

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

<b>SAMUEL K. LIPARI,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 07-CV-00849-FJG</b>
	)	
<b>GENERAL ELECTRIC COMPANY, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT JEFFREY  
IMMELT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

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## **INTRODUCTION**

Since June of 2003, either Medical Supply Chain (“MSC”) and/or Samuel K. Lipari have been bringing a series of never ending lawsuits. All these suits pertain to MSC’s purported attempt to enter into the health care supplier/distribution market. By recently filing his Amended Complaint in this case, Plaintiff has now attempted to turn a straightforward breach of contract case against the GE Defendants<sup>1</sup> into a far-reaching federal racketeering case against numerous corporate entities and individuals, including GE’s Chief Executive Officer, Jeffrey Immelt. Plaintiff’s Amended Complaint, full of irrelevant and unsupported allegations, lacks the factual allegations necessary to plead a right to recovery under any of Plaintiff’s theories of liability, and, as such, the Amended Complaint should be dismissed with prejudice by this Court.

### **I. Plaintiff Previously Attempted to Sue Mr. Immelt in His Individual Capacity.**

The present Amended Complaint does not represent the first time that Plaintiff has named Mr. Immelt as a defendant in a frivolous lawsuit.<sup>2</sup> In the previous action, the United States District Court for the District of Kansas dismissed with prejudice Plaintiff’s claims against Mr. Immelt. Thereafter, the Tenth Circuit ultimately determined that Plaintiff was subject to sanctions for naming Mr. Immelt in his individual capacity.

#### **A. Previous Lawsuit.**

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<sup>1</sup> The GE Defendants include General Electric Company (“GE”), General Electric Capital Business Asset Funding Corporation (“GE Capital”) and GE Transportation Systems Global Signaling, LLC (“GE Transportation”).

<sup>2</sup> A more detailed analysis of Plaintiff’s prior lawsuits involving many of the same parties and the same or similar subject matter is set forth in the Memorandum of Law in Support of the GE Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint (Doc. 12, pp. 2-6).

On June 18, 2003, MSC filed a lawsuit against the GE Defendants in federal court in Kansas. *See Medical Supply Chain, Inc. v. General Electric Company, et al.*, Civil Action No. 03-2324-CM (Judge Carlos Murguia) (“*GE I Lawsuit*”). In that suit, MSC claimed that the GE Defendants and Mr. Immelt prevented MSC’s entry into the health care supplier/distribution market by refusing to sublease a building or provide financing to MSC. More specifically, MSC alleged that the GE Defendants and Mr. Immelt violated federal antitrust laws pursuant to the Sherman Act and the Robinson-Patman Act. MSC also asserted state common law claims against the defendants, including breach of contract. MSC’s factual allegations were that the GE Defendants and Mr. Immelt refused to sublease a building and provide necessary financing to MSC so as to prevent MSC from entering the healthcare supply market, thereby ensuring that defendants’ “cartel” would continue to dominate the market. Among other remedies, MSC sought monetary damages in the amount of profits “that it would have made for the next four years of operations had it been allowed to enter the market,” as well as the equity it would have gained from the purchase of the building, and the cash payment it would have received from GE for the buy-out of its lease.

On January 29, 2004, the district court dismissed all of MSC’s antitrust claims with prejudice, and declined to retain jurisdiction over the state law claims. *See Medical Supply Chain, Inc. v. General Electric Company, et al.*, 2004 WL 956100 (D. Kan. Jan. 29, 2004). Additionally, the district court determined that it was “unwilling at this juncture to conclude that Plaintiff’s Amended Complaint was so meritless or otherwise frivolous that sanctions are warranted.” *Id.* at \*5 (emphasis added). The court ultimately

denied the motion for Rule 11 sanctions which was filed in conjunction with the defendants' motion to dismiss.

