IN THE STATE OF MISSOURI
JACKSON COUNTY SIXTEENTH CIRCUIT COURT
AT INDEPENDENCE, MISSOURI

SAMUEL K. LIPARI, Plaintiff, vs. NOVATION, LLC, et al., Defendants.	)	Circuit No. 0816-CV04217

MOTION AND SUGGESTIONS OF DEFENDANT LATHROP & GAGE L.C. FOR SECURITY FOR COSTS

COMES NOW Defendant Lathrop & Gage L.C. and, pursuant to Mo.S.Ct. Rule 77.02, moves this Court for its order requiring Plaintiff Samuel Lipari, as the assignee of Medical Supply Chain, Inc., to post adequate security for costs and states the following in support of its Motion.

This suit follows at least four others initiated by Mr. Lipari regarding a terminated corporation Medical Supply Chain, Inc., including: *Medical Supply Chain, Inc. v. Neoforma, Inc.*, In the United States District Court for the District of Kansas, No. 05-2299-CM; *Samuel K. Lipari v. US Bancorp*, In the United States District Court for the District of Kansas, No. 07-2146-CM; *Medical Supply Chain, Inc. v. U.S. Bancorp*, In the United States District Court for the District of Kansas, No. 02-2539; and *Medical Supply Chain, Inc. v. General Electric*, et al., In the United States District Court for the District of Kansas, No. 03-2334. All of the suits seek redress for alleged wrongs to Medical Supply Chain, Inc., purporting to arise from a business venture in the field of medical supply sales. This suit is brought by Mr. Lipari in the purported capacity as the assignee

of Medical Supply Chain, Inc. The corporation Medical Supply Chain, Inc. was terminated by Mr. Lipari as a Missouri Corporation on or about January 27, 2006. Mr. Lipari's rights as the assignee of the terminated entity Medical Supply Chain, Inc. cannot be any broader than the rights held at the time of the assignment by Medical Supply Chain, Inc., which in turn cannot be later in time than its termination. *See, Citibank (S.D.) N.A v. Banks*, 135 S.W.3d 545, 556-57 (Mo. App. 2004); *Carlund Corp. & Capitol Indemnity v. Crown Center Redevel. Corp.*, 849 S.W.2d 647 (Mo. App. 1993); Mo.Rev.Stat. 351.522 (upon termination corporation ceases to exist as an entity).

Mr. Lipari is acting pro se. Mr. Lipari cannot represent any other interest or entity without violating Mo.Rev.Stat. § 484.010, et seq. (unauthorized practice of law). A pro se litigant should be held to the same standards as a licensed attorney. *See, Daniels v. State Board of Employment Security*, 248 S.W.2d 570 (Mo. App. 2008) (pro se litigant held to same standards as licensed attorney and allowed no indulgence not allowed if he was represented by counsel); *Thompson v. State Board of Healing Arts*, 244 S.W.3d 180 (Mo. App. 2007) (same); *State v. Watkins*, 102 S.W.3d 570 (Mo. App. 2003) (same).

Mr. Lipari has filed and pursued an untimely appeal in this case. While the case was still pending in the Missouri Supreme Court on his Motion for Transfer, he has issued discovery to Lathrop & Gage. A copy of the discovery is attached as Exhibit 1. The discovery is far beyond the bounds of permissible discovery. It seeks privileged and confidential information. It seeks discovery about matters that are in no way, shape or form connected with the terminated entity Medical Supply Chain, Inc. It seeks discovery of events that are not and cannot be connected to Medical Supply Chain, Inc. because they occurred years after the termination of Medical Supply Chain, Inc.

Lathrop & Gage has incurred expenses and costs to respond to the frivolous interlocutory appeal. Lathrop & Gage has incurred expenses responding to the frivolous discovery. The expense has and will include primarily attorney time, but also staff time and copying and mailing expenses. The Court cannot now rule on the appropriateness of the discovery, but Lathrop & Gage respectfully submits that the Court can and should examine the discovery, the breadth of the Petition, and Mr. Lipari's predilection for filing improper or frivolous motions for the purpose of determining whether it is appropriate to require security for the costs or fees that may be incurred in this case.

In addition, Mr. Lipari or his counsel representing him or Medical Supply Chain, Inc. has been sanctioned on multiple other occasions in other courts for conduct similar to conduct in this case, including filing frivolous appeals and pleadings. Attached as Exhibit 2 is a copy of *Medical Supply Inc. v. Neoforma ,et al.*, 419 F. Supp. 2d 1316 (D. Kan. 2006)(Civil Action No. 2299), which recounts the behavior of in a prior suit including insisting on relitigating precluded claims, failing to provide factual support for claims, and the company's failure to heed the Court's prior admonitions brought by Medical Supply Chain, Inc. (Civil Action No. 022539) that lead to sanctions of attorney fees in the amount of $23, 956. The order allowing the $23,956 in fees is attached as Exhibit 3.[1] Attached as Exhibit 4[2] is a further Order of the United States District Court for the District of Kansas entered on August 6, 2007 in the same matter *Medical Supply Chain, Inc. v. Neoforma, Inc.* (Civil Action No. 05-2299) in which the court Orders that certain defendants be awarded attorney fees in a total amount of $54,889.55 for having to

[1] The Order is available at 2005 WL 2122675 (D. Kan. May 13, 2005).

[2] This Order is available as a public record from the United States District Court for the District of Kansas.

respond to the Complaint filed by the plaintiff the description of which applies exactly to the Petition before this Court.

In the Order published at 419 F. Supp.3d 1316 (D. Kan. 2006), the District Court specifically ruled that sanctions against Mr. Lipari personally were appropriate due to his active participation in pursuing litigation. *Id.* at 1335. What is more, the Court intended the sanctions to have a deterrent effect:

> In sum, the court finds that defendants reasonable attorney fees and costs against plaintiff and Mr. Landrith jointly and severally is the minimum amount of sanctions necessary to 'adequately deter the undesirable behavior.' *White v. Glen Motors*, 977 F.2d 499, 502 (10th Cir. 1992) (internal quotations and citations omitted).

419 F. Supp.2d at 1335.

This Court should first require that Mr. Lipari demonstrate that he fully satisfied the awards of sanctions and attorney fees previously entered against him before proceeding further in this case.[3] At a bare minimum, it should require security for any award of costs or fees that arise in this case, including both ordinary litigation costs and any extraordinary penalties or sanctions, including attorney fees.

The power to require a litigant to post security for costs arises from Mo.S.Ct. Rule 77.02. The Court also has the inherent power to regulate the practice of law before it. *See, Division of Employment Security v. Westerhold*, 950 S.W.2d 618, 620 (Mo. App. 1977). In a 1988 divorce action, a court did not abuse its discretion in requiring a litigant to provide $4,000 as security for costs where the litigant's attorney represented that the litigant had a negative net worth. *Franke v. Franke*, 747 S.W.2d 202 (Mo. App. 1988). Lathrop & Gage submits that the proper amount for security in this case should be

[3] The public record in those cases do not appear to indicate whether the award was satisfied.

$10,000 given the breadth and scope of Mr. Lipari's pleadings and the fact that Medical Supply Chain, Inc. does not exist.

WHEREFORE, Defendant Lathrop & Gage, L.C., respectfully requests this Court's Order requiring Plaintiff Samuel Lipari to post security for costs in this matter of Ten Thousand Dollars ($10,000) or in such other amount as the Court deems appropriate in the premises.

Respectfully submitted,

LATHROP & GAGE L.C.

By: _____

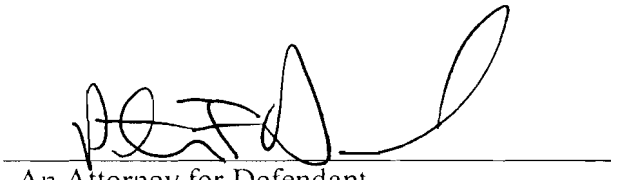
William G. Beck (26849)
Peter F. Daniel (33798)
J. Alison Auxter (59079)
2345 Grand Boulevard, Suite 2800
Kansas City, Missouri 64108-2684
Telephone: (816) 292-2000
Telecopier: (816) 292-2001

ATTORNEY FOR DEFENDANT
LATHROP & GAGE L.C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served, by First Class United States mail, postage prepaid, on the following parties of record this 6th day of November, 2008:

Mr. Samuel K. Lipari
Medical Supply Chain
3520 Akin Boulevard, #918
Lee's Summit, MO 64064-7910



An Attorney for Defendant
Lathrop & Gage L.C.

IN THE STATE OF MISSOURI
JACKSON COUNTY SIXTEENTH CIRCUIT COURT
AT INDEPENDENCE, MISSOURI

SAMUEL K. LIPARI (Assignee of Dissolved Medical Supply Chain, Inc.) *Plaintiff* vs. NOVATION, LLC NEOFORMA, INC. GHX, LLC ROBERT J. ZOLLARS VOLUNTEER HOSPITAL ASSOCIATION VHA MID-AMERICA, LLC CURT NONOMAQUE THOMAS F. SPINDLER ROBERT H. BEZANSON GARY DUNCAN MAYNARD OLIVERIUS SANDRA VAN TREASE CHARLES V. ROBB MICHEAL TERRY UNIVERSITY HEALTHSYSTEM CONSORTIUM ROBERT J. BAKER JERRY A. GRUNDHOFER RICHARD K. DAVIS ANDREW CECERE THE PIPER JAFFRAY COMPANIES ANDREW S. DUFF COX HEALTH CARE SERVICES OF THE OZARKS, INC. SAINT LUKE'S HEALTH SYSTEM, INC. STORMONT-VAIL HEALTHCARE, INC. SHUGHART THOMSON & KILROY, P.C. HUSCH BLACKWELL SANDERS LLP LATHROP & GAGE L.C. *Defendants.*	)	**Case No. 0816-cv-04217** **Missouri Antitrust, Fraud, Tortious Interference, Prima Facie Tort** **Jury Trial Demanded**

PROPOUNDING PARTY:
SAMUEL K. LIPARI

RESPONDING PARTY:
LATHROP & GAGE, L.C.

SET NUMBER:
00001

Pursuant to Missouri Rules of Civil Procedure Rule 56.01(a), Samuel K. Lipari submits the following requests for documents to LATHROP & GAGE, L.C. to produce on November 28th at 1:00pm at the residence of Samuel K. Lipari located at 3520 Aiken Blvd. Apt 918 Lee's Summit, MO 64064-7910, Lee's Summit, Missouri, 64064.

EXHIBIT 1

DEFINITIONS

1. The term "you" or "your" refers to Lathrop & Gage, L.C. and each of its affiliates, attorneys, law firms including Fish & Richardson P.C, Lathrop & Gage, L.C.'s professional services consultancy Kerma Partners, Lathrop & Gage, L.C.'s future successor in interest and , accountants, divisions, subdivisions, predecessors, directors, officers, employees, agents, representatives and all persons acting or purporting to act for or on behalf of Lathrop & Gage, L.C. and or any of Lathrop & Gage, L.C.'s clients while under the direction or participation of Lathrop & Gage, L.C.

2. The term "document" means any writing or recording as defined in Rule 1001 of the Federal Rules of Evidence, including any drafts, revisions and computer-readable material.

3. The term "persons" refers to natural persons, proprietorships, corporations, partnerships, trusts, joint venture groups, associations and organizations.

4. "Relating to" and "relates to" mean, without limitation, relating to, concerning, constituting, mentioning, referring to, describing, summarizing, evidencing, listing, relevant to, demonstrating, tending to prove or disprove, or explain.

5. "Correspondence" means any letter, memorandum or other writing in electronic, storage media or paper.

6. "Communication" or 'communications" includes, without limitation, in-person or telephone conversations, telegrams, telexes, email, tapes, or other sound recordings or means of transmitting information from one source to another and all documents related to specific communications including cell phone and land line call recordings and billing records including digital records and recordings.

7. The connectives "and" and "or" mean either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

8. The use of the singular includes the plural, and vice versa.

9. The use of one gender includes all others, appropriate I the context.

INSTRUCTIONS

1. The relevant time period of these requests is from January 1, 2002 to January October 22, 2008, unless otherwise specified and shall include all documents which relate or refer to this period even though prepared before or subsequent to that period.

