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.	)	

SUGGESTIONS IN SUPPORT OF
NOVATION, LLC, VHA INC. , UNIVERSITY HEALTHSYSTEM CONSORTIUM
ROBERT BAKER AND CURT NONOMAQUE'S
MOTION FOR SANCTIONS

Defendants Novation, LLC ("Novation"), VHA Inc. ("VHA") and University Healthsystem Consortium ("UHC") Robert Baker, and Curt Nonomaque (collectively "Defendants") submit these Suggestions in Support of their Motion for Sanctions.

I. INTRODUCTION

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, and a magistrate of the U.S. District Court for Kansas. Plaintiff also seeks damages arising from its allegations that Medicare, Medicaid and Champus have been defrauded into paying inflated prices for medical supplies by an alleged cartel involving some of the defendants. Plaintiff's recent filings in opposition to Defendants' motion to dismiss allege an even broader conspiracy

involving city, state and judicial officials in Kansas—a conspiracy which Plaintiff asserts engages in witness harassment, covert surveillance of Plaintiff's CEO and his family, and even has possible involvement in attorneys' disappearances and deaths.

By this lawsuit, Plaintiff is re-litigating in Missouri claims that have been dismissed with prejudice twice in Kansas. 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. 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 id.* 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).

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.

Plaintiff and its counsel have chosen to ignore the Tenth Circuit's and the Kansas District Court's admonitions regarding Plaintiff's attorney's Rule 11 responsibilities and have tried to assert these claims again, arguing that its lack of success in Kansas is due to the Kansas' lawlessness and disregard for the Constitution. *See* Affidavit of Samuel Lipari ("Lipari Aff.") at ¶¶ 15, 33 (attached as an Exhibit to Plaintiff's Suggestions in Opposition to Defendants' Motion to Dismiss).

However, as set forth in more detail in Defendants' Motion to Dismiss and the Suggestions in support thereof, the U.S. District Court in Kansas correctly concluded that Plaintiff's claims are legally defective. The prior dismissals bar most of Plaintiff's claims here under the doctrine of collateral estoppel. In addition, Plaintiff's claims suffer from numerous other deficiencies. Indeed, the legal defects and factual gaps in this case compel a finding that this is a frivolous lawsuit, filed in violation of Plaintiff's counsel's Rule 11 responsibilities and represents the vexatious and unreasonable multiplication of proceedings prohibited by 28 U.S.C. § 1927.

II. ARGUMENT AND AUTHORITIES

I. The Complaint Violates Rule 11

Rule 11(b), which applies to pleadings, motions and other papers, provides in pertinent part:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to

> the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --
>
> (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations an other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. . . .

Rule 11 is "intended to be vigorously applied by district courts to curb widely acknowledged abuse resulting from the filing of frivolous pleadings and other papers." *Perkins v. General Motors Corp*., 129 F.R.D. 655, 658 (W.D.Mo. 1990) (*quoting Aduono v. World Hockey Ass'n*., 824 F.2d 617, 621 (8th Cir. 1987)). The Rule grants the Court discretion to sanction a party with "an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." Fed. R. Civ. P. 11(c)(2).

The filing of this Complaint violates Rule 11. First, its allegations lack evidentiary support. Indeed, the lawsuit appears to have been filed in order to allow Plaintiff's CEO and its counsel to vent wholly unsupported and delusional conspiracy theories such as those discussed in the affidavit of Samuel Lipari, which was filed among Plaintiff's papers in opposition to Defendants' Motion to Dismiss. That affidavit either directly alleges or implies that Defendants and/or various unidentified co-conspirators in city and state governments and Kansas courts are responsible, directly or indirectly, for nefarious acts ranging from the harassment of potential witnesses, surveillance of Lipari's home, retaliation against Plaintiff's attorney, and unspecified

involvement in attorney deaths in Ft. Worth. In Plaintiff's Complaint, it discusses at length its allegations of alleged bias against Plaintiff's attorney by a federal magistrate in a wholly unrelated case.

These ridiculously broad and patently frivolous conspiracy theories demonstrate that Plaintiff's case is without factual basis. "While irrelevant allegations, standing alone, may not be cause of Rule 11 sanctions, the existence of numerous irrelevant, unsubstantiated, and sensational allegations is an appropriate factor for a district court to consider in determining whether the pleading as a whole lacks adequate factual foundation." *Kunstler v. Britt*, 914 F.2d 505, 515 (4th Cir. 1990). Moreover, the Complaint lacks the most basic factual allegations necessary to support these claims against Defendants. For example, Plaintiff alleges that Defendants were part of a conspiracy to harm Plaintiff by blocking its efforts to obtain financing, escrow services, and office space, but alleges no facts regarding Defendants' involvement in, or even knowledge of, Plaintiff's efforts in this regard. Further, Plaintiff alleges a RICO claim, but fails to allege that Defendants had any involvement in acts of racketeering. In addition, Plaintiff alleges a fraud claim without alleging a misrepresentation or actionable omission.