MSC appealed the district court's dismissal of its antitrust claims to the Tenth Circuit. At the same time, the defendants cross-appealed the district court's denial of their motion for sanctions. On July 26, 2005, the Tenth Circuit affirmed the district court dismissal of the Plaintiff's antitrust claims. *See Medical Supply Chain, Inc. v. General Electric Company, et al.*, 144 Fed.Appx. 708 (10<sup>th</sup> Cir. 2005). Further, the Tenth Circuit held that the district court abused its discretion in failing to sanction Plaintiff for naming Mr. Immelt in his individual capacity. Specifically, the Court noted that:

It is clear that at least MSC's claims against Jeffrey Immelt in his individual capacity were frivolous in that no allegation was made that Immelt had any personal connection to MSC's alleged injury or even that he knew MSC existed. Therefore, it was abuse of discretion not to find that portion of the Amended Complaint frivolous.

*Id.* at 716. The Tenth Circuit remanded the matter to the district court for a determination of the proper sanctions to impose against MSC for filing suit against Jeffrey Immelt in his individual capacity.

## **II. The Present Lawsuit and Plaintiff's Amended Complaint.**

On March 22, 2006, Samuel Lipari, purportedly as the "Statutory Trustee of Dissolved Medical Supply Chain, Inc.," filed suit against the GE Defendants (and others) in the Circuit Court of Jackson County, Missouri. This lawsuit asserted the same breach of contract claims that were asserted by MSC in the *GE I* lawsuit. Just as in the *GE I* lawsuit, Plaintiff sought monetary damages in the amount of profits "that it would have made for the next four years of operations had it been allowed to enter the market," as well as the equity it would have gained from the purchase of the building, and the cash

payment it would have received from GE for the buy-out of its lease. However, this time Plaintiff sought a specific monetary amount from the GE Defendants -- \$450,000,000.

The case was subsequently removed to this Court, and Plaintiff filed his Amended Complaint on December 7, 2007. (Doc. 6) This amended pleading attempts to assert claims under the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Hobbs Act, and it added multiple new parties (both individuals and corporate entities, some of which were previously dismissed by the state court) as defendants. One of the new defendants named in the Amended Complaint was Mr. Immelt. Thus, Plaintiff brought suit against Mr. Immelt despite the fact that Plaintiff had already been reprimanded by the Tenth Circuit for naming Mr. Immelt as a defendant in the *GE I* lawsuit.

## **ARGUMENT**

### **I. Plaintiff's Amended Complaint Should Be Dismissed With Prejudice for Failing to Comply With Fed. R. Civ. P. 8(a)(2) and 8(e)(1).**

By filing an utterly confusing and rambling 68-page/403-paragraph Amended Complaint, Plaintiff has completely disregarded the mandates set forth by Federal Rules of Civil Procedure 8(a)(2) and 8(e)(1). Although Plaintiff may boast about the length of the filing, the content is a morass of incomprehensible allegations that do not bear any relationship with each other. Rule 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." For its part, Rule 8(e)(1) requires that "[e]ach averment of a pleading be simple, concise and direct." Plaintiff's Amended Complaint satisfies neither requirement.

There is compelling precedent for dismissing Plaintiff's Amended Complaint for violations of Rule 8. In a related lawsuit, *Medical Supply Chain, Inc. v. Neoforma, Inc.*,

*et al.*, 419 F.Supp.2d 1316 (D. Kan. 2006), Judge Murguia found that Plaintiff's complaint in that case fell "miles from Rule 8's boundaries." *Id.* at 1331. The Court determined that "plaintiff's complaint is so exceptionally verbose and cryptic that dismissal is appropriate." *Id.* Notably, the Court also did not allow Plaintiff an opportunity to attempt to correct the deficiencies by filing an amended pleading. *Id.* at 1332.

Based upon Plaintiff's blatant violations of Rule 8, Mr. Immelt requests that Plaintiff's Amended Complaint be dismissed with prejudice, and that Plaintiff not be allowed to file another amended pleading.

**II. Plaintiff's Claims Under RICO and The Hobbs Act Should Be Dismissed Under Rule 12(b)(6) For Failure to State a Claim For Which Relief May Be Granted.**

As discussed above, Plaintiff's rambling and largely incoherent Amended Complaint have made it nearly impossible to decipher exactly what federal claims the Plaintiff has attempted to allege. In addition, Plaintiff has often failed to delineate the specific parties against whom he is making various allegations. However, as best as can be determined by Mr. Immelt, Plaintiff appears to be attempting to assert federal claims under both RICO (18 U.S.C. § 1962) and The Hobbs Act (18 U.S.C. § 1951). Ultimately, neither of these claims can survive a Rule 12(b)(6) analysis, and therefore should be dismissed.