2. The plaintiff seeks documents records and other information known to and possessed or controlled by the defendant corporation and its employees and agents. The knowledge of an agent of a corporation regarding matters within the agent's scope of employment and authority and to which his employment or authority extends is imputed to the corporate principal. *Packard Manufacturing Co. v. Indiana Lumbermens Mutual Insurance Co.*, 356 Mo. 687, 203 S.W.2d 415, 421 [7, 8] (Mo. banc 1947); *Eveready Heating and Sheet Metal, Inc., v. D.H. Overmyer, Inc.*, 476 S.W.2d 153, 155 (Mo.App.1972). A corporation is charged with the knowledge of its officers and agents even if the officers or agents do not communicate the knowledge. *Medicine Shoppe International, Inc. v. J-Pral Corp.*, 662 S.W.2d 263, 270 (Mo.App.1983). The controlling rule of this jurisdiction is:

> "We observe that "'[a] corporation can obtain knowledge only through its officers or agents and it is a well-established rule of agency that the knowledge of an agent of a corporation with reference to a matter within its scope of his authority and employment and to which his authority or

employment extends is imputed to the corporation.'" *Southwest Bank of Polk County v. Hughes*, 883 S.W.2d 518, 522 (Mo.App. 1994) (quoting *Packard Mfg. Co. v. Indiana Lumbermans Ins. Co.*, 203 S.W.2d 415, 421 (Mo. banc 1947)); *Iota Mgmt. Corp. v. Boulevard Inv. Co.*, 731 S.W.2d 399, 410 (Mo.App. 1987)."

Orion Security, Inc. v. Board of Police Commissioners, 2002 MO 1250 at ¶33 (MOWDCA, 2002)

3. If you object to furnishing any requested document on the ground of privilege, immunity, work product or otherwise, please provide a written statement in which you identify the specific ground on which your objection is based and the document objected to by furnishing its date, author, recipient, a general description of the subject matter of the document and the reason why the document is protected.

4. Notwithstanding your objection, you must disclose any objected to evidence containing nonobjectionable matter which is relevant, and material to the discovery requests, but you may withhold the portion for which you assert the objection, subject to further request or motion, provided that you furnish the above-requested identification.

5. If you later discover additional responsive documents, you are obligated to supplement your responses pursuant to Rule 56.01(e)(1),Rule 56.01(e)(2) or pursuant to any later imposed order of the court.

6. All documents created electronically or copied, archived or communicated electronically must be delivered to the plaintiff in electronic form as a digital document in a PC readable format on disk, CD or other digital storage medium for commercially available drives, this includes all documents created with word processor software.

7. If the original document's data or metadata concerning the document requires software other than that utilized by Microsoft Office, a copy of the software must be delivered with the data.

8. If any document is provided in paper format a log must be presented identifying the records custodian responsible for the document, their address and the persons knowledgeable of its chain of delivery who can testify that the document was not originated electronically, transmitted or stored in digital format by the GE defendants or their agents or law firms.

REQUESTS FOR PRODUCTION

A. Requests For Documents Related To Lathrop & Gage, L.C.'s Role in Missouri Healthcare Monopolization

1. The plaintiff requests all documents and records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge related to the retention of William B. Mateja and Fish & Richardson P.C. to provide legal representation of State of Missouri Governor Matt Blunt and Lathrop & Gage, L.C. during a criminal investigation by the US Department of Justice into public corruption through licensing office and management corporations set up by Lathrop & Gage, L.C. for the purpose of distributing patronage funds to State Republican Party and Republican National Committee members, including all correspondence between Joel Voran, Tom S. Stewart, Jim Fitter, Mark F. (Thor) Hearne II and Fish & Richardson P.C.; and all communications by William B. Mateja and or the preceding Lathrop & Gage, L.C. employees to employees of the US department of Justice including Bud Cummins, Todd Graves, Bradley J. Schlozman, and former Deputy Attorney General James B. Comey during the years 2004 thru October 22, 2008.

2. The plaintiff requests all documents and records of Lathrop & Gage, L.C. and its agent Fish & Richardson P.C.'s attorneys along with identification and addresses of persons with knowledge related to William B. Mateja's communications with or on the behalf of the defendants Neoforma, Inc., Novation

LLC, VHA, Inc. and the nondefendant health systems Tenet Healthcare Corporation, Blue Cross Blue Shield of Kansas while in William B. Mateja's role as a former Northern District of Texas AUSA in 1991 thru 2005 and subsequently as an employee of Fish & Richardson P.C. until October 4, 2008 including all correspondence and other communications with Deputy U.S. Attorney General Paul J. McNulty leading to the change in corporate fraud prosecution charging guidelines, the so called McNulty Memorandum of December 12, 2006, the Medicare debarment of Serono Labs parent Swiss corporation, Serono, S.A., over Serostim; and all communications related to Carol Lam and Todd Graves.

3. The plaintiff requests all documents and records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge related to creating entities, plans and contracting for Governor Matt Blunt's healthcare initiative that came to be known as Insure Missouri including all communications and advisory opinions related to the scheme and to withdrawing from or cutting Medicaid and State of Missouri funds to low income or socially disadvantaged Missouri citizens provided to Missouri officials including , Ed Martin, Patricia E. Vincent, Henry T. Herschel and State Representative Jeff Grisamore; all communications with the office of the US Department of Health and Human Services; HHS Secretary Mike Leavitt; Missouri Senator Kit Bond, former Missouri Senator Jim Talent, Kansas Governor Kathleen Sebelius, former Kansas Attorneys General Phil Kline and Jim Morrison, the defendants and the nondefendant Cerner and its CEO Neal Patterson; and Irvine O. Hockaday.

4. The plaintiff requests all communications, documents and records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge concerning the Western District of Missouri Office of the US Attorney's investigation of CoxHealth, communications with US Rep. Sam Graves concerning CoxHealth, the US Grand Jury investigation and USA John Wood's Medicare Fraud settlement with CoxHealth including any and all communications with Cox CEO Robert Bezanson, former Cox CEO Larry Wallis and former Cox Chief Financial Officer Larry Pennel, former Cox employee David Tapp, and Cox corporate compliance officer Betty Breshears.

B. Requests For Documents Related
Lathrop & Gage, L.C's Interference in the Plaintiff's Federal Antitrust Litigation

5. The plaintiff requests all communications, documents and records of Lathrop & Gage, L.C. and its attorneys and agent Jeff Roe along with identification and addresses of persons with knowledge concerning communications and legal advice to The McClatchy Company (formerly Knight Ridder) newspapers including the Kansas City Star, Springfield News-Leader, The Wichita Eagle, the Lee's Summit Journal, The McClatchy Company employees Mark Zieman, Keith Chrostowski, Yael T. Abouhalkah, Steve Kraske and Tony Messenger and former employee Mac Tully; the Gatehouse Media (former Morris Communications) newspaper The Independence Examiner, its employees and former employee James Dornbrook; and the Morris Communications newspapers The Topeka Capital Journal and the Joplin Globe over, for the purpose of censoring stories on the plaintiff's litigation; the censoring of the plaintiff's letter to the editor of the Kansas City Star concerning the plaintiff's litigation experience in Kansas District Court and Senator Sam Brownback's support for Novation LLC; the censoring of the plaintiff's counsel's name from the article "Suit filed on retirement plans" authored by Gene Meyer and published on the cover of the Business Section of the Kansas City Star Published on 2005-12-02, Page C1; the censoring of the plaintiff's letter to the editor of the Kansas City Star concerning the plaintiff's litigation experience in Kansas District Court and Senator Sam Brownback's support for Novation LLC; the censoring of Kansas City Star reporter Grace Hobson in 2003, 2005 and 2006 investigations of Kansas Social and Rehabilitation Services criminal conduct brought to her attention by Janice Lynn King, Melinda Walmsley and David Martin Price; the censoring of US attorney firing and voter suppression stories by Greg Gordon of the McClatchy News Syndicate including "2006 Missouri's election was ground zero for GOP,"; and Tony Messenger's open records request concerning Governor Matt Blunt's office emails.

6. The plaintiff requests all communications, documents and records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge concerning Lathrop & Gage, L.C. attorneys' communication with State of Kansas Judicial Branch Officials; US District Court of Kansas officials including the Hon. Judge Kathryn Vratil, Hon. Judge Carlos Murguia, the Hon. Magistrate Judge

James P. O'Hara, the Hon. Magistrate Judge David J. Waxse; the State of Kansas Justices Hon. Judge Kay McFarland, Hon. Judge Donald L. Allegrucci, Hon. Judge Lawton R. Nuss; Kansas Disciplinary Office attorneys Rex A. Sharp (concerning Rex A. Sharp's fraud on the 16th Circuit Missouri State Court in deceptively giving the appearance he would represent the plaintiff in order to obtain confidential information), Randall D. Grisell (concerning Randall D. Grisell's fraud on the Kansas Supreme Court in presenting a facially false report signed by Randall D. Grisell, Sally Harris, and Michael Schmitt to that court on the plaintiff's counsel to procure the disbarment through fraud), Kansas Bar examiner Kevin F. Mitchelson (over preventing the plaintiff's associate Donna Huffman from sitting for the bar and challenging Judy Jewsome's admission to the bar for her work as constituent services representative to Democrat US Rep. Nancy Boyda), former disciplinary attorney Scott J. Bloch; the disciplinary complaint filed against John Vratil for Lathrop & Gage, L.C.'s assistance to then Kansas Attorney General Phil Kline, correspondence and records of communications between John Vratil and Hon. Judge Donald L. Allegrucci and Hon. Judge G. Joseph Pierron related to the plaintiff's former counsel Bret D. Landrith, the plaintiff's witness David Martin Price and the appointment/reappointment of Andrew R. Ramirez.

7. The plaintiff requests all communications, documents and records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge concerning Lathrop & Gage, L.C. attorneys' communications with Charlie Shields, Jeff Roe, James Harris, The Adam Smith Foundation over the recall of Missouri State judges; with Edward R. Martin, Jr. and Henry T. Herschel over the attempted interference in selection of Missouri State Judges Missouri between March 6, 2007 and October 20, 2008; the State of Missouri Disciplinary complaint filed against Scott Eckersley; the attorney discipline action against Edward R. Martin, Jr. for selective disclosure of emails subject to State of Missouri sunshine laws and the violation of attorney client confidentiality; attorney ethics violations of Tom S. Stewart in 2005-October 2008 concerning the period Tom S. Stewart was CEO of Lathrop & Gage, L.C.; the extrajudicial communications to officials of the Western District of Missouri Court of Appeals concerning the appeal of the dismissal of parties from this case; communications with members of the Missouri Board of Bar Governors including James C. Wirken about the plaintiff, former counsel and his associate Donna Huffman; and all communications with Gregory M. Bentz President of the Kansas City Metropolitan Bar Association and Thomas M. Burke of the Missouri Bar about the prevention of the plaintiff and his associate Dustin Sherwood from obtaining legal counsel in civil litigation, including the recruitment of Gary Collins (after Missouri Supreme Court Attorney Discipline Counsel mistake of thinking Gary Collins was the Kansas Bankruptcy Attorney Craig Collins, and called Gary Collins after discussing with Sherwood the inability to find representation) to meet with Dustin Sherwood in July 2008 under the false pretext Gary Collins was reconsidering his earlier denial of representation in order to corruptly elicit from Dustin Sherwood Sherwood's confidential legal strategy for defending his farm from Lathrop & Gage LC's illicit taking and for Gary Collins to relay Sherwood's confidences to US Trustee Janice Stanton and Lathrop & Gage LC's Brian T. Fenimore.

C. Requests For Documents Related To Lathrop & Gage, L.C's Role in Causing the firing of the US Attorneys for Arkansas and the Western District of Missouri to obstruct the investigations of Lathrop & Gage, L.C's fee office companies, Governor Matt Blunt and the Medicare Fraud of CoxHealth

8. The plaintiff requests all communications, documents, consultant payments, funds received and other records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge concerning Lathrop & Gage, L.C. attorneys' communications from 2004 thru October 22, 2008 with Karl Rove, Tim Griffin, Alberto Gonzales, Paul McNulty, Kyle Sampson, Harriet E. Miers, Monica Goodling, U.S. Attorney General Michael Mukasey, Nora Dannehy, Missouri Senator Christopher "Kit" Bond, Jack Bartling, Jason Van Eaton, and Jeff Roe over Arkansas US Attorney Bud Cummins' public corruption criminal investigation of Lathrop & Gage, L.C.'s fee office and fee office management corporations created to distribute patronage for Missouri Governor Matt Blunt to Republican National Committee donors.

