

**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>)	

ANSWER TO SHOW CAUSE ORDER OF DECEMBER 5th, 2008

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and Respectfully submits his answer to the court's show cause order of December 5th, 2008.

STATEMENT OF FACTS

1. The plaintiff withdrew his remaining claims on October 15, 2008 ending the Article III case or controversy between the parties.
2. The court issued a memorandum and order on November 26, 2008 dismissing the plaintiff's action if the plaintiff did not withdraw his voluntary dismissal by December 10, 2008. See **exb. 1**.
3. On December 3, 2008 the plaintiff amended his notice of appeal in Kansas District Court and the Western District of Missouri. See **exb. 2**.
4. On December 5th, 2008 the Hon. Judge Carlos Murguia received a document from an extrajudicial source alerting him to renew the effort to evade or delay review of the absence of jurisdiction for KS Dist. Court Case No. 07-cv-02146-CM:

“***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)”

Exb. 3 Appearance Docket of W.D. of Missouri Case No. 4:06-cv-01012-FJG

5. The Hon. Judge Carlos Murguia on December 5th, 2008 issued an order to show cause (**exb. 4**) against the plaintiff for failing to withdraw the voluntary dismissal with prejudice by the deadline set by the court in the memorandum and order on November 26, 2008.
6. The deadline set by the Hon. Judge Carlos Murguia was tomorrow December 10, 2008 not December 1, 2008 as claimed by Hon. Judge Carlos Murguia in the order to show cause (exb. 4).
7. The show cause order is against the plaintiff for conduct after the plaintiff withdrew his

remaining claims on October 15, 2008.

8. The Hon. Judge Carlos Murguia has repeatedly made adverse rulings contrary to controlling precedent and against only the plaintiff in the present action that are temporally related with adverse rulings against the plaintiff made by Hon. Judge Fernando J. Gaitan, Jr. and Hon. Judge Michael W. Manners contrary to the controlling precedents of the Western District of Missouri and the State of Missouri respectively. See **exb. 5** *Lipari v. General Electric Company, et al* W. D. of MO Case no 07-0849. and **exb. 6** Appearance docket of *Lipari v. Novation LLC, et al* 16th Cir. Missouri State Court Case No. 0816-04217.

9. On July 8, 2008 this court made a show cause order initiating the scheme to fraudulently procure dismissal of the plaintiff's claims on the false accusation by US Bank NA and US Bancorp that the plaintiff failed to produce documents and answers requested by the defendants that led instead to the partial dismissal on September 4, 2008 of the plaintiff's contract, tortuous interference and fiduciary duty claims against US Bancorp.

10. The temporal relationship of rulings adverse to the plaintiff and involving adoption of extrajudicial interim orders and communications includes the dismissal of racketeering claims against the cartel members involved in extrinsic fraud to interfere in the plaintiff's ongoing antitrust litigation by Hon. Judge Fernando J. Gaitan, Jr. (a case Hon. Judge Gaitan had assigned to himself even though an open § 455 Motion for recusal based on his directorship of a defendant was on the record in the previous removal of the same action W. D. of MO Case no. 06-0573) on July 30, 2008. See **exb. 5** *Lipari v. General Electric Company, et al* W. D. of MO Case no 07-0849. The July 7, 2008 order of this court in the same case or controversy dismissing the plaintiff's motion to reopen his federal antitrust and racketeering claims in KS Dist. Court case no. 05-2299-CM. And also, the partial dismissal of August 8, 2008 Hon. Judge Michael W. Manners that Hon. Judge Michael W. Manners had in error requested on July 3, 2008. See **exb. 6**. *Lipari v. Novation LLC, et al* 16th Cir. Missouri State Court Case No. 0816-04217.

MEMORANDUM OF LAW

The plaintiff respectfully suggests that the court's bias and prejudice can be so profound that it is incapable of recognizing the many ways the court's conduct manifests or gives the appearance of bias and

prejudice to disinterested third party. The issuance of a show cause order is a required preparatory step for sanctioning the plaintiff by taking property in the form of a fine, attorneys fees of the defendants or costs and to further damage the business and litigation reputation of the plaintiff.

The court's December 5th preparation to sanction the plaintiff for failing to file something by December 10 is perceived by the plaintiff as a continuation of the court's conduct against the plaintiff that included depriving the plaintiff of counsel by effecting the disbarment in Kansas District Court; threatening the plaintiff's replacement counsel then dismissing the bulk of the plaintiff's claims because he did not have counsel, sanctioning the plaintiff because his federal complaint sought redress for misconduct in preceding litigation that he had a clearly established right to seek; giving the defendants repeated opportunities to dismiss the claims in disregard for the Federal Rules of Civil Procedure; participation in a scheme with the defendants to effect a dismissal as a sanction for not complying with discovery; then instead immediately dismissing the plaintiff's contract claims as "implausible" when a Western District of Missouri Judge had found an electronic contract existed under the same fact pattern; partially dismissing the plaintiff's claims to avoid appeal; and denying the plaintiff all discovery by refusing to rule on the defendants' bad faith "automatic" protective orders that were unlawful blanket orders under controlling Tenth Circuit precedent or to extend discovery until after the plaintiff was forced to dismiss his remaining claims. The plaintiff believes an impartial observer would find this conduct to be manifestations of an impermissible bias or prejudice against the plaintiff.