**A. Standard of Review.**

When ruling on a motion to dismiss under Rule 12(b)(6), "a district court must accept the allegations contained in the complaint as true, and all reasonable inferences from the complaint must be drawn in favor of the nonmoving party." *Breedlove v.*

*Earthgrains Baking Cos.*, 140 F.3d 797, 198-99 (8<sup>th</sup> Cir. 1998) (citations omitted). In ruling on a motion to dismiss, the court “may consider some materials that are part of the public record . . . as well as materials that are necessarily embraced by the pleadings.” *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8<sup>th</sup> Cir. 1999) (quotations omitted). The Court must grant the dismissal “if it appears beyond doubt that the plaintiff can prove no set of facts in support of [his] claim which would entitle [him] to relief.” *Riley v. St. Louis County*, 153 F.3d 627, 630 (8<sup>th</sup> Cir. 1998) (citations omitted).

**B. No Private Right Cause of Action Exists Under The Hobbs Act.**

Plaintiff generally alleges in his Amended Complaint that “[t]he defendants committed violations of The Hobbs Act, 18 U.S.C. § 1951.” (Doc. 6, ¶ 181) Despite Plaintiff’s failure to clarify whether he is alleging that some, or all, of the defendants violated the Hobbs Act, Plaintiff’s claim must fail for a much more basic reason. The Eighth Circuit has determined that no private right cause of action exists under the Hobbs Act (18 U.S.C. § 1951).

In *Wisdom v. First Midwest Bank of Poplar Bluff*, 167 F.3d 402 (8<sup>th</sup> Cir. 1999), the Eighth Circuit held as follows:

We agree that neither the statutory language of 18 U.S.C. § 1951 nor its legislative history reflect an intent by Congress to create a private right of action. We hold, therefore, that the district court correctly dismissed the Wisdoms’ claims based on a private right of action under 18 U.S.C. §§ 1341, 1343, and 1951.

*Id.* at 409. Based upon the foregoing, Plaintiff has no standing to assert a private cause of action based solely on purported violations of the Hobbs Act (18 U.S.C. § 1951), and he

has thus failed to state a claim for which relief may be granted. As such, Plaintiff's claim(s) related to the Hobbs Act must be dismissed with prejudice.<sup>3</sup>

**C. Plaintiff Has Failed to State a Cognizable Claim Under the RICO Statute.**

In order to recover under the Racketeering Influenced Corrupt Organizations Act (RICO), the Plaintiff must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Wisdom*, 167 F.3d at 406 (citing *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985)). Plaintiff has failed to establish the predicate acts of racketeering and has also failed to properly allege the pattern and enterprise elements of a valid RICO claim. Furthermore, Plaintiff fails to adequately allege an injury to business or property as a result of the alleged RICO violation. This Court should therefore dismiss Plaintiff's RICO claims in the Amended Complaint with prejudice.

**1. Plaintiff's Allegations Regarding the Racketeering Activity are Frivolous and Defective.**

Plaintiff attempts to establish a pattern of racketeering by alleging predicate acts that are deficient on their face. Although Plaintiff appears to be asserting fourteen separate predicate acts in his Amended Complaint, each of these alleged acts can be placed into one of two categories: extortion or fraud. Plaintiff appears to be alleging eleven separate acts of extortion (or attempted extortion), and three separate acts of fraud. However, the allegations supporting each of these acts are insufficient to establish a pattern of racketeering as required by RICO, and thus Plaintiff's RICO claim fails as a matter of law.

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<sup>3</sup> Plaintiff should have been aware that no private right cause of action exists under the Hobbs Act inasmuch as Plaintiff's Hobbs Act claim in *Medical Supply Chain, Inc. v. US Bancorp NA, et al.*, 2003 WL 21479192 was dismissed on this very ground. *See Id.* at \*6 (citing *Wisdom*). This is just one more reason why Plaintiff's Amended Complaint should be dismissed with prejudice.