9. The plaintiff requests all communications, documents, consultant payments, funds received and other records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge concerning Lathrop & Gage, L.C. attorneys' communications from 2004 thru October 22, 2008 with Karl Rove, Alberto Gonzales, Paul McNulty, Kyle Sampson, Harriet E. Miers, Michael Elston, Monica Goodling, U.S. Attorney General Michael Mukasey, Nora Dannehy, Missouri Senator Christopher "Kit" Bond, Jack Bartling, Jason Van Eaton, Jeff Roe, Robert Bezanson, and former CoxHealth CEO Larry Wallis concerning the removal of US Attorney Todd Graves and/or the dismissal or settlement of Medicare Fraud charges against CoxHealth and its employees.

C. Requests For Documents Related To
Lathrop & Gage, L.C's Role in the Shughart Thomson Kilroy P.C., Joel Pelofsky, and Janice Stanton Enterprise to acquire land for Republican National Committee Donor James E. Hasler

10. The plaintiff requests all communications, documents, records of all payments, funds received and other records of Lathrop & Gage, L.C. and its attorneys and agents concerning the Missouri state civil proceedings, bankruptcy proceedings and criminal investigation of Dustin R. Sherwood and Jennifer Sherwood, the theft of the Sherwood's harvest in an uninspected transfer by to a Missouri licensed grain dealer, James E. Hasler, Joel Pelofsky, Janice Stanton, Gary Collins, Craig Collins, US Attorney John Wood and or his staff, Trimble Missouri, Clay County, US Rep. Sam Graves, US Senator Christopher "Kit" Bond, Deere & Company, and William L. Needler.

11. The plaintiff requests all communications, documents, cotracts, records of all payments, funds received and other records of Lathrop & Gage, L.C. for its lease of its Kansas City, Missouri office space.

D. Requests For Documents Related To
Lathrop & Gage, L.C's Insurance and Indemnification

12. The plaintiff requests all communications, documents, payments, funds promised and other records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge concerning documents related to any insurance coverage held by the defendant that covers the plaintiff's claims or defendant's litigation liabilities.

13. The plaintiff requests all communications, documents, consultant payments, funds received and other records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge concerning documents related to any insurance coverage held by the defendants' agent law firm Fish & Richardson P.C and agent professional services merger consultant Kerma Partners or Lathrop & Gage, L.C.'s future successor in interest that may potentially indemnify the defendants for part or all of the plaintiff's claims or defendants' litigation liabilities.

14. The plaintiff requests all communications, documents, consultant payments, funds received and other records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge concerning documents related to any insurance coverage held by the defendants' successor in interest law firm, merger candidate or joint venture partner.

15. The plaintiff requests all communications, documents, consultant payments, funds received and other records of Lathrop & Gage, L.C. and its attorneys along with identification and addresses of persons with knowledge concerning documents related to offers, proposals, agreements or solicitations related to third parties including but not limited to VHA; UHC; Novation LLC; GHX LLC; Shugart Thomson & Kilroy, P.C.; Cox Health Care Services Of The Ozarks, Inc.; Saint Luke's Health System, Inc.; Stormont-Vail Healthcare, Inc.; or Blackwell Sanders LLP indemnifying any defendants for part or all of the plaintiff's claims or defendants' litigation liabilities and any preliminary communications toward such a collective assignment or allocation of liability communicated with Jim Fitter, Spencer Fane Britt & Browne LLP's Michael Delaney.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 23rd day of October, 2008, by email and by first class mail postage prepaid to:

William G. Beck, Peter F. Daniel, J. Alison Auxter, Lathrop & Gage LC, 2345 Grand Boulevard, Suite 2800, Kansas City, MO 64108 Attorneys for Lathrop & Gage, L.C.

S/Samuel K. Lipari

Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064
816-365-1306
saml@medicalsupplychain.com
Pro se

Hecke, Tina

From: Daniel, Peter

Sent: Thursday, November 06, 2008 8:34 AM

To: Hecke, Tina

Subject: Motion for Cost Security Bond

I am not quite done with this but plan to have it filed today. Please change the certificate of service to reflect Lipari's new address. Other than Lipari we do not have to serve any of the other counsel because they all represent dismissed defendants so take them off the certificate of service for this and all other pleadings in this case. BUT, I still want to send them courtesy copies of the pleadings so plan to mail copies to them with a note that says "Courtesy copy."

▷

United States District Court,D. Kansas.
MEDICAL SUPPLY CHAIN, INC., Plaintiff,
v.
NEOFORMA, INC., et al., Defendants.
No. Civ.A. 05-2299-CM.

March 7, 2006.

Background: Corporation that developed a health care supply strategist certification program brought action against bank and others, alleging that defendants engaged in trade restraint in market for hospital supplies, and asserting claims for price restraint under the Sherman Act, restraint of trade and monopolization under both federal and Missouri law, conspiracy, tortious interference with contract or business expectancy, breach of contract, breach of fiduciary duty, fraud, prima facie tort, and claims under Racketeer Influenced and Corrupt Organizations Act (RICO) and the USA PATRIOT Act. The United States District Court for the Western District of Missouri transferred case. Defendants filed motions to dismiss and for sanctions, and plaintiffs moved for reconsideration of order transferring venue, to strike defendants' renewed motion to dismiss and/or strike, and for clarification of order.

Holdings: The District Court, Murguia, J., held that:
(1) reconsideration of order transferring venue was not warranted;
(2) defendants' renewed motions to dismiss would not be stricken;
(3) plaintiff failed to state a claim under the Sherman Act, the Clayton Act, or RICO;
(4) no private cause of action existed to enforce the USA PATRIOT Act; and
(5) sanctions were warranted against plaintiff's attorney in antitrust action, in the form of attorney fees and costs, pursuant to both Rule 11 and statute providing for sanctions against attorney who multiplies proceedings.

Ordered accordingly.

West Headnotes

[1] Federal Civil Procedure 170A 928

170A Federal Civil Procedure
170AVII Pleadings and Motions
170AVII(I) Motions in General
170Ak928 k. Determination. Most Cited Cases
Whether to grant or deny a motion for reconsideration is committed to the court's discretion.

[2] Federal Civil Procedure 170A 928

170A Federal Civil Procedure
170AVII Pleadings and Motions
170AVII(I) Motions in General
170Ak928 k. Determination. Most Cited Cases
A party's failure to present its strongest case in the first instance does not entitle it to a second chance in the form of a motion to reconsider.

[3] Federal Courts 170B 145

170B Federal Courts
170BII Venue
170BII(B) Change of Venue
170BII(B)4 Proceedings and Effect of Change
170Bk145 k. Ruling or Order and Effect of Change. Most Cited Cases
Reconsideration of order transferring venue of antitrust litigation was not warranted, where plaintiff's arguments in support of reconsideration did not assert a change in controlling law or the availability of new evidence, and plaintiff did not raise any arguments that it could not have raised in its motions opposing transfer.

[4] Federal Civil Procedure 170A 1101

170A Federal Civil Procedure
170AVII Pleadings and Motions
170AVII(N) Striking Pleading or Matter Therein
170Ak1101 k. In General. Most Cited Cases
Defendants' renewed motions to dismiss antitrust

EXHIBIT 2

case, which contained new arguments and authorities that were available when defendants filed their original motions to dismiss, did not fall within purview of rule permitting a court to strike "from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter," where defendants renewed their motions only after case was transferred, and striking the motions was inconsequential, since even if the court struck the motions, none of its instant rulings would change. Fed.Rules Civ.Proc.Rule 12(f), 28 U.S.C.A.

[5] Federal Civil Procedure 170A ⚿1771

170A Federal Civil Procedure
170AXI Dismissal
170AXI(B) Involuntary Dismissal
170AXI(B)3 Pleading, Defects In, in General
170Ak1771 k. In General. Most Cited Cases
Dismissal for failure to state a claim upon which relief can be granted is a harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[6] Antitrust and Trade Regulation 29T ⚿972(3)

29T Antitrust and Trade Regulation
29TXVII Antitrust Actions, Proceedings, and Enforcement
29TXVII(B) Actions
29Tk972 Pleading
29Tk972(2) Complaint
29Tk972(3) k. In General. Most Cited Cases
(Formerly 265k28(6.4))
A plaintiff must plead three elements to state a claim under the Sherman Act: (1) a contract, combination, or conspiracy among two or more independent actors; (2) that unreasonably restrains trade; and (3) is in, or substantially affects, interstate commerce. Sherman Act, § 1, 15 U.S.C.A. § 1.

[7] Antitrust and Trade Regulation 29T ⚿972(4)

29T Antitrust and Trade Regulation
29TXVII Antitrust Actions, Proceedings, and Enforcement
29TXVII(B) Actions
29Tk972 Pleading
29Tk972(2) Complaint
29Tk972(4) k. Conspiracy or Combination. Most Cited Cases
(Formerly 265k28(6.4))
Corporation that developed a health care supply strategist certification program failed to allege a contract, combination, or conspiracy among two or more independent actors, as required to state a claim under the Sherman Act, although corporation asserted many conspiracy theories, where it did not allege any facts that supported its assertions. Sherman Act, § 1, 15 U.S.C.A. § 1.

[8] Antitrust and Trade Regulation 29T ⚿641

29T Antitrust and Trade Regulation
29TVII Monopolization
29TVII(C) Market Power; Market Share
29Tk641 k. In General. Most Cited Cases
(Formerly 265k12(1.3))
Conduct violates Sherman Act section which prohibits monopolies in interstate trade or commerce when an entity acquires or maintains monopoly power in such a way as to preclude other entities from engaging in fair competition. Sherman Act, § 2, 15 U.S.C.A. § 2.

[9] Antitrust and Trade Regulation 29T ⚿620

29T Antitrust and Trade Regulation
29TVII Monopolization
29TVII(A) In General
29Tk619 Elements in General
29Tk620 k. In General. Most Cited Cases
(Formerly 265k12(1.3))
The offense of monopoly under the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market, and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident. Sherman Act, § 2, 15 U.S.C.A. § 2.

[10] Antitrust and Trade Regulation 29T ⚿972(4)

29T Antitrust and Trade Regulation
29TXVII Antitrust Actions, Proceedings, and Enforcement
29TXVII(B) Actions
29Tk972 Pleading
29Tk972(2) Complaint
29Tk972(4) k. Conspiracy or Combination. Most Cited Cases
(Formerly 265k28(6.3))
Assertion that defendants collectively maintained, attempted to achieve and maintain, or combined or conspired to achieve and maintain, a monopoly over the sale of hospital supplies was not sufficient to allege defendants' possession of monopoly power, a relevant product and geographic market, or that defendants controlled prices and excluded competition, as required to state a monopoly claim under the Sherman Act. Sherman Act, § 2, 15 U.S.C.A. § 2.

[11] Antitrust and Trade Regulation 29T 972(3)

29T Antitrust and Trade Regulation
29TXVII Antitrust Actions, Proceedings, and Enforcement
29TXVII(B) Actions
29Tk972 Pleading
29Tk972(2) Complaint
29Tk972(3) k. In General. Most Cited Cases
(Formerly 265k28(6.3))
Corporation that developed a health care supply strategist certification program failed to allege who alleged interlocking directors were, for which defendants' companies they served, or that corporations in question were actual competitors, as required to state a claim under Clayton Act section which prohibits persons from serving, at the same time, as a director or officer of any two corporations that were engaged in commerce and were competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws. Clayton Act, § 8(a)(1), 15 U.S.C.A. § 19(a)(1).

[12] Racketeer Influenced and Corrupt Organizations 319H 3

319H Racketeer Influenced and Corrupt Organizations
319HI Federal Regulation
319HI(A) In General
319Hk3 k. Elements of Violation in General. Most Cited Cases
To plead a viable civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim, the plaintiff must allege that a defendant: (1) participated in the conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity. 18 U.S.C.A. § 1962(c).

