

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

<b>SAMUEL K. LIPARI,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 06-1012-CV-W-FJG</b>
	)	<b>State Court No. 0616-CV32307</b>
<b>US BANCORP, NA</b>	)	
<b>AND US BANK, NA,</b>	)	<b>JURY TRIAL DEMANDED</b>
	)	
<b>Defendants.</b>	)	

**NOTICE OF REMOVAL OF CIVIL ACTION**

To: The Judges of the United States District Court  
for the Western District of Missouri  
Western Division

Defendants U.S. Bancorp (misnamed as US Bancorp, NA) and U.S. Bank National Association (misnamed as US Bank, NA) (collectively, the “Defendants”) submit this Notice of Removal of this action from the Circuit Court of Jackson County, Missouri at Independence, Missouri – where this case is currently pending under the case style of *Lipari v. US Bancorp, NA*, Case No. 0616-CV32307 – to the United States District Court for the Western District of Missouri. In support of this Notice of Removal, Defendants state as follows:

**I. INTRODUCTION**

1. Defendants desire to exercise their right under the provisions of 28 U.S.C. §§ 1441 *et seq.*, to remove this case from the Circuit Court of Jackson County, Missouri, at Independence, Missouri. 28 U.S.C. § 1441(a) provides in pertinent part:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

2. This civil action has not been tried. Plaintiff filed his Petition for Damages on November 28, 2006. Defendants first received a copy of Plaintiff's Petition on December 8, 2006 via certified mail. Rather than challenge service of process, Defendants voluntarily appear in this action, but hereby reserve all objections, arguments, and defenses to Plaintiff's Petition. A responsive pleading will be filed in accordance with Rule 81 of the Federal Rules of Civil Procedure.

## **II. NOTICE OF REMOVAL IS TIMELY**

3. The time in which Defendants are required by the laws of the State of Missouri, by the Missouri Rules of Civil Procedure, or by the Rules of the Circuit Court of Jackson County, to move, answer or otherwise plead in response to Plaintiff's Petition has not elapsed.

4. In accordance with the requirements of 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after the receipt by any defendant, through service, of a copy of the initial pleading setting forth the claim for relief on which Plaintiff's action is based.

## **III. DIVERSITY JURISDICTION EXISTS**

5. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

6. Plaintiff Samuel K. Lipari is a citizen and resident of the State of Missouri. Defendant U.S. Bancorp is a Delaware corporation with its principal place of business at 800 Nicollet Mall, Minneapolis, Minnesota 55402. Defendant U.S. Bank National Association is a national banking association with its main office located at 800 Nicollet Mall, Minneapolis, Minnesota 55402. Complete diversity of citizenship therefore exists. *See* 28 U.S.C. §§ 1332, 1348; *Wachovia Bank, National Association v. Schmidt*, \_\_\_ U.S. \_\_\_, 126 S.Ct. 941, 945 (2006).

7. The \$75,000 amount-in-controversy requirement found in 28 U.S.C. § 1332 is satisfied because Plaintiff's Petition seeks damages in the amount of four hundred fifty million dollars (\$450,000,000.00). *See* Pl.'s Pet. at ¶ 263.

#### **IV. REMOVAL TO THIS DISTRICT IS PROPER**

8. Pursuant to 28 U.S.C. §§ 1441 *et seq.*, the right exists to remove this case from the Circuit Court of Jackson County, Missouri at Independence, Missouri, to the United States District Court for the Western District of Missouri, which embraces the place where the action is pending.

#### **V. MISCELLANEOUS**

9. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served on Defendants – including a copy of the Petition bearing Case No. 0616-CV32307 – is attached to this Notice of Removal as Exhibit A.

10. All Defendants join in this Notice of Removal.

11. Written notice of the filing of this Notice of Removal will be promptly served on counsel for all adverse parties as required by law or, as is the case here, on the alleged “*pro se*” Plaintiff.

12. A true and correct copy of this Notice of Removal will be promptly filed with the Clerk of the Circuit Court of Jackson County, Missouri at Independence, Missouri, as required by law, and served on Plaintiff.

13. Defendants reserve the right to amend or supplement this Notice of Removal, and Defendants reserve all defenses.

14. Defendants request a trial by jury on all issues triable by right to a jury trial.

WHEREFORE, Defendants U.S. Bancorp and U.S. Bank National Association pray that this case be removed from the Circuit Court of Jackson County, Missouri at Independence,

Missouri, where it is now pending, to this Court, that this Court accept jurisdiction of this action, and that this action be placed on the docket of this Court for further proceedings, same as though this case had originally been instituted in this Court.

Dated: December 13, 2006

Respectfully submitted,

/s/ Mark A. Olthoff

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ATTORNEYS FOR DEFENDANTS  
U.S. BANCORP AND U.S. BANK  
NATIONAL ASSOCIATION

**CERTIFICATE OF SERVICE**

I hereby certified that the above and foregoing document was filed electronically with the above-captioned court, and a copy was sent by overnight mail on this 13th day of December, 2006 to:

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

/s/ Mark A. Olthoff  
Attorney for Defendants