**a. Predicate Acts Related to Extortion.**

Plaintiff attempted to allege eleven separate predicate acts involving extortion or attempted extortion. Specifically, these are delineated in Plaintiff's Amended Complaint as "Racketeering Acts" ("Acts") 1, 2, 3, 4, 5, 6, 7, 8, 9, 12 and 13. None of these alleged acts, however, constitute extortion or attempted extortion.

Significantly, Plaintiff's allegations related to the vast majority of the extortion-related predicate acts make no mention of Mr. Immelt whatsoever. Specifically, Plaintiff's allegations in Acts 2, 3, 4, 6, 7, 8, 9, 12 and 13 fail to assert any (legal or illegal) conduct by Mr. Immelt, and therefore do not constitute adequately pled predicate acts against Mr. Immelt.

The only two acts of "attempted extortion" alleged by Plaintiff which mention Mr. Immelt are Acts 1 and 5, and neither of these acts allege any criminal conduct by Mr. Immelt. In fact, the allegations in both of these Acts only describe the purported conduct of Mr. Immelt's attorneys, not Mr. Immelt himself. Neither of these alleged predicate acts provide a sufficient foundation upon which a RICO claim could be made against Mr. Immelt.

In Act 1, Plaintiff essentially alleges that prior to the *GE I* lawsuit being filed, Mr. Immelt's attorneys threatened Plaintiff not to bring the lawsuit, and told Plaintiff that he would be sanctioned if such a lawsuit was filed. Even accepting this allegation as true,<sup>4</sup> this would not constitute an illegal predicate act for RICO purposes. There is no law which prevents an attorney from warning another attorney or potential litigant not to file a frivolous lawsuit, and from issuing a warning that sanctions will be sought if such a

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<sup>4</sup> Mr. Immelt obviously disputes that the Plaintiff or his attorney were ever threatened, however, under the applicable standard of review, it must be accepted as true for purposes of ruling on this motion to dismiss.

lawsuit is filed. In fact, in order to recover sanctions under Rule 11, adequate notice must be provided to the opposing party. Notably, as detailed in Section I of this brief, after Plaintiff filed the *GE I* lawsuit, the Plaintiff's antitrust claims were dismissed with prejudice, and the Plaintiff was subject to sanctions for naming Mr. Immelt as a defendant in his individual capacity. Thus, the allegations of Act fail to properly plead a RICO predicate act.

In Act 5, Plaintiff appears to be alleging that in August 2005, after the *GE I* lawsuit was disposed of on appeal by the Tenth Circuit, Mr. Immelt's attorneys threatened Plaintiff and his (now disbarred) counsel from asserting his state law breach of contract claims. Once again, one attorney warning another attorney (or party) not to file a frivolous lawsuit does not constitute a valid predicate act. As such, the allegations included within Act 5 are insufficient to establish a predicate act under RICO.

Notwithstanding the pleading deficiencies described above, the acts of "attempted extortion" alleged by Plaintiff are insufficient on a more basic level. Under the Hobbs Act, extortion is defined as the "obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right." 18 U.S.C. § 1951 (b)(2). Fatally, not one of the extortion-related predicate acts asserted by the Plaintiff has properly alleged that Mr. Immelt (or any other defendant) obtained the property of the Plaintiff.

In *Scheidler v. National Organization for Women, Inc.*, 537 U.S. 393, 411 (2003), the U.S. Supreme Court held that since the defendants in that case never obtained the property of the plaintiffs, the predicate acts of extortion had not been established, and thus there was no support for the plaintiffs' RICO claim which was founded upon the

alleged acts of extortion. In the present case, Plaintiff alleged predicate acts of extortion fail for the same reason. There is no allegation, and cannot be any such allegation, that any of the defendants (including Mr. Immelt) obtained, or attempted to obtain, the Plaintiff's property. As such, each of Plaintiff's extortion-related predicate acts (i.e., Acts 1, 2, 3, 4, 5, 6, 7, 8, 9, 12 and 13) are fatally flawed and do not establish predicate acts sufficient to assert a viable RICO claim.