[13] Federal Civil Procedure 170A 636

170A Federal Civil Procedure
170AVII Pleadings and Motions
170AVII(A) Pleadings in General
170Ak633 Certainty, Definiteness and Particularity
170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases
Under rule requiring that fraud be pled with particularity, a plaintiff must allege with particularity not only each element of a Racketeer Influenced and Corrupt Organizations Act (RICO) violation, but also the predicate acts of racketeering; to properly allege the predicate acts, plaintiff must specify the "who, what, where, and when" of each purported act. 18 U.S.C.A. § 1961 et seq.; Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[14] Federal Civil Procedure 170A 636

170A Federal Civil Procedure
170AVII Pleadings and Motions
170AVII(A) Pleadings in General
170Ak633 Certainty, Definiteness and Particularity
170Ak636 k. Fraud, Mistake and Condition of Mind. Most Cited Cases

Racketeer Influenced and Corrupt Organizations 319H 70

319H Racketeer Influenced and Corrupt Organizations
319HI Federal Regulation
319HI(B) Civil Remedies and Proceedings
319Hk68 Pleading
319Hk70 k. Racketeering or Criminal

Activity; Predicate Acts. Most Cited Cases
Assertions that defendants "engaged in conduct of an enterprise through a pattern of racketeering activity," and that a law firm violated RICO by conspiring with other unspecified defendants to shut a corporation that developed a health care supply strategist certification program out of the healthcare supply industry, were insufficient to allege the "who, what, where, and when" of each purported predicate act of racketeering, as required to state a civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim. 18 U.S.C.A. § 1962(c); Fed.Rules Civ.Proc.Rule 9(b), 28 U.S.C.A.

[15] Action 13 ⚷3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory Rights of Action. Most Cited Cases
No private cause of action exists to enforce the USA PATRIOT Act. 31 U.S.C.A. § 5318.

[16] Federal Courts 170B ⚷18

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(A) In General
170Bk14 Jurisdiction of Entire Controversy; Pendent Jurisdiction
170Bk18 k. Validity or Substantiality of Federal Claims and Disposition Thereof. Most Cited Cases
District Court would not retain supplemental jurisdiction over plaintiff's state law claims, where plaintiff's federal claims had been dismissed. 28 U.S.C.A. § 1367(a).

[17] Judgment 228 ⚷634

228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(A) Judgments Conclusive in General
228k634 k. Nature and Requisites of Former Adjudication as Ground of Estoppel in General. Most Cited Cases

Judgment 228 ⚷713(1)

228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(C) Matters Concluded
228k713 Scope and Extent of Estoppel in General
228k713(1) k. In General. Most Cited Cases
Under the doctrine of issue preclusion, when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.

[18] Judgment 228 ⚷540

228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(A) Judgments Operative as Bar
228k540 k. Nature and Requisites of Former Recovery as Bar in General. Most Cited Cases
Claim preclusion applies when three elements exist: (1) a final judgment on the merits in an earlier action; (2) identity of the parties in the two suits; and (3) identity of the cause of action in both suits.

[19] Judgment 228 ⚷570(11)

228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(A) Judgments Operative as Bar
228k570 Judgment on Discontinuance, Dismissal, or Nonsuit
228k570(11) k. Defects in Pleading. Most Cited Cases

Judgment 228 ⚷585(2)

228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(B) Causes of Action and Defenses Merged, Barred, or Concluded
228k585 Identity of Cause of Action in General
228k585(2) k. What Constitutes Identical Causes. Most Cited Cases
Claim preclusion barred plaintiff's claims under the Sherman Act, the Hobbs Act, and the USA

PATRIOT Act, as well as several state claims, where claims had ended in a judgment on the merits in a prior case, claims involved many of the same defendants, and claims involved the same causes of action. Sherman Act, §§ 1, 2, 15 U.S.C.A. §§ 1, 2; 18 U.S.C.A. § 1951(b)(2); 31 U.S.C.A. § 5318.

[20] Antitrust and Trade Regulation 29T 972(3)

29T Antitrust and Trade Regulation
29TXVII Antitrust Actions, Proceedings, and Enforcement
29TXVII(B) Actions
29Tk972 Pleading
29Tk972(2) Complaint
29Tk972(3) k. In General. Most Cited Cases
(Formerly 265k28(6.2))
Plaintiff's 115 page, 613 paragraph complaint in antitrust case violated rules requiring a "short and plain statement of the claim showing that the pleader is entitled to relief," and that each averment be "simple, concise, and direct." Fed.Rules Civ.Proc.Rule 8(a), (e)(1), 28 U.S.C.A.

[21] Federal Civil Procedure 170A 2769

170A Federal Civil Procedure
170AXX Sanctions
170AXX(B) Grounds for Imposition
170Ak2767 Unwarranted, Groundless or Frivolous Papers or Claims
170Ak2769 k. Reasonableness or Bad Faith in General; Objective or Subjective Standard. Most Cited Cases
The standard for Rule 11 sanctions is an objective one; subjective bad faith is not required to trigger Rule 11 sanctions. Fed.Rules Civ.Proc.Rule 11, 28 U.S.C.A.

[22] Federal Civil Procedure 170A 2766

170A Federal Civil Procedure
170AXX Sanctions
170AXX(B) Grounds for Imposition
170Ak2766 k. Multiplication of Proceedings in General. Most Cited Cases
Sanctions may be imposed under statute providing for sanctions against attorney who multiplies proceedings for conduct that, viewed objectively, manifests either intentional or reckless disregard of the attorney's duties to the court. 28 U.S.C.A. § 1927.

[23] Federal Civil Procedure 170A 2769

170A Federal Civil Procedure
170AXX Sanctions
170AXX(B) Grounds for Imposition
170Ak2767 Unwarranted, Groundless or Frivolous Papers or Claims
170Ak2769 k. Reasonableness or Bad Faith in General; Objective or Subjective Standard. Most Cited Cases
The court must apply an objective standard in determining whether to impose sanctions under statute providing for sanctions against attorney who multiplies proceedings, and subjective bad faith is not a necessary showing. 28 U.S.C.A. § 1927.

[24] Federal Civil Procedure 170A 2766

170A Federal Civil Procedure
170AXX Sanctions
170AXX(B) Grounds for Imposition
170Ak2766 k. Multiplication of Proceedings in General. Most Cited Cases
Because statute providing for sanctions against attorney who multiplies proceedings is penal in nature, an award should only be made in instances evidencing a serious and standard disregard for the orderly process of justice, and the court must be aware of the need to ensure that the statute does not dampen attorneys' zealous representation of their clients' interests. 28 U.S.C.A. § 1927.

[25] Federal Civil Procedure 170A 2771(4)

170A Federal Civil Procedure
170AXX Sanctions
170AXX(B) Grounds for Imposition
170Ak2767 Unwarranted, Groundless or Frivolous Papers or Claims
170Ak2771 Complaints, Counterclaims and Petitions
170Ak2771(4) k. Anti-Trust or Trade Regulation Cases. Most Cited Cases

Federal Civil Procedure 170A 2805

170A Federal Civil Procedure
170AXX Sanctions
170AXX(C) Persons Liable for or Entitled to Sanctions
170Ak2805 k. Joint and Several Liability. Most Cited Cases

Federal Civil Procedure 170A 2814

170A Federal Civil Procedure
170AXX Sanctions
170AXX(D) Type and Amount
170Ak2811 Monetary Sanctions
170Ak2814 k. Computation; Items and Services Compensable. Most Cited Cases
Sanctions were warranted against plaintiff and plaintiff's attorney in antitrust action, jointly and severally, in the form of attorney fees and costs, pursuant to both Rule 11 and statute providing for sanctions against attorney who multiplies proceedings, where mere fact that plaintiff filed a nearly unintelligible 115 page complaint suggests that suit was brought for purpose of harassing defendants or the court, complaint consisted of frivolous claims, not one of which supported a viable claim for which relief could be granted, plaintiff's insistence on re-litigating claims barred by claim preclusion unreasonably and vexatiously multiplied the proceedings, and plaintiff failed to heed court's previous admonitions and sanctions, but, rather, chose instead to proceed with the case. 28 U.S.C.A. § 1927; Fed.Rules Civ.Proc.Rule 11, 28 U.S.C.A.

[26] Federal Civil Procedure 170A 2800

170A Federal Civil Procedure
170AXX Sanctions
170AXX(C) Persons Liable for or Entitled to Sanctions
170Ak2800 k. In General. Most Cited Cases
A district court may impose sanctions against plaintiff, plaintiff's counsel, or against both with joint and several liability.

[27] Federal Civil Procedure 170A 2830

170A Federal Civil Procedure
170AXX Sanctions
170AXX(E) Proceedings
170Ak2830 k. Determination; Order. Most Cited Cases
The sanctioning of a party requires specific findings that the party was aware of the wrongdoing.

***1320** Ira Dennis Hawver, Ozawkie, KS, for Plaintiff.
Janice Vaughn Mock, Sophie N. Froelich, Stephen N. Roberts, Nossaman, Guthner, Knox & Elliott, LLP, San Francisco, CA, John K. Power, Husch & Eppenberger, LLC, Jonathan H. Gregor, Mark A. Olthoff, Kathleen A. Hardee, Shughart Thomson & Kilroy, PC, Kansas City, MO, Andrew M. Demarea, Shughart Thomson & Kilroy, Overland Park, KS, for Defendants.

MEMORANDUM AND ORDER

MURGUIA, District Judge.
On March 9, 2005, plaintiff Medical Supply Chain, Inc. filed the above-captioned case in the United States District Court for the District of Western Missouri, case number 05-2010-CV-W-ODS. Plaintiff brought suit against Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association ("VHA"), Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, U.S. Bancorp NA, U.S. Bank National Association, Jerry A. Grundhofer, Andrew Cesare, [FN1] Piper Jaffray Companies, Andrew S. Duff, Shughart Thomson & Kilroy, P.C.,[FN2] and Novation, LLC. Plaintiff's 115 page complaint alleges sixteen counts including claims for price restraint under the Sherman Act, restraint of trade and monopolization under both federal and Missouri law, conspiracy, tortious interference with contract or business expectancy, breach of contract, breach of fiduciary duty, fraud, prima facie tort, and claims under RICO and the USA PATRIOT Act.

FN1. Throughout the docket sheet, this defendant's last name was spelled numerous different ways. The court will use "Cesare," the spelling most often used by plaintiff's counsel.

FN2. Plaintiff's complaint names "Shughart Thomson & Kilroy Watkins Boulware, P.C." but the law firm's correct name is "Shughart Thomson & Kilroy, P.C.".

On June 15, 2005, Judge Ortrie D. Smith of the

Western District of Missouri granted defendants' Motions to Transfer the case to the District of Kansas, citing this district court's experience with "the almost identical previous lawsuit" and the interests of justice. (Doc. 26, at 2).

Each group of defendants have filed a motion to dismiss, and two groups of defendants have filed renewed motions after the case was transferred, resulting in seven motions to dismiss. The motions to dismiss pending before the court are defendant Robert Zollars' Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 2); Defendant Neoforma, Inc.'s Motion to Dismiss, [sic] Complaint, or Alternatively to Require Amendment, Pursuant to F.R.C.P. Rules 8 and 9 (Doc. 4); Defendants U.S. Bancorp, U.S. Bank National Association, Piper Jaffray Companies, Jerry A. Grundhofer, Andrew Cesare and Andrew S. Duffs' Motion to Transfer, Dismiss and/or Strike (Doc. 6); Defendants Curt Nonomaque and Robert Baker's Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction and for Failure to State a Claim (Doc. 11); Defendant Shughart Thomson & Kilroy, P.C.'s Motion to Transfer, Dismiss and/or Strike (Doc. 13); Defendants U.S. Bancorp, U.S. Bank National Association, Piper Jaffray Companies, Jerry A. Grundhofer, Andrew Cesare and Andrew S. Duffs' Renewed Motion to Dismiss and/or Strike (Doc. 32); and Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker and ***1321** Curt Nonomaque's Renewed Motion to Dismiss Complaint for Failure to State a Claim (Doc. 34).