The order to show cause for conduct occurring after the voluntary dismissal with prejudice of the plaintiff's remaining claims on October 15, 2008 cannot revive or otherwise continue subject matter jurisdiction of this court (the plaintiff asserts subject matter jurisdiction was never acquired because federal diversity was absent and the Hon. Judge Fernando J. Gaitan, Jr. could not rule on a dismissal or transfer the action while federal jurisdiction was exclusively in the Tenth Circuit appeal). With the absence of a live controversy in the wake of the voluntary dismissal with prejudice, the Kansas District no longer has an Article III case before it: "Our jurisdiction is limited constitutionally to live cases and controversies. See U.S. Const. art. III, S 2." *U.S. v. Scarfo*, 263 F.3d 80 at 89-90 (3rd Cir., 2001).

The order to show cause appearing not on the date of the amended notice of appeal but instead on the date Hon. Judge Fernando J. Gaitan, Jr. of the Western District of Missouri's chambers caused the

Western District amended notice of appeal to be transmitted to Hon. Judge Carlos Murguia of Kansas District Court instead of the Eighth Circuit Court of Appeals as Federal Rules of Appellate Procedure and the Western District of Missouri and Eighth Circuits own standard operating procedures and local rules dictate gives the appearance that Hon. Judge Carlos Murguia is participating in a common scheme or enterprise with Hon. Judge Fernando J. Gaitan, Jr. who himself is a director of the Novation LLC hospital St. Luke's Health System a defendant and hospital supply cartel member with US Bancorp and US Bank. See **exb. 7** Hon. Judge Fernando J. Gaitan, Jr.'s Judicial Council disclosure and **exb. 8** St. Luke's claimed ownership of Novation LLC and exclusive anticompetitive agreement that provided over \$90 million dollars in annual business exclusively to Novation LLC.

The temporal relationship of this court's order with the defendants' conduct procuring interim dismissals in the Western District of Missouri racketeering action against the defendants' hospital supply cartel and a partial dismissal of some of the hospital supply cartel members in the 16th Circuit of Missouri State Court exceeds that rejected in *Glass v. Pfeffer*, 849 F.2d 1261 at 1268 (C.A.10 (Kan.), 1988) and gives rise to the appearance of a lack of independence or extra judicial bias and prejudice by this court.

This court is not free to sanction the plaintiff for amending his notice of appeal or to attempt to extort the plaintiff under color of official right through the US Mail or electronically to withdraw or abandon his appeal in order to aid the Novation LLC hospital supply cartel conspiracy from being uncovered or to prevent the Novation LLC hospital supply cartel members from being prosecuted. On December 2nd, Attorney General Six of Kansas brought claims that the suppliers identified in the plaintiff's hospital supply complaint had greatly overcharged Medicaid during the timeperiod covered in the plaintiff's federal antitrust complaint now on appeal. The filing of a timely notice of appeal divests the district court of jurisdiction, e.g., *Garcia v. Burlington Northern R.R. Co.*, 818 F.2d 713, 721 (10th Cir.1987).

The plaintiff's notice of appeal is being held in abeyance by the Tenth Circuit in *Lipari v US Bank et al*, C.A.10 case no. 08-3287 on the plaintiff-appellant's assertion the Kansas District court never acquired diversity jurisdiction over the plaintiff-appellant's concurrent state claims removed from state court and transferred to Kansas District Court from the Western District of Missouri while an appeal was pending in the plaintiff-appellant's first filed federal action on the same case or controversy.

This court's November 26 memorandum and order (exb. 1), while redundant in the plaintiff-appellant's reasoned view after the voluntary dismissal with prejudice under Rule 41(a)(2) on October 15, 2008 based on Kansas District Court precedent:

"The Kansas District court's own precedent is that only a motion under 41(a)(2) seeking dismissal without prejudice requires a court order:

Under Rule 41(a)(2), "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." Thus, a dismissal **without prejudice** under Rule 41(a)(2) depends on the Court's discretion." [Emphasis added]

103 Investors I, L.P. v. Square D Co., 222 F.Supp.2d 1263 at 1270-1271 (D. Kan., 2002).

The memorandum and order of November 26, 2008 (exb. 1) now with certainty concludes the Kansas District Court action. "Fed. R. App. Proc. 4(a)(2) states that "[a] notice of appeal filed after the court announces a decision or order-- but before the entry of the judgment or order -- is treated as filed on the date of and after the entry." *U.S. v. Scarfo*, 263 F.3d 80 at 87 (3rd Cir., 2001).

Respectfully submitted,

S/ Samuel K. Lipari

Samuel K. Lipari
3520 NE Akin #918
Lee's Summit, MO 64064
816-365-1306
saml@medicalsupplychain.com
Pro se

Certificate of Service

I certify that on December 9, 2008 I have served the opposing counsel with a copy of the foregoing notice using the US Postal Service having sent the copy with postage prepaid to the following:

Mark A. Olthoff
MARK A. OLTHOFF MO lic. #38572
ANDREW M. DEMAREA MO lic. #45217
SHUGHART THOMSON & KILROY, P.C.
Twelve Wyandotte Plaza
120 W. 12th Street, Suite 1700
Kansas City, Missouri 64105
Telephone: (816) 421-3355
Facsimile: (816) 374-0509

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

S/ Samuel K. Lipari

Samuel K. Lipari