

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

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

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendants U.S. Bancorp and U.S. Bank National Association (U.S. Bank) are entitled, as a matter of law, to be dismissed from this case. In support of their motion and as grounds for dismissal, defendants state as follows:

1. Plaintiff Lipari does not have standing or legal capacity to assert a claim on behalf of a dissolved corporation (Medical Supply Chain, Inc.). Even if claims could be stated, which they cannot, the supposed causes of action belong to Medical Supply Chain, Inc. and not Lipari personally. Missouri law precludes a shareholder from asserting claims of the corporation, this Court has previously ruled Lipari cannot be substituted for Medical Supply and principles of judicial estoppel prevent the assertion of these claims by Lipari personally.

2. The Complaint fails to comply with Fed. R. Civ. P. 8. The Complaint is a rambling diatribe of unsubstantiated and hollow conspiracy theories, irrelevant allegations and wild accusations. This lawsuit, just as *Medical Supply II*, is ripe for dismissal under Rule 8.

3. The claims in Lipari's Complaint are barred by *res judicata*. The prior dismissals, in particular under Fed. R. Civ. P. 8 in *Medical Supply II*, 419 F. Supp.2d 1316, 1331-32 (D. Kan. 2006), preclude the present claims.

4. Plaintiff's Complaint fails to state a claim upon which relief may be granted under Rule 12(b)(6). Even observing the allegations in a light most favorable to plaintiff, there are no claims as a matter of law.

5. Lipari's vituperative allegations concerning District Judge Kathryn Vratil, District Judge Carlos Murguia, Magistrate Judge James P. O'Hara, and the law firm of Shughart Thomson & Kilroy, P.C. should be stricken from the Complaint as scandalous, immaterial and frivolous.

6. Defendants have filed a Memorandum in Support of this Motion and incorporate by reference all arguments in the Memorandum as if fully set forth herein.

WHEREFORE, for the above-stated reasons and as more fully discussed in the Memorandum in Support, defendants request the following relief:

1. *All claims* in Plaintiff's Complaint be dismissed *with prejudice*;
2. The Court admonish Samuel Lipari that, should he or Medical Supply bring another action based on the facts and transactions pled in *Medical Supply I*, *Medical Supply II* or this matter, Lipari and/or Medical Supply may be enjoined and a Show Cause Order issued (*see Serrano*, 2007 WL 951612 *3 (W.D. Tex., Mar. 19, 2007); *see also Johnson v. Stock*, 2005 WL 1349963 *3-4 (10th Cir. 2005) (unpublished));
3. That, should Samuel Lipari or Medical Supply choose to file a subsequent lawsuit based upon the facts pled in *Medical Supply I*, *Medical Supply II* or this case, Medical Supply and/or Lipari first satisfy all orders and judgments previously entered awarding sanctions and attorneys' fees against Medical Supply or Lipari;

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing was filed via electronic case filing this 25th day of April, 2007, with a true and correct copy being delivered via United States mail, postage prepaid, to:

Mr. Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064

PLAINTIFF

/s/ Mark A. Olthoff

Attorney for Defendants