Additional motions before the court are defendants U.S. Bancorp, U.S. Bank National Association, Piper Jaffray Companies, Jerry A. Grundhofer, Andrew Cesare and Andrew S. Duffs' Motion for Sanctions (Doc. 22); Defendants' Motion to Stay Rule 26(f) Conference and Discovery (Doc. 24); plaintiff's Motion for Reconsideration of Order Transferring Venue (Doc. 28); Novation, LLC, VHA, University Healthsystem Consortium, Robert Baker and Curt Nonomaque's Motion for Sanctions (Doc. 36); plaintiff's Motion to Strike Defendants' Renewed Motion to Dismiss and/or Strike (Doc. 38); plaintiff's Motion to Consolidate Under Rule 42 (Doc. 39); plaintiff's Motion to Require Consolidation Arguments to be in the Form of Pleadings on the Record and Notice of Threat of Unlawful Sanctions (Doc. 42); plaintiff's Motion to Strike Novation Defendants' Renewed Motion to Dismiss (Doc. 43); plaintiff's Motion for Clarification of Order in Case No. 03-2324 (Doc. 45); First Plaintiff's Motion for Partial Summary Judgment Under F.R. Civ. P. Local Rule 56.1 (Doc. 46); plaintiff's Motion for Leave to Join Additional Defendants Under Fed.R.Civ.P. 29(a) (Doc. 49); plaintiff's Motion to Substitute Plaintiff Under F.R.C.P. Rules [sic] 17(a), 15(a) and 25(a) (Doc. 56); plaintiff's Motion to Substitute Defendant Under F.R.C.P. Rules [sic] 17(a) (Doc. 57); and Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker and Curt Nonomaque's Motion to Set Oral Hearing on Motion to Dismiss (Doc. 76).

I. Background

A. Bret D. Landrith

Plaintiff's counsel for all of the pending motions before the court, Bret D. Landrith, withdrew as counsel for plaintiff on January 30, 2006 after being disbarred from the practice of law in the state of Kansas on December 9, 2005 for violating Kansas Rules of Professional Conduct relating to competence, meritorious claims, candor toward the tribunal, fairness to opposing parties and counsel, respect for rights of third persons, and misconduct. *See In re Landrith*, 124 P.3d 467, 485-86 (Kan.2005). On February 7, 2006, Ira Dennis Hawver entered his appearance on behalf of Medical Supply Chain, Inc.

B. Prior Relevant Cases

Plaintiff has brought two other cases in this court that are relevant to the court's analysis. The first, captioned *Medical Supply Chain, Inc. v. U.S. Bancorp, NA, et al.*, 02-2539-CM, 2003 WL 21479192 (D.Kan.2003) ("*Medical Supply I*"), was filed on October 22, 2002 against defendants U.S. Bancorp, NA; US Bank Private Client Group, Corporate Trust, Institutional Trust and Custody, and Mutual Fund Services, LLC, a subsidiary of U.S. Bancorp; Piper Jaffray; Andrew Cesare; Susan Paine; Lars Anderson; Brian Kabbes; and Unknown Healthcare Supplier. Plaintiff contended these defendants engaged in conduct violating (1) the Sherman Antitrust Act; (2) the Clayton Antitrust Act; and (3) the Hobbs Act. Plaintiff also alleged defendants (4) "fail[ed] to properly train [their]

employees on the USA PATRIOT Act or to provide a compliance officer"; (5) misused "authority and excessive use of force as enforcement officers under the USA PATRIOT Act"; and (6) violated "criminal laws to influence policy under section 802 of the USA PATRIOT Act."The complaint further charged defendants with (7) misappropriation of trade secrets under state law; (8) tortious interference with prospective contracts; (9) tortious interference with contracts; (10) breach of contract; (11) promissory estoppel; (12) fraudulent misrepresentation; and (13) violation of the covenant of good ***1322** faith and fair dealing. Plaintiff sought over $943 million in damages and declaratory relief.

On June 16, 2003, this court granted defendants' motions to dismiss for failure to state any claims upon which relief could be granted and dismissed the case. *Medical Supply I*, 2003 WL 21479192, at *9 (D.Kan. June 16, 2003). When discussing plaintiff's USA PATRIOT Act claims, the undersigned judge advised Mr. Landrith to "take greater care in ensuring that the claims he brings on his clients' behalf are supported by the law and the facts." *Id.* at *6. Furthermore, with regard to the same claims, the undersigned judge noted that "the court finds plaintiff's allegation so completely divorced from rational thought that the court will refrain from further comment until such time as federal criminal proceedings are commenced, if indeed they ever are." *Id.* at *8. On November 8, 2004, the Tenth Circuit affirmed the district court's dismissal, and ordered plaintiff to show cause why he should not be sanctioned for filing a frivolous appeal pursuant to Fed. R.App. P. 38. *Medical Supply I*, 112 Fed.Appx. 730, 731-32 (10th Cir.2004). On December 30, 2004, the undersigned judge assessed attorney fees and double costs as a sanction against Mr. Landrith. Defendants were awarded $23,956 in attorney fees. *Medical Supply I*, 2005 WL 2122675, at *1 (D.Kan. May 13, 2005).

The second case brought by plaintiff in this court, captioned *Medical Supply Chain, Inc. v. General Electric Company, et al.*, case number 03-2324-CM ("Medical Supply II"), was filed on June 18, 2003. Defendants included General Electric Company, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling, LLC, and Jeffrey Immelt. Plaintiff's amended complaint alleged violations of the Sherman Act, the Robinson-Patman Act, and various state law claims. Specifically, plaintiff alleged that it

suffered antitrust injury from the defendants' breach of a written contract to buy out the remainder of a lease and provide financing for Medical Supply's entry into the hospital supply market. This contract was a unique credit agreement and an essential facility required for entry into the e-commerce market for hospital supplies.

Plaintiff further alleged that "GE founded a cartel or trust with its horizontal and vertical competitors, centered around an electronic marketplace that now has over 80% of the hospital e-commerce market," and that "GE's refusal to deal and group boycott, preventing Medical Supply's entry into a market GE has monopoly power in[,] is a violation of the Sherman and Clayton Antitrust Acts."

On January 29, 2004, the undersigned judge granted defendants' motions to dismiss, but opted not to impose Rule 11 sanctions against plaintiff. *Medical Supply II*, 2004 WL 956100, at *5 (D.Kan. Jan.29, 2004). In granting defendants' motions to dismiss, the court noted that "at the most fundamental level, plaintiff's antitrust claims fail." *Id.* at *3. On July 26, 2005, the Tenth Circuit affirmed the district court's dismissal of plaintiff's complaint, but reversed and remanded on the issue of sanctions against plaintiff, finding that "at least [plaintiff's] claims against Jeffrey Immelt in his individual capacity were frivolous in that no allegation was made that Immelt had any personal connection with [plaintiff's] alleged injury or even that he knew [plaintiff] existed." *Medical Supply II*, 144 Fed. Appx. 708, 716 (10th Cir.2005). The issue of sanctions remains pending.

C. Instant Allegations

Plaintiff asserts federal question subject matter jurisdiction based on several federal***1323** acts including the Clayton Act, the Sherman Act, the Declaratory Judgment Act,[FN3] the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and the USA PATRIOT Act. Plaintiff also asserts diversity jurisdiction, despite acknowledging that both plaintiff and at least one defendant reside in Missouri. (Compl., at 4-6). Therefore, this court does not have diversity jurisdiction over plaintiff's case. 28 U.S.C. § 1332. Plaintiff alleges that this court has

personal jurisdiction "over the parties who are in the territorial limits of the United States and who have sufficient contacts with the State of Missouri." (Compl., at 5).

> FN3. Plaintiff asserts subject matter jurisdiction under the Declaratory Judgment Act, but did not assert any claims against any defendants under that act.

In addition to the captioned defendants, plaintiff also lists eight "coconspirators not named as defendants in this action," several of which are relevant for purposes of this Order, including General Electric Company, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling, LLC, and Jeffrey R. Immelt.

The court is unclear on the bulk of plaintiff's allegations. On page 84 of its complaint, plaintiff lists its "summary of claims" as follows: [FN4]

> FN4. For convenience and clarity, the court has copied plaintiff's summary of claims in its entirety, and did not designate any mistakes or typographical errors in the language.

423. Medical Supply Chain, Inc., in its antitrust litigation opposing trade restraint in the electronic market for hospital supplies. Medical Supply has experienced substantial antitrust injury from the actions of Novation, a joint venture created by UHC and VHA, Inc. in support of the electronic marketplace entity Neoforma, Inc. which is believed to be an instrumentality of UHC and VHA, Inc. which were both in an alliance to eliminate competition among member competitors in a scheme to inflate prices similar to the alliance of Shell and Texaco to create two joint ventures, Equilon Enterprises LLC and Motiva Enterprises condemned for per se Sherman I prohibited conduct in *Dagher v. Saudi Refining Inc.*, 369 F.3d 1108, 1114 (9th Cir.2004).

424. Medical Supply Chain, Inc. has been excluded from the hospital supply market with agreements between UHA and VHA's Novation in combination with their electronic marketplace Neoforma, Inc. U.S. Bancorp NA, and The Piper Jaffray Companies exchanged directors with Novation and participated in exclusive agreements with Novation and Neoforma to keep hospitals using technology products from companies U.S. Bancorp NA and Piper Jaffray had an interest in. The purpose of these agreements was to injure the hospital supply consumers with artificially inflated prices.

425. Because of these illegal anticompetitive agreements with Novation and Neoforma, Inc., Piper Jaffray and then U.S. Bancorp refused to deal with Medical Supply Chain, Inc. U.S. Bancorp broke a contract with Medical Supply Chain, Inc. to provide escrow accounts needed to capitalize Medical Supply's entry into the hospital supply marketplace, using the pretext of the USA PATRIOT Act. U.S. Bancorp and Piper Jaffray simultaneously stole Medical Supply's intellectual property, which has since been openly used by Novation and Neoforma. US Bancorp and Piper Jaffray have continued to extort property from Medical Supply Chain on behalf of the hospital supply cartel by obstructing entry to the market for hospital supplies through the threat of malicious USA PATRIOT Act reports.

***1324** 426. Medical Supply attempted to obtain preliminary injunctive relief against U.S. Bancorp, The Piper Jaffray Companies and an Unknown Healthcare Supplier to prevent them from using the USA PATRIOT Act as a sham petition designed to prevent Medical Supply from entering the market and to stop the theft of its intellectual property. To date, Medical Supply has not been successful.

427. In June of 2004, Novation/ Neoforma, Inc. again stopped Medical Supply from entering the market for hospital supplies using exclusive dealing agreements with General Electric and GE's electronic marketplace cartel GHX, LLC. These agreements caused GE to break a written contract to purchase a commercial real estate lease from Medical Supply. The contract included Medical Supply's requirement to use the proceeds to capitalize Medical Supply's entry to market since it was under the extortion of U.S. Bancorp threatened and malicious USA PATRIOT Act reporting. Medical Supply is currently attempting to resolve its contract with GE and obtain injunctive relief and treble damages under Sherman I and II.

428. On December 14, 2004 Medical Supply served notice on UHC, Robert J. Baker, VHA, Inc., Curt

Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars that Medical Supply had not succeeded in obtaining prospective injunctive relief against the U.S. Bancorp and Piper Jaffray defendants to prevent antitrust injuries from being obstructed from entering the market for hospital supplies or the theft of Medical Supply's intellectual property. The notice informed the UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars that if they did not provide a substantiated response denying their responsibility for the hospital supply cartel's actions against Medical Supply, they would be held jointly and severally liable:

"If you dispute that any of these actions were taken against Medical Supply, or that your company is liable as an antitrust coconspirator, please promptly provide a substantiated basis for Medical Supply's reliance on the same to me at the address provided below. Since your company has not refuted the publicized events and relationships described herein, a constructive use of the time remaining between now and our anticipated filing of February 1, 2005 might be to reach an agreement on the platform and electronic format the millions of recorded transactions, hospital supply contracts, kickbacks and equity shares that will be exchanged through discovery as we collectively document the injuries to America's hospitals and our company from your concerted refusals to deal and group boycotts."

429. Only counsel for Neoforma responded and the purpose of the communication was to have Medical Supply await their answer till after the holidays, an answer that never came.