Moreover, Plaintiff's Complaint is not warranted by existing law nor by a nonfrivolous argument for the extension or modification of current law. Plaintiff seeks to recover for damages arising from an alleged antitrust conspiracy for which it has no standing to complain. *See* Defendants' Suggestions in Support of Motion to Dismiss for Failure to State a Claim, at p. 4. Plaintiff's RICO claim is based upon a series of cases that have been overruled by the U.S. Supreme Court. *See* Defendants' Reply Suggestions in Support of Motion to Dismiss for Lack of Personal Jurisdiction, at pp. 6-7. Plaintiff has also failed to articulate a non-frivolous reason that its antitrust claims are not barred by collateral estoppel. *See* Defendants' Reply Suggestions

in Support of Motion to Dismiss, at pp. 3-5. *See Landscape Properties, Inc. v. Whisenhunt*, 127 F.3d 678, 682 (8th Cir. 1997) (affirming award of sanctions where the plaintiff's attorney "has presented no valid reason for seeking to relitigate" a claim previously asserted in another proceeding).

Rule 11 "requires counsel to read and consider before litigating." *In re Cascade Energy & Metals Corp*., 87 F.3d 1146, 1151 (10th Cir. 1996) (*quoting Thornton v. Wahl*, 787 F.2d 1151, 1154 (7th Cir. 1986)); *see also Monument Builders of Greater Kansas City, Inc. v. American cemetery Assn. of Kansas*, 891 F.2d 1473, 1484-85 (10th Cir. 1989) ("Rule 11 imposes an obligation on the signer of a pleading to conduct a reasonable inquiry into whether the pleading is legally frivolous or factually unsupported."). Once the Court has found a Rule 11 violation, "imposition of sanctions is mandatory." *Perkins*, 129 F.R.D. at 658 (*citing Adamson v. Bowen*, 855 F.2d 668, 672 (10th Cir. 1988)). Moreover, upon finding a violation, the Court may sanction the lawyer, the client, or both. *White*, 908 F.2d at 679 (citation omitted). Plaintiff's counsel has wholly failed to discharge the responsibilities imposed by Rule 11.

II. The Complaint Violates 28 U.S.C. § 1927

Title 28 U.S.C. § 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct.

Sanctions under § 1927 are discretionary, unlike those under Rule 11, and may be imposed by this Court if it finds that plaintiff's counsel acted either in subjective bad faith or that counsel's conduct was objectively vexatious. *Perkins*, 129 F.R.D. at 657 (citations omitted); *see also Tenkku v. Normandy Bank*, 348 F.3d 737, 743 (8th Cir. 2003) ("Section 1927 warrants

sanctions when an attorney's conduct 'viewed objectively, manifests either intentional or reckless disregard of the attorney's duties to the court.'") (quoting *Perkins*).

This lawsuit was filed despite (1) two prior dismissals of substantially similar claims; (2) prior warnings regarding Rule 11; (3) the Tenth Circuit's Show Cause Order against Plaintiff as to why sanctions should not be awarded; and, (4) the operation of collateral estoppel against many of the claims. Plaintiff's counsel fails to articulate a non-frivolous basis for why the claims should be entertained again in this forum, and primarily contends that its prior losses are the result of the corruption, bad faith, and misconduct of the Kansas judiciary. In *Healey v. Labgold*, 231 F.Supp.2d 64 (D.D.C. 2002), the court noted that:

> By its express terms, § 1927 punishes the purposeful multiplying of proceedings. Surely, the filing of a lawsuit that contains five counts that another federal court has expressly stated you have no right to press qualifies as the multiplying of proceedings. If that is not a violation of the statute, one wonders what is.

Id. at 68. *See also KPERS v. Reimer & Koger Assoc., Inc.*, 165 F.3d 627, 630 (8th Cir. 1999), (affirming an award of attorneys' fees and costs under § 1927 on the ground that plaintiff's counsel had unreasonably and vexatiously multiplied the proceedings in filing a subsequent action asserting identical claims which had already been rejected in an earlier suit). Plaintiff's counsel should be sanctioned under this statute.

III. CONCLUSION

WHEREFORE, for all of the foregoing reasons, Defendants pray this Court enter its Order sanctioning plaintiff and plaintiff's counsel under Rule 11 and/or § 1927, including striking the Complaint in this case and awarding Defendants their expenses and reasonable attorneys' fees incurred in defending this lawsuit, preparing and presenting this motion and any other further relief to which they are entitled.

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 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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