**b. Predicate Acts Related to Fraud.**

Plaintiff has attempted to allege three separate predicate acts involving fraud or fraudulent misrepresentation. Specifically, these are delineated in Plaintiff's Amended Complaint as "Racketeering Acts" ("Acts") 10, 11 and 14. However, these fraud-based predicate act allegations asserted by the Plaintiff are insufficient to serve as the basis of a RICO claim.

1. Alleged Predicate Act 10.

Plaintiff's alleged predicate Act 10 does not sufficiently allege a predicate act of fraud against Mr. Immelt. Significantly, the allegations in support of Act 10 do not even mention Mr. Immelt. Plaintiff appears to be claiming that the GE Defendants, through their attorneys, committed fraud by removing the present case to this Court in 2006. This bizarre allegation is patently deficient.

First, there is nothing fraudulent or otherwise illegal in removing a state court case to federal court. This case was removed in good faith by the GE Defendants, and the fact that it was ultimately remanded back to state court in no way indicates that fraud played any role in the initial removal.

Second, this allegation of fraud necessarily fails for not being pled with particularity under Fed. R. Civ. P. 9(b). Rule 9(b) requires that in all averments of fraud, the circumstances constituting fraud “shall be stated with particularity.” It has been widely held that the requirements of Rule 9(b) apply to fraud-based allegations contained within RICO complaints. *See Bennett v. Berg*, 685 F.2d 1053, 1062 (8<sup>th</sup> Cir. 1982) (fraud-based RICO claim was not pled with particularity as required by Rule 9(b)). Plaintiff has failed to plead with the requisite particularity. Plaintiff altogether fails to allege who was defrauded by the removal, whether there was any reliance on the alleged fraudulent statements, and whether any damages resulted from the alleged fraud. Thus, Plaintiff’s alleged Act 10 fails to adequately plead a predicate act of fraud, and should be disregarded.

2. Alleged Predicate Act 11.

Plaintiff’s alleged predicate Act 11 contains no allegations regarding conduct by Mr. Immelt. Instead, these allegations primarily focus on the purportedly “fraudulent testimony” given to the Senate Judiciary Committee by another named defendant (and former United States Attorney) Bradley J. Schlozman. As such, Plaintiff’s allegations related to predicate Act 11 fail to allege anything regarding Mr. Immelt, let alone a viable predicate act against him.

3. Alleged Predicate Act 14.

Although Plaintiff’s alleged predicate Act 14 does specifically mention Mr. Immelt, it too fails to constitute a valid predicate act. These allegations relate solely to Mr. Immelt’s purported “fraud by omission” in “failing to disclose GE’s liability to [Plaintiff] for the breach of its real estate contracts with the [Plaintiff] in a Form 10-K

corporate disclosure.” (Doc. 6, ¶ 332) As discussed below, these allegations fail for several reasons.

These allegations of fraud necessarily fail for not being pled with particularity under Fed. R. Civ. P. 9(b). For example, there is no mention as to who was defrauded; whether there was any reliance; what was obtained through the “fraudulent omission”; and how Plaintiff was supposedly harmed by this conduct.

Plaintiff contends that Mr. Immelt fraudulently failed to disclose GE’s liability to Plaintiff for breach of a real estate contract on GE’s March 3, 2006 Form 10-K corporate disclosure statement. Plaintiff is presumably referring to alleged “liability” arising from the breach of contract lawsuit that he filed against the GE Defendants related to the alleged “agreement” by the GE Defendants to sublease a building to MSC and to provide MSC with the financing necessary to purchase the building and capitalize its business. However, there is one major problem – no lawsuit was pending at the time of this alleged non-disclosure. The Tenth Circuit had affirmed the dismissal of the GE I lawsuit on July 26, 2005, and Plaintiff did not file the current lawsuit until March 22, 2006. Thus, Plaintiff had no lawsuit pending against the GE Defendants as of March 3, 2006. Thus, this alleged predicate act is facially deficient.