430. The coconspirators UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars did however renew their conscious commitment to a common scheme designed to achieve an unlawful objective of keeping Medical Supply out of the market for hospital supplies by reviewing the case against U.S. Bancorp and consulting with representatives for U.S. Bancorp, U.S. Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff. The cartel decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth Circuit ***1325** Court of Appeals to uphold the trial court's erroneous ruling. The cartel also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being conflicted out of opposing U.S. Bancorp and actually effected a frenzy of disbarment attempts against Medical Supply's counsel in the period from December 14, 2004 to February 3rd, 2005, all originating from the cartel's agents Shughart Thomson and Kilroy's past and current share holders.

(Compl., at 84-86).

Plaintiff seeks "approximately $1,500,000,000.00 for the conduct related to the refusal to provide trust accounts and ... approximately $1,500,000,000.00 for the conduct related to preventing Medical Supply from selling the office building lease to General Electric Transportation Co." (Compl., at 114). Plaintiff also seeks $1 million for damages sustained as a "consequence of Defendants' tortuous [sic] interference with contract or business expectancy and/or in prima facie tort ... together with punitive or exemplary damages for the same, in an amount in excess of $10,000," "approximately" $1.5 million in damages for defendants' violations of "civil racketeering laws," $500,000 for damages plaintiff sustained as a result of defendants' USA PATRIOT Act violations, and costs and reasonable attorney fees. (Compl., at 114-15).

II. Legal Standard for Motions to Dismiss

The court will dismiss a cause of action for failure to state a claim only when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *Maher v. Durango Metals, Inc.*, 144 F.3d 1302, 1304 (10th Cir.1998), or when an issue of law is dispositive, *Neitzke v. Williams*, 490 U.S. 319, 326, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, *Maher*, 144 F.3d at 1304, and all reasonable inferences from those facts are viewed in favor of the plaintiff, *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir.1984). The issue in resolving a motion such as this is not whether the plaintiff will ultimately prevail, but whether he or she is entitled to offer evidence to support the claims. *Scheuer v.*

Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974), overruled on other grounds, *Davis v. Scherer*, 468 U.S. 183, 104 S.Ct. 3012, 82 L.Ed.2d 139 (1984).

III. Analysis

A. Plaintiff's Motion for Reconsideration of Order Transferring Venue (Doc. 28)

[1][2][3] Whether to grant or deny a motion for reconsideration is committed to the court's discretion. *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1386 (10th Cir.1997); *Hancock v. City of Okla. City*, 857 F.2d 1394, 1395 (10th Cir.1988). In exercising that discretion, courts in general have recognized three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. *See Marx v. Schnuck Mkts., Inc.*, 869 F.Supp. 895, 897 (D.Kan.1994) (citations omitted); D. Kan. Rule 7.3 (listing three bases for reconsideration of order). "A party's failure to present its strongest case in the first instance does not entitle it to a second chance in the form of a motion to reconsider." ***1326***Sithon Maritime Co. v. Holiday Mansion*, 177 F.R.D. 504, 505 (D.Kan.1998). Plaintiff's arguments in support of reconsideration do not assert a change in controlling law or the availability of new evidence. Moreover, in arguing that the U.S. District Court for the Western District of Missouri committed clear error by transferring the instant case to this district, plaintiff did not raise any arguments that it could not have raised in its motions opposing transfer. Because plaintiff is not entitled to a second chance at presenting its strongest case, *Sithon Maritime Co.*, 177 F.R.D. at 505, plaintiff's motion for reconsideration is denied.

B. Plaintiff's Motions to Strike (Docs. 38 and 43)

[4] Plaintiff requests that the court strike two renewed motions to dismiss. The bulk of plaintiff's arguments simply respond to defendants' motions to dismiss rather than argue in support of striking the motions. Plaintiff's on-point argument is that the renewed motions to dismiss include new arguments and authorities that were available when defendants filed their original motions to dismiss.

The court may "order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed.R.Civ.P. 12(f). The court finds that defendants' renewed motions do not fall within the purview of Rule 12(f). Rather, defendants renewed their motions only after the instant case was transferred from the U.S. District Court for the Western District of Missouri (in the 8th Circuit) to this court (in the 10th Circuit). Moreover, the court finds that striking the motions is inconsequential; even if the court struck the motions at issue, none of its instant rulings would change. Plaintiff's motions to strike are denied.

C. Motions to Dismiss

Pending before the court are five motions to dismiss and two renewed motions to dismiss. Defendants assert several different arguments in support of dismissal, including that this court does not have personal jurisdiction over certain defendants, plaintiff did not properly serve certain defendants, all of plaintiff's claims fail to state a claim for which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), several of plaintiff's claims are barred by claim and/or issue preclusion, and plaintiff's complaint violates Federal Rules of Civil Procedure 8 and 9. In addition, several defendants contend that some of plaintiff's allegations against specific defendants and third parties are so immaterial, impertinent and scandalous that they should be stricken by the court.

The court has reviewed the pending motions to dismiss and responses, along with the complaint and plaintiff's prior cases in this district. Even presuming all well-pleaded allegations as true, resolving doubts in favor of plaintiff, and viewing the pleadings in the light most favorable to plaintiff, the court finds that dismissal of plaintiff's complaint is warranted for several reasons.[FN5]

> FN5. Although the court limited its analysis to Rule 12(b)(6), claim preclusion and Rule 8, the court does not intend to imply that defendants' additional grounds for dismissal are without merit. Rather, three separate grounds for dismissal are sufficient, and the court declines to continue its analysis.

1. Rule 12(b)(6)

[5] Plaintiff's complaint fails at the most basic level to allege sufficient facts to support cognizable legal claims. Federal Rule of Civil Procedure 12(b)(6) allows the court to dismiss a cause of action for "failure to state a claim upon which relief can ***1327** be granted." The court recognizes that "[d]ismissal under Rule 12(b)(6) is a 'harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice.' " *Morse v. Regents of Univ. of Colo.*, 154 F.3d 1124, 1127 (10th Cir.1998) (quoting *Cayman Exploration Corp. v. United Gas Pipe Line Co.*, 873 F.2d 1357, 1359 (10th Cir.1989)). However, even considering the harshness of this remedy, dismissal under 12(b)(6) is warranted in this case.

a. Sherman Act, § 1 (Counts I and II)

[6][7] A plaintiff must plead three elements to state a claim under § 1 of the Sherman Act: (1) a contract, combination, or conspiracy among two or more independent actors; (2) that unreasonably restrains trade; and (3) is in, or substantially affects, interstate commerce. 15 U.S.C. § 1; *TV Commc'ns Network, Inc. v. Turner Network Television, Inc.*, 964 F.2d 1022, 1027 (10th Cir.1992); 1 Irving Scher, et al., *Antitrust Adviser* (4th ed.2001) § 1.04. Accepting the allegations contained in the complaint as true, the court finds that plaintiff has failed to allege a contract, combination, or conspiracy among two or more independent actors. Plaintiff's complaint alleges numerous conspiracies and agreements between various defendants. For example, plaintiff alleges that "Defendants entered into a combinations [sic] and or conspiracies in unreasonable restraint of trade or commerce ... in the markets for hospital supplies, hospital supplies sold in e-commerce and the capitalization of healthcare technology and supply chain management companies." (Compl., at 87). Although plaintiff asserts many conspiracy theories, it does not allege any facts that support its allegations. *See TV Commc'ns Network, Inc.*, 964 F.2d at 1024 ("Although the modern pleading requirements are quite liberal, a plaintiff must do more than cite relevant antitrust language to state a claim for relief.") (citing *Mountain View Pharmacy v. Abbott Labs.*, 630 F.2d 1383, 1387 (10th Cir.1980)); *Perington Wholesale, Inc. v. Burger King Corp.*, 631 F.2d 1369, 1373 (10th Cir.1979) (holding that to survive a motion to dismiss, a complaint stating violations of the Sherman Act "must allege facts sufficient, if they are proven, to allow the court to conclude that claimant has a legal right to relief") (citation omitted); *see also Medical Supply II*, 2004 WL 956100, at *3 ("dismissing plaintiff's antitrust claims for, inter alia, failure to allege that the named defendants were parties to an unlawful agreement"), *rev'd on other grounds*, 144 Fed.Appx. 708 (10th Cir.2005); *Medical Supply I*, 2003 WL 21479192, at *3 (D.Kan. June 16, 2003), *aff'd*, 112 Fed.Appx. 730 (10th Cir.2004) ("Accepting the allegations contained in the complaint as true, the court finds plaintiff has failed to allege a contract, combination, or conspiracy among two or more independent actors, and thus has not stated a claim under § 1."). Counts I and II fail to state a claim upon which relief can be granted.

b. Sherman Act, § 2 (Counts III and IV)

[8][9] Section 2 of the Sherman Act prohibits monopolies in interstate trade or commerce. 15 U.S.C. § 2 ("Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States ... shall be deemed guilty of a felony."). Conduct violates this section when an entity acquires or maintains monopoly power in such a way as to preclude other entities from engaging in fair competition. *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 389-90, 76 S.Ct. 994, 100 L.Ed. 1264 (1956); ***1328***Instructional Sys. Dev. Corp. v. Aetna Cas. & Sur. Co.*, 817 F.2d 639, 649 (10th Cir.1987). "The offense of monopoly under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71, 86 S.Ct. 1698, 16 L.Ed.2d 778 (1966). In the Tenth Circuit, "monopoly power is defined as the ability both to control prices and exclude competition." *Tarabishi v. McAlester Reg'l Hosp.*, 951 F.2d 1558, 1567 (10th Cir.1991). Further, "determination of the existence of monopoly power requires proof of relevant product and geographic markets." *Id.*

[10] Plaintiff's relevant allegations regarding § 2 of the Sherman Act specifically consists of the

following paragraph:

Defendants collectively have at all times material to this complaint maintained, attempted to achieve and maintain, or combined or conspired to achieve and maintain, a monopoly over the sale of hospital supplies, the sale of hospital supplies in e-commerce, and over the capitalization of healthcare technology companies and supply chain management companies in the several Stated [sic] of the United States; and have used, attempted to use, or combined and conspired to use, their monopoly power to affect competition in the sale of hospital supplies, the sale of hospital supplies in e-commerce, and over the capitalization of healthcare technology companies and supply chain management companies sale [sic] of the same in the several States of the United States in violation of 15 U.S.C. § 2.

(Compl., at 96).

Thus, even accepting each of plaintiff's allegations as true, plaintiff has clearly failed to allege (1) defendants' possession of monopoly power, (2) a relevant product and geographic market, or (3) that defendants either controlled prices and excluded competition. *See* *Medical Supply II*, 144 Fed.Appx. at 713 (affirming the district court's holding on plaintiff's Sherman Act, § 2 claim, and stating that "we see no reason to disturb the district court's conclusion that [plaintiff] failed to state a claim that GE had illegally monopolized or attempted to monopolize the North American hospital supply e-commerce market"); *Medical Supply I*, 2003 WL 21479192, at *3 ("Here, plaintiff has failed to allege that defendants both controlled prices and excluded competition. Further, plaintiff has not pled the existence of a relevant product market or geographic market. Plaintiff has not stated that defendants' alleged market power stems from defendants' willful acquisition or maintenance of that power rather than from defendants' development of a superior product, business acumen, or historic accident."). The court finds that Counts III and IV fail to state a claim of monopoly under § 2.

c. Clayton Act (Count V)

[11] A provision of the Clayton Act, 15 U.S.C. § 19, prohibits persons from serving, at the same time, as a director or officer of any two corporations that are engaged in commerce and are competitors, "so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws." 15 U.S.C. § 19(a)(1). Plaintiff's complaint, however, fails to allege who the alleged interlocking directors are, for which defendants' companies they serve, or that the corporations in question are actual competitors. For these reasons, plaintiff's Count V is dismissed for failure to state a claim.

d. RICO (Count XV)

[12][13] To plead a viable civil RICO claim under 18 U.S.C. § 1962(c), plaintiff ***1329** must allege that a defendant " '(1) participated in the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' " *Abbott v. Chem. Trust*, 2001 WL 492388, at *15 (D.Kan. Apr.26, 2001) (quoting *BancOklahoma Mortgage Corp. v. Capital Title Co.*, 194 F.3d 1089, 1100 (10th Cir.1999)). Plaintiff also alleges that defendants conspired to violate 18 U.S.C. § 1962(c). *See* 18 U.S.C. § 1962(d). Under Rule 9(b), plaintiff must allege with particularity not only each element of a RICO violation, but also the predicate acts of racketeering. *Phillips USA, Inc. v. Allflex USA, Inc.*, 1993 WL 191615, at *2 (D.Kan. May 21, 1993) (quoting *Farlow v. Peat, Marwick, Mitchell & Co.*, 956 F.2d 982, 989 (10th Cir.1992)). To properly allege the predicate acts, plaintiff must specify the "who, what, where, and when" of each purported act. *Id.* (citation omitted).

