

**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>)	

Withdraw of Counsel

The undersigned attorney, Dennis Hawver, withdraws his appearance on behalf of the plaintiff in the above-captioned matter in accordance with D. Kan. Rule 83.5.5. The plaintiff has directed counsel to withdraw for the following reasons:

1. Samuel K. Lipari instructed his counsel to request that the defendants withdraw their second Rule 12(b) 6 motion for dismissal in this action and if they did not withdraw the second dismissal that his counsel was instructed to withdraw.
2. Plaintiff's counsel contacted the defendants' attorney Mark A. Olthoff as instructed and Mr. Olthoff declined to withdraw the second Rule 12(b) 6 motion.
3. The plaintiff believes that the second motion to dismiss is unlawful for the following reasons:
 - a. The defendants' current dismissal is a prohibited second Rule 12 motion to dismiss. Palermo, Federal Pretrial Practice: Basic Procedure & Strategy 2001 states at page 21; "Rules 12(g) and 12(h), read together, provide in

general, there shall not be more than one Rule 12 motion to dismiss....All defenses and grounds “then available” shall be asserted in the one motion; certain defenses shall be asserted in the Rule 12 motion, or in the initial responsive pleading (or amendment thereof) under threat of waiver.”

b. The plaintiff through his counsel fully answered the defendants’ previous Rule 12 (b) 6 motion to dismiss (doc. # 22) as ordered by this court on October 20, 2007 in a denial of the Plaintiff’s Motion to Strike (doc. #25).

c. The plaintiff believes that the complaint clearly identified the claims were not subject to *res judicata*, that they had been previously dismissed without prejudice by this court and that the defendants made failed arguments that the complaint failed to adequately plead each claim.

d. The plaintiff believes that the November 26, 2007 order granting the defendants’ dismissal (doc.#22) despite the absence of *res judicata* and the defendants’ error of controlling law over the claim pleading requirements foreshadows formal and informal sanctions and an appeal.

4. The undersigned attorney is not a government attorney and can only provide representation where a possibility of compensation and an absence of risk exists. It is the undersigned’s informed view that a government case might be the only vehicle to enforce the public policy against the actions that have injured the plaintiff.

5. Attached is a proposed order granting withdraw of counsel (exhibit 1) and a signed acknowledgement of service to the plaintiff of this motion to withdraw

(exhibit 2).

Wherefore the undersigned attorney respectfully gives notice to the court that he is no longer representing the plaintiff in this matter before the court as Case No. 2:07-cv-02146-CM and is instructed to seek leave of the court to withdraw from representing the plaintiff in the related case *Medical Supply Chain, Inc. v. Neoforma, Inc. et al*, Case No. 05-cv-02299-CM-GLR.

Respectfully submitted,

/s/ Dennis Hawver

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via electronic case filing, on this 27th day of December, 2007 to:

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