**c. Without Pleading Any Sufficient Predicate Acts, All of Plaintiff’s RICO Claims, Including RICO Conspiracy Under 18 U.S.C. § 1962(d), Necessarily Fail.**

Although Plaintiff’s Amended Complaint fails to state whether he is making RICO claims under 18 U.S.C. § 1962(a), (b) or (c), it makes little difference. In order to assert a valid claim under any of these provisions, Plaintiff must allege facially sufficient predicate acts of racketeering activity. As explained above, Plaintiff has completely

failed to satisfy this requirement. Thus, he has failed to state a claim for which relief may be granted under § 1962(a), (b) or (c).

Additionally, Plaintiff appears to be attempting to assert a RICO conspiracy claim under 18 U.S.C. § 1962(d), which states that “[i]t should be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b) or (c) of this section.” However, when a plaintiff has failed to allege sufficient predicate acts under § 1962(a), (b) or (c), a conspiracy claim under § 1962(d) will not survive. *See VSA v. Von Weise Gear Co.*, 769 F.Supp. 1080, 1085 (E.D. Mo. 1991) (“a conspiracy claim under § 1962(d) will not lie when the Court has determined that the plaintiff has failed to state a claim under § 1962(c)”). Here, Plaintiff’s § 1962(d) claim has no foundation upon which to stand, and should therefore be dismissed.<sup>5</sup>

2. Plaintiff Has Not Adequately Pleaded the “Pattern” or “Enterprise” Elements of a RICO Violation.

Plaintiff has also failed to allege the pattern required for a RICO claim. The Supreme Court has held that “to prove a pattern of racketeering activity a plaintiff . . . must show that the racketeering predicate acts are related and that they amount to or pose a threat of continued criminal activity.” *H. J., Inc. v. Northwestern Bell Co.*, 492 U.S. 229, 239 (1989). “It is this factor of continuity plus relationship which combines to produce a pattern.” *Id.* (citation omitted). Relatedness may be established if the acts

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<sup>5</sup> Additionally, any conspiracy claim asserted by Plaintiff is barred under the doctrine of claim preclusion. *See Mischia v. St. John’s Mercy Health Systems, et al.*, 457 F.3d 800, 804 (8<sup>th</sup> Cir. 2006) (noting that claim preclusion bars claims that the parties could have brought forward in a previous action). In Plaintiff’s *Neoforma* lawsuit, he brought conspiracy claims under antitrust statutes and RICO, which were ultimately dismissed by the district court. While not naming the GE Defendants and Mr. Immelt as defendants in that lawsuit, he specifically listed them in his Complaint as non-defendant co-conspirators. *See Medical Supply Chain v. Neoforma*, Case No. 05-0210-CV-W-ODS, United States District Court, Western District of Missouri (Complaint ¶¶ 27, 29-31). Thus, any conspiracy claims against the GE Defendants and Immelt should have been brought in that prior lawsuit. Plaintiff’s failure to do so bars him from bringing his current conspiracy claims.

have the "same or similar purposes, results, participants, victims, or methods of commission." *Id.* at 240. Continuity, in turn, requires either "a closed period of repeated conduct" or "past conduct that by its nature projects into the future with a threat of repetition." *Id.* Thus, a plaintiff in a RICO action must allege either an "open-ended" pattern of racketeering activity (i.e., past criminal conduct coupled with a threat of future criminal conduct) or a "closed-ended" pattern of racketeering activity (i.e., past criminal conduct "extending over a substantial period of time"). Even if the Court were to accept Plaintiff's allegations of racketeering conduct, they are insufficient to establish either an open-ended or closed-ended pattern. Not only are the individual predicate acts pled by Plaintiff not related, but there is no allegation connecting Mr. Immelt to each of the alleged predicate acts.

Even if the Plaintiff established a "pattern" of racketeering activity (which he did not), he failed to adequately allege the existence of a RICO "enterprise". In order to adequately plead a RICO enterprise, Plaintiff must allege facts establishing: (1) a common or shared purpose; (2) some continuity of structure and personnel; and (3) an ascertainable structure distinct from that inherent in a pattern of racketeering. *Handeen v. Lemaire*, 112 F.3d 1339, 1351 (8<sup>th</sup> Cir. 1997) (citing *Atlas Pile Driving Co. v. DiCon Fin. Co.*, 886 F.2d 986, 995 (8th Cir. 1989)). Plaintiff has failed to sufficiently allege any of these three elements of an enterprise. With respect to the first two elements, Plaintiff has not adequately pled a common or shared purpose among all of the defendants, and he has failed to establish any ascertainable structure to the alleged enterprise through his pleadings. With regard to the third element, Plaintiff has failed to make any claim that

the “enterprise” exists separate from the racketeering activity alleged in his Amended Complaint. For these reasons, Plaintiff’s RICO claim necessarily fails.