[14] Here, plaintiff failed to sufficiently allege the "who, what, where, and when" its RICO claim. Plaintiff's specific RICO allegations consists of the following: "The Defendants engaged in (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity," as well as numerous assertions that defendant Shughart Thomson & Kilroy, a law firm based in Kansas City, Missouri, violated RICO by conspiring with other unspecified defendants to shut plaintiff out of the healthcare supply industry. Again, plaintiff offers no specific facts in support of its numerous allegations. Thus, plaintiff's RICO claim fails to state a claim for which relief may be granted.

Plaintiff also cites to 18 U.S.C. §§ 1503 and 1513 in its RICO discussion. Section 1503 prohibits influencing, intimidating, impeding or injuring a

juror or officer of the court, 18 U.S.C. § 1503(a), while § 1513 prohibits retaliation against a witness for attending or testifying in an official proceeding, or for providing information relating to the commission of a federal offense to a law enforcement officer, 18 U.S.C. § 1513(a)(1). Plaintiff seems to argue that defendant Shughart Thomson & Kilroy violated these statutes when it lodged ethics complaints against Mr. Landrith. Plaintiff's allegations have nothing to do with unlawfully influencing a juror or officer of the court, or retaliating against a witness or informant. Therefore, these allegations fail to state a claim.

Also as part of its RICO claim, plaintiff alleges that defendants violated 17 U.S.C. § 506 when it "stole copyrighted works to keep Medical Supply from realizing its plan to enter the market for hospital suppliers ... that included business plans, algorithms, confidential proprietary business models, customer and associate lists from Medical Supply Chain, Inc. in 2002 and from its predecessor company Medical Supply Management in 1995 and 1996." (Compl., at 110). This is the entirety of detail plaintiff gives regarding its criminal copyright claim. Thus, plaintiff does not allege exactly what material was stole by whom, how the allegedly stolen material fits the definition of copyrighted material, or how the material was stolen.

Plaintiff also alleges that defendants violated 18 U.S.C. § 2319. However, because plaintiff makes absolutely no allegations regarding this statute other than to state that "Defendants [sic] violation falls under 18 USC § 2319," this claim fails to state a valid claim.

As part of its RICO claims, plaintiff also alleges that defendants violated the Hobbs Act "by preventing Medical Supply's entry into commerce under color of official right," citing to 18 U.S.C. § 1951. Section 1951 prohibits the obstruction, delay or affection of commerce by robbery or extortion. Significantly, extortion is defined as the "wrongful use of actual or threatened force, violence, or fear, under color of official right." 18 U.S.C. § 1951(b)(2). Here, *1330 there is no allegation that defendants, who are private parties, acted under color of official right, or acted with any force, violence or fear. Therefore, plaintiff's claim under the Hobbs Act fails to state a claim.

e. USA PATRIOT Act (Count XVI)

[15] Plaintiff alleges that all defendants, through defendants U.S. Bancorp NA and U.S. Bank National Association, violated two sections of the USA PATRIOT Act, 31 U.S.C. § 5318(g)(3) and 18 U.S.C. § 1030, by "maliciously" filing a suspicious activity report regarding plaintiff and its founder Samuel Lipari. No private cause of action exists to enforce the USA PATRIOT Act. *Medical Supply I.* 112 Fed.Appx. at 731. Therefore, plaintiff's USA PATRIOT Act claims are dismissed.

f. State Law Claims

[16] Federal district courts have supplemental jurisdiction over state law claims that are part of the "same case or controversy" as federal claims. 28 U.S.C. § 1367(a). "[W]hen a district court dismisses the federal claims, leaving only the supplemental state claims, the most common response has been to dismiss the state claim or claims without prejudice." *United States v. Botefuhr,* 309 F.3d 1263, 1273 (10th Cir.2002) (quotation marks, alterations, and citation omitted). Having dismissed each of plaintiff's federal claims, this court finds no compelling reason to retain jurisdiction over the state law claims and dismisses them without prejudice.

2. Issue/Claim Preclusion

Several defendants argue that issue and/or claim preclusion bar several of plaintiff's claims. Claim and issue preclusion are rules of "fundamental and substantial justice that enforce[ ] the public policy that there be an *end* to litigation." *May v. Parker-Abbott Transfer & Storage, Inc.,* 899 F.2d 1007, 1009 (10th Cir.1990) (internal citation and quotation omitted). Claim and issue preclusion serve to "avoid[ ] unnecessary expense and vexation for parties, conserve[ ] judicial resources, and encourage[ ] reliance on judicial action." *Id.*

[17] Under the doctrine of issue preclusion, " '[w]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.' " *Botefuhr,* 309 F.3d at 1282 (quoting *Ashe v. Swenson,* 397 U.S. 436, 443, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970)).

Four elements must be demonstrated in order to trigger issue preclusion: "(1) the issue previously decided is identical with the one presented in the action in question, (2) the prior action has been fully adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action."

Id. at 1282 (quotations omitted).

[18] On the other hand, "claim preclusion applies when three elements exist: (1) a final judgment on the merits in an earlier action; (2) identity of the parties in the two suits; and (3) identity of the cause of action in both suits." *MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir.2005) (citations omitted). "If these requirements are met, [claim preclusion] is appropriate unless the party seeking to avoid preclusion did not have a 'full and fair opportunity' to litigate the claim in the prior suit." *Id.* (quoting *Yapp v. Excel Corp.*, 186 F.3d 1222, 1226 n. 4 (10th Cir.1999)).

*1331 [19] Here, at least five of plaintiff's claims against three defendants are barred by claim preclusion. In *Medical Supply I*, plaintiff brought suit against three of the same defendants as the instant case: US Bancorp NA, Piper Jaffray, and Andrew Cesare. This court reached final judgment on the merits of each of plaintiff's claims in *US Bancorp* by dismissing each claim for failure to state a claim for which relief can be granted pursuant to Rule 12(b)(6). *See Medical Supply I*, 2003 WL 21479192. Moreover, the Tenth Circuit affirmed this court's dismissal. *See Medical Supply I*, 112 Fed.Appx. (10th Cir.2004). The identical claims include Sherman Act § 1 claims, 15 U.S.C. § 1 (Counts I and II of the instant action), Sherman Act § 2 claims, 15 U.S.C. § 2 (Counts III and III), the Hobbs Act claims, 18 U.S.C. § 1951(b)(2) (Count XV), the USA PATRIOT Act claims, 31 U.S.C. § 5318 (Count XVI), as well as several state claims. Finding that each of these claims (1) ended in a judgment on the merits in a prior case, (2) involved the many of the same defendants and (3) involved the same causes of action, the court finds that claim preclusion bars plaintiff's claims as to the identical defendants.[FN6]

FN6. The court is confident that several of plaintiff's instant claims, to the extend that the court understands them, are also precluded by issue preclusion. However, because the court has several other grounds on which to base dismissal of plaintiff's claims, the court opts to not wade through the details of plaintiff's claims looking for previously-litigated issues.

3. Rule 8

[20] Plaintiff's complaint, as a whole, violates Federal Rules of Civil Procedure Rule 8(a) and 8(e)(1). Rule 8(a) states: "A pleading ... shall contain .. a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e)(1) elaborates on the short and plain requirement in requiring each averment to be "simple, concise, and direct." Plaintiff's 115 page, 613 paragraph complaint falls miles from Rule 8's boundaries. Pages seven through fifty of plaintiff's complaint are organized under the heading of "The Relative Markets" and consist of a multitude of unsupported, unauthenticated commentary about the healthcare industry in the United States. These "facts" include quotes from President George W. Bush, U.S. Senate Committee hearing testimony, quotations from newspaper articles and study findings. Also included is wholly irrelevant information such as paragraph eighty-eight, which seeks to educate the court about the number of deaths in 2003 resulting from the lack of affordable health insurance, as well as unsubstantiated and very weighty allegations, such as that "defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused hospitals to be overcharged $30,000,000,000.00 (thirty billion dollars) in 2002." (Compl., at 11). Pages fifty to eighty-four comprise a section entitled "Events," which includes some background of this case and others, allegations regarding defendants and other third persons, caselaw, newspaper article quotations, and discussion about disciplinary complaints lodged against Mr. Landrith, to name a few. The "Claims for Relief" section starts on page eighty-six, and continues in the same style. For instance, the discussion of plaintiff's first count spans eleven pages, excluding the fact that plaintiff begins each count by realleging all previous paragraphs. In sum, plaintiff's complaint is so exceptionally verbose and cryptic that dismissal is appropriate.

Although the short and plain requirement of Rule 8 is a low burden, several courts have dismissed complaints like plaintiff's. *See* *1332*United States el rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378-79 (7th Cir.2003) (affirming dismissal of plaintiff's 155 page, 400 paragraph complaint, holding that "[l]ength may make a complaint unintelligible, by scattering and concealing in a morass of irrelevancies the few allegations that matter") (citing *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 702-03 (3d Cir.1996) (240 pages, 600 paragraphs); *Kuehl v. FDIC*, 8 F.3d 905, 908-09 (1st Cir.1993) (43 pages, 358 paragraphs), *Michaelis v. Neb. State Bar Assoc.*, 717 F.2d 437, 439 (8th Cir.1983) (98 pages, 144 paragraphs)).

The court is unwilling to allow plaintiff to amend its complaint for three reasons. First, for reasons explained more fully below, the court believes amendment would be futile. Second, before requesting sanctions against plaintiff, two groups of defendants gave plaintiff at least twenty-one days notice pursuant to Federal Rule of Civil Procedure 11(c)(1)(A). After receiving such notice, plaintiff chose not to withdraw or amend its complaint. Therefore, any additional opportunity is not necessary. Third, the author of the complaint is plaintiff's original counsel, Mr. Landrith. Mr. Hawver recently entered his appearance on behalf of plaintiff, but has chosen not to amend the complaint in this case. Thus, Mr. Hawver has chosen to step into the shoes of Mr. Landrith and adopt the complaint as his own.

D. Defendants' Requests for Sanctions (Docs. 22 and 36)

Two groups of defendants filed two separate motions for sanctions against plaintiff and plaintiff's counsel. Defendants argue that sanctions are warranted pursuant to Federal Civil Procedure Rule 11 and 28 U.S.C. § 1927 in light of plaintiff's decision to disregard previous admonitions from this court and the Tenth Circuit. Defendants also contend that plaintiff and its counsel filed the instant lawsuit unnecessarily to harass and annoy defendants with frivolous and costly litigation.

[21] Federal Rule of Civil Procedure 11(b) states that by filing a pleading, an attorney is certifying that the information contained in the motion,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Violation of these requirements will result in sanctions imposed by the court. Fed.R.Civ.P. 11(c); *see Griffen v. City of Okla. City*, 3 F.3d 336, 342 (10th Cir.1993) ("Rule 11 requires the district court to impose sanctions if a document is signed in violation of the Rule."). The standard for Rule 11 sanctions is an objective one. *See White v. Gen. Motors Corp.*, 908 F.2d 675, 680 (10th Cir.1990) ("A good faith belief in the merit of an argument is not sufficient; the attorney's belief must also be in accord with what a reasonable, competent attorney would believe under the circumstances."). Likewise, subjective bad faith is not required to trigger Rule 11 sanctions. *Burkhart ex rel. Meeks v. Kinsley Bank*, 804 F.2d 588, 589 (10th Cir.1986).

