas City, MO 64105

via email
jheidrick@stklaw.com
molthoff@stklaw.com
ademarea@stklaw.com

S/ Samuel K. Lipari

Samuel K. Lipari

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Jay Heidrick
Attorney At Law

Shughart Thomson & Kilroy
32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, KS 66210
<http://www.stklaw.com> <<http://www.stklaw.com>> tel: 816-691-3743
fax: 816-222-0519
jheidrick@stklaw.com

<<mailto:jheidrick@stklaw.com>>

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Thanks.

Jay

	<p>Jay Heidrick <i>Attorney At Law</i></p> <p>Shughart Thomson & Kilroy 32 Corporate Woods, Suite 1100 9225 Indian Creek Parkway Overland Park, KS 66210</p> <p>tel: 816-691-3743 fax: 816-222-0519</p> <p>http://www.stklaw.com jheidrick@stklaw.com</p>
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From: Jay Heidrick
Sent: Thursday, March 06, 2008 3:03 PM
To: 'Samuel Lipari'
Cc: Mark Olthoff; Jay Heidrick
Subject: Lipari v. US Bank...

Sam-

I attach Defendants' First Requests for Production and First Interrogatories to Plaintiff. Please let me know if you have any questions.

Thanks.

Jay Heidrick

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Medical Supply Chain

*Empowering Health Systems,
Optimizing Supply Chain Results!*

March 10, 2008

Dear Jay,

I will be happy to confer with you about complying with my discovery production request at your earliest opportunity. I am available every weekday between 8am and 4pm except that the noon hour is usually spent away from my office. With prior notice I could take your call instead of lunch.

I think the issue you raised with *Aikens v. Deluxe Financial Services, Inc.*, 217 F.R.D. 533 (D.Kan., 2003) is a misperception over the reasonable particularity requirement of Rule 34. This overly generalized request form was avoided by my request, which uses “all documents related”, and “all records related” as a modifier to a sufficiently particularized event or occurrence and the persons and time frame involved where known. See footnote 11 of *Clearone Communications, Inc. v. Chiang et al* Utah Dist. Court Case No: 2:07cv00037TC https://ecf.utd.uscourts.gov/cgi-bin/show_public_doc?2007cv0037-628 which also discusses *Aikens*.

I still seek the documents and records I requested and in electronic form. I would be more receptive to modifying my requests if you produced the two documents your professional responsibility and diligence required before signing motions in this action - the written contract for escrow accounts and the written contract for a financial line of credit secured with part of each escrow account.

My proposed order addressed provisions for you to redact privileged information and a line-by-line privilege log for later in camera review. Since this is the same in Missouri and Kansas, I think it is a good procedure.

I knew, as did you that these issues would arise and attempted to address them in our case management order where we had Magistrate Waxse available. After your sole lost weekend in this case, you, Mark and Andrew decided not to further brief our dispute over this issue prior to the case management conference. I cannot help but be reminded of Andrew telling Magistrate Waxse that the previous case management report did not have to be in the correct form specified under local rule by Judge Waxse because the case would be dismissed.

I fear more people are without healthcare each day because you have recently made a similar assurance to your client US Bancorp and that assurance is not based on law.

Sincerely,
Samuel Lipari
Medical Supply Chain
297 NE Bayview
Lee's Summit, MO 64064
Phone: 816.365.1306
Saml@MedicalSupplyChain.com
www.MedicalSupplyChain.com

Subject: Re: Documents on CD for Rule 26 disclosures...
Date: Wednesday, May 7, 2008 11:19 AM
From: Samuel Lipari <Saml@MedicalSupplyChain.com>
Reply-To: Samuel Lipari <saml@medicalsupplychain.com>
To: Jay Heidrick jheidrick@stklaw.com
Conversation: Documents on CD for Rule 26 disclosures...

Jay,

Sorry for the misunderstanding. I have not password protected any of the files. I think we are using two different meanings of searchable, the table of contents leads you to documents by keywords. Some are scanned images where keyword searching, cutting and pasting is not possible. Some were made into pdfs with the software I could afford, not Adobe and you have to go into the properties section to alter or save.

You are no doubt inconvenienced but that is the software I have and the form I have created and store the pdfs in the normal course of business. You on the other hand give me only the paper versions of MS Word documents for the few docs you have produced in discovery even though I have requested only electronic documents. I hope this helps. Best regards, S~

Samuel Lipari
Medical Supply Chain
297 NE Bayview
Lee's Summit, MO 64064
Phone: 816.365.1306
Saml@MedicalSupplyChain.com
www.MedicalSupplyChain.com

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----- Original Message -----

From: [Jay Heidrick](#)
To: [Samuel Lipari](#)
Cc: [Jay Heidrick](#)
Sent: Wednesday, May 07, 2008 9:54 AM
Subject: Documents on CD for Rule 26 disclosures...

Sam-

In your response to our Motion to Compel, you indicated that the CD of documents you provided were searchable. That is not the case. The files are password protected that prevent any type of OCR, re-printing as a .pdf and searching. Please provide the password that will allow us to change the security setting for these files and make them searchable. Or please provide us with a new CD that allows OCR and searchable functions. Thanks.

Jay



Jay Heidrick
Attorney At Law

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