3. Plaintiff Has Not Pleaded an Injury that Can be Redressed by the RICO Statute.

Finally, Plaintiff does not adequately allege an injury redressable under RICO. Courts have construed the requirement that a plaintiff establish an injury to business or property to require a showing of a concrete, financial loss. *See e.g., Imagineering, Inc. v. Kiewit Pacific Co.*, 976 F.2d 1303, 1310 (9th Cir. 1992) (rejecting a RICO claim where “the facts alleged do not establish proof of ‘concrete financial loss,’ let alone show that money was paid out as a result of [defendant’s] alleged racketeering activity.”); *Maio v. Aetna, Inc.*, 221 F.3d 472, 483 (3rd Cir. 2000) (“[T]he injury to business or property element of section 1964(c) can be satisfied by allegations and proof of actual monetary loss, *i.e.*, an out-of-pocket loss.”); *Sheperd v. American Honda Motor Co.*, 822 F. Supp. 625, 629 (N.D. Cal. 1993) (noting that “the requirement of a concrete financial loss proximately caused by the wrongful conduct of RICO defendants is not easily met” and dismissing car dealers’ allegations of reduced profits resulting from manufacturer’s wrongful refusal to supply them with popular vehicle models); *Oscar v. University Students Co-operative Ass’n*, 965 F.2d 783, 785 (9th Cir.1992) (en banc) (injuries to property are not actionable under RICO unless they result in “tangible financial loss” to plaintiff). Any damages claimed by Plaintiff would necessarily be speculative inasmuch as he claims that MSC was never allowed into the hospital supply market. Plaintiff’s fanciful allegations about billions of dollars in alleged lost profits fall far short of satisfying the pleading requirement of “concrete financial loss.” This is especially true given that Plaintiff has claimed billions in loss because of the conduct of U.S. Bancorp,

Neoforma and a host of other entities named as defendants in other lawsuits filed by Plaintiff. Plaintiff's RICO claim should therefore be dismissed.

**D. All State Law Claims Against Mr. Immelt, If Any, Should Be Dismissed.**

Plaintiff has attempted to assert two different state law claims: (1) breach of contract; and (2) intentional interference with a business expectancy. Although these claims appear to be brought solely against the GE Defendants (and not Mr. Immelt individually), to the extent that they may be read to implicate Mr. Immelt, these claims necessarily fail. Plaintiff has not alleged a sufficient claim for breach of contract against Mr. Immelt, inasmuch as Mr. Immelt is not alleged to have been a party to any contract with Plaintiff, nor has he been accused of breaching any contract with the Plaintiff. Additionally, Plaintiff has not alleged a sufficient claim for tortious interference with a business expectancy against Mr. Immelt, since, among other things, there is no allegation that Mr. Immelt knew of any business expectancy possessed by the Plaintiff or took any action to cause Plaintiff to lose such business expectancy. Thus, Plaintiff has not asserted any viable state law claim against Mr. Immelt.

**PRAYER**

WHEREFORE, for all of these reasons, Defendant Jeffrey Immelt requests that the Court dismiss with prejudice all claims asserted against him in Plaintiff's Amended Complaint, and grant Mr. Immelt all other relief to which he is entitled.

HUSCH & EPPENBERGER, LLC

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ATTORNEYS FOR DEFENDANT  
JEFFREY IMMELT

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was forwarded this 12<sup>th</sup> day of February, 2008, by first class mail, postage prepaid to:

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

And an electronic copy was filed via the CM/ECF system which will send a notice of electronic filing to the following:

Nick Badgerow  
Spencer Fane Britt & Browne LLP  
9401 Indian Creek Parkway, Suite 700  
Overland Park, KS 66210

/s/ Michael S. Hargens