*1333 [22][23][24] Section 1927 provides that "[a]ny attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. Sanctions may be imposed under § 1927"for conduct that, viewed objectively, manifests either intentional or reckless disregard of the attorney's duties to the court." *Braley v. Campbell*, 832 F.2d 1504, 1512 (10th Cir.1987). Like Rule 11, the court must apply an objective standard, and subjective bad faith is not a necessary showing for application of § 1927

sanctions. Because § 1927 is penal in nature, an award should only be made " 'in instances evidencing a serious and standard disregard for the orderly process of justice" ' and the court must be aware of the "need to ensure that the statute does not dampen attorneys' zealous representation of their clients' interests." *Ford Audio Video Sys., Inc. v. AMX Corp., Inc.*, 1998 WL 658386, at *3 (10th Cir. Sept.15, 1998) (quoting *Dreiling v. Peugeot Motors of Am., Inc.*, 768 F.2d 1159, 1165 (10th Cir.1985) (internal quotations omitted)).

[25] The court notes that, pursuant to Rule 11(c)(1)(A), both groups of defendants requesting sanctions gave plaintiff at least twenty-one days notice before filing their motions for sanctions. "The basic requirements of due process with respect to the assessment of costs, expenses, or attorney's fees are notice that such sanctions are being considered by the court and a subsequent opportunity to respond." *Braley*, at 1514. Plaintiff responded to defendants' motions by arguing that claim and issue preclusion do not bar plaintiff's claims, and that defendants violated Rule 11 and § 1927 by requesting sanctions. Plaintiff chose not to withdraw or amend its complaint.

The court finds that sanctions against plaintiff in the form of attorney fees and costs are appropriate and necessary pursuant to both Rule 11 and § 1927 for four reasons. First, the mere fact that plaintiff filed a nearly unintelligible 115 page complaint, which the court already found violates Rule 8, suggests that plaintiff's complaint, and the instant suit as a whole, was brought for the purpose of harassing defendants or the court, causing unnecessary delay and/or needlessly increasing the cost of litigation in violation of Rule 11(b)(1). Second, as discussed above, not one of plaintiff's federal claims supports a viable claim for which relief can be granted pursuant to Rule 12(b)(6). As such, plaintiff's complaint consists of frivolous claims in violation of Federal Rule of Civil Procedure 11(b)(2). Moreover, each of plaintiff's federal claims lack the evidentiary support needed to avoid violating Rule 11(b)(3). Third, plaintiff's insistence on re-litigating claims barred by claim preclusion "unreasonably and vexatiously" "multiplies the proceedings" in violation of § 1927.

Fourth, and most importantly, plaintiff failed to heed the court's previous admonitions and sanctions, choosing instead to proceed with the instant suit and attempt another bite at the proverbial apple. Plaintiff's previous two claims in this court were dismissed for failure to state a claim pursuant to Rule 12(b)(6). *Medical Supply I*, 2003 WL 21479192, at *9; *Medical Supply II*, 2004 WL 956100, at *5. In *Medical Supply I*, the undersigned judge advised plaintiff's counsel to "take greater care in ensuring that the claims he brings on his clients' behalf are supported by the law and the facts." *Id.* at *6. In the same Order, the undersigned judged found plaintiff's allegations "completely divorced from rational thought." *Id.* at *8. In *Medical Supply II*, the undersigned judge noted that "at the most fundamental level, ***1334** plaintiff's antitrust claims fail." 2004 WL 956100, at *3.

Both prior dismissals were affirmed by the Tenth Circuit. *Medical Supply I*, 112 Fed. Appx. at 731-32; *Medical Supply II*, 144 Fed. Appx. at 716. In *Medical Supply I*, the Tenth Circuit ordered plaintiff to show cause why sanctions should not be imposed. 112 Fed.Appx. at 731-32. The undersigned judge imposed attorney fees totaling $23,956 and double costs as a sanction against Mr. Landrith. *Medical Supply I*, 2005 WL 2122675, at *1. In *Medical Supply II*, the Tenth Circuit reversed and remanded on the issue of sanctions against plaintiff, and the issue of sanctions remains pending. 144 Fed.Appx. at 716

Plaintiff and its counsel have had plenty of warning about filing frivolous claims from both this court and the Tenth Circuit. But plaintiff persisted, filing a third lawsuit against many of the same defendants and alleging many of the same claims. Enough is enough. *See Brooks v. Couchman*, 2006 WL 137415, at *1 (10th Cir. Jan.19, 2006) (affirming the district court's dismissal of plaintiff's third attempt at the same argument, stating that "we have expended valuable court resources on at least two occasions dealing with [plaintiff] and his various meritless theories. We repeat our sentiment ...: 'We will spend no more judicial time or resources addressing his frivolous claims.' " (internal citation omitted)); *Sweeney v. Resolution Trust Corp.*, 16 F.3d 1, 6-7 (1st Cir.1994) (finding that the district court did not abuse its discretion in imposing sanctions on plaintiffs for filing a third and "repetitive" motion to remand when the court had previously denied two "almost identical

motions and made detailed findings of fact").

[26][27] The court may impose sanctions against plaintiff, plaintiff's counsel, or against both with joint and several liability. *White*, 908 F.2d at 685-86. However, "the sanctioning of a party requires specific findings that the party was aware of the wrongdoing." *Id.* at 685 (citations omitted); *Barrett v. Tallon*, 30 F.3d 1296, 1303 (10th Cir.1994) ("Thus, in the case of a frivolously pleaded RICO claim, it seems that the court should sanction the responsible attorneys rather than the plaintiffs, unless it finds that the plaintiffs insisted, against the advice of counsel, that the RICO claim be asserted, or that the plaintiffs had a sufficient understanding of the nature, elements, and limitations of the attempted RICO claim to independently evaluate its applicability to the alleged facts.").

Certainly plaintiff's former counsel, Bret D. Landrith, is culpable. Mr. Landrith was the attorney of record when each of the sanctionable motions were filed, and Mr. Landrith signed and authored the complaint and each of the motions before the court. Nonetheless, sanctions against plaintiff are also appropriate for two reasons. First, plaintiff's CEO and sole shareholder, Samuel Lipari, takes responsibility for the decisions to knowingly bring the instant lawsuit after the result of plaintiff's previous attempts at litigation. For instance, Mr. Lipari's affidavit, entitled "Affidavit of Sam Lipari on The Unsuitability of Transfer," states:

I chose to bring this new action in Missouri District court because I have a responsibility to Medical Supply's stakeholders ... to adjudicate these claims. I brought two earlier and related actions to Kansas District court based on the advice of my counsel. I have witnessed first hand that no decision or outcome in either case including from the Tenth Circuit Court of Appeals had any relationship to the pleadings of my company or applicable law. I make this determination based on my considerable personal experience as a clerk and researcher ***1335** for a Missouri legal firm and upon discussion with what I believe are the foremost healthcare antitrust authorities in our nation.

(Doc. 30, exh. 1). Mr. Lipari's affidavit continues with a litany of conspiracy theories involving defendants, this court, and other government agencies and employees. Significantly, however, Mr. Lipari's affidavit also discusses numerous instances when he actively participated in prior and current litigation. Mr. Lipari's affidavit also discusses attending one of Mr. Landrith's disciplinary conferences. Thus, Mr. Lipari was well-aware of the legal arguments and allegations being brought by his attorney, as well as the disciplinary allegations against Mr. Landrith prior to his disbarment. Even so, plaintiff chose to continue vigorously litigating the instant case. Second, after Mr. Landrith was disbarred, plaintiff chose to retain new counsel and continue litigating this case. Therefore, sanctioning plaintiff as well as Mr. Landrith serves to deter both from future frivolous filings.

In sum, the court finds that defendants' reasonable attorney fees and costs against plaintiff and Mr. Landrith jointly and severally is the minimum amount of sanctions necessary to "adequately deter the undesirable behavior." *White v. Gen. Motors*, 977 F.2d 499, 502 (10th Cir.1992) (internal quotations and citations omitted).

E. Plaintiff's Motion for Clarification of Order in Case No. 03-2324 (Doc. 45)

Plaintiff's motion for clarification seems to request this court to clarify its ruling in a separate case, case number 03-2324, which found that plaintiff's request to consolidate case number 03-2324 with the instant case is moot. Case number 03-2324 was closed as of February 13, 2004, with attorney fees the only remaining issue. The court need not address this motion for two reasons. First, plaintiff has previously requested the court to "clarify" its decision in case number 03-2324, and the court found plaintiff's request moot in light of the posture of the case. Second, plaintiff's instant case will soon be closed, as the instant Memorandum and Order's holdings dismiss plaintiff's entire complaint. Therefore, the issue of whether to consolidate two closed cases is a moot one.

IT IS THEREFORE ORDERED that defendant Robert Zollars' Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 2); Defendant Neoforma, Inc.'s Motion to Dismiss, [sic] Complaint, or Alternatively to Require Amendment, Pursuant to F.R.C.P. Rules 8 and 9 (Doc. 4); Defendants U.S. Bancorp, U.S. Bank National Association, Piper

Jaffray Companies, Jerry A. Grundhofer, Andrew Cesare and Andrew S. Duffs' Motion to Transfer, Dismiss and/or Strike (Doc. 6); Defendants Curt Nonomaque and Robert Baker's Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction and for Failure to State a Claim (Doc. 11); Defendant Shughart Thomson & Kilroy, P.C.'s Motion to Transfer, Dismiss and/or Strike (Doc. 13); Defendants U.S. Bancorp, U.S. Bank National Association, Piper Jaffray Companies, Jerry A. Grundhofer, Andrew Cesare and Andrew S. Duffs' Renewed Motion to Dismiss and/or Strike (Doc. 32); and Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker and Curt Nonomaque's Renewed Motion to Dismiss Complaint for Failure to State a Claim (Doc. 34) are granted. Plaintiff's case is hereby dismissed.

IT IS FURTHER ORDERED that defendants U.S. Bancorp, U.S. Bank National Association, Piper Jaffray Companies, Jerry A. Grundhofer, Andrew Cesare and Andrew S. Duffs' Motion for Sanctions (Doc. 22), and Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker and Curt Nonomaque's Motion*1336 for Sanctions (Doc. 36) are granted. Plaintiff and Mr. Bret D. Landrith are hereby jointly and severally sanctioned in the amount of defendants' reasonable attorney fees and costs. **Defendants shall submit an accounting of their attorney fees and costs within twenty (20) days of this Memorandum and Order.**

IT IS FURTHER ORDERED that plaintiff's Motion for Reconsideration of Order Transferring Venue (Doc. 28); plaintiff's Motion to Strike Defendants' Renewed Motion to Dismiss and/or Strike (Doc. 38); plaintiff's Motion to Strike Novation Defendants' Renewed Motion to Dismiss (Doc. 43); and plaintiff's Motion for Clarification of Order in Case No. 03-2324 (Doc. 45) are denied.

IT IS FURTHER ORDERED that Defendants' Motion to Stay Rule 26(f) Conference and Discovery (Doc. 24); plaintiff's Motion to Consolidate Under Rule 42 (Doc. 39); plaintiff's Motion to Require Consolidation Arguments to be in the Form of Pleadings on the Record and Notice of Threat of Unlawful Sanctions (Doc. 42); First Plaintiff's Motion for Partial Summary Judgment Under F.R. Civ. P. Local Rule 56.1 (Doc. 46); plaintiff's Motion for Leave to Join Additional Defendants Under Fed.R.Civ.P. 29(a) (Doc. 49); plaintiff's Motion to Substitute Plaintiff Under F.R.C.P. Rules [sic] 17(a), 15(a) and 25(a) (Doc. 56); plaintiff's Motion to Substitute Defendant Under F.R.C.P. Rules [sic] 17(a) (Doc. 57); and Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker and Curt Nonomaque's Motion to Set Oral Hearing on Motion to Dismiss (Doc. 76) are denied as moot.

SO ORDERED.

D.Kan.,2006.
Medical Supply Chain, Inc. v. Neoforma, Inc.
419 F.Supp.2d 1316, 2006-1 Trade Cases P 75,160

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HOnly the Westlaw citation is currently available.
United States District Court,D. Kansas.
MEDICAL SUPPLY CHAIN, INC., Plaintiff,
v.
US BANCORP, NA, et al., Defendants.
No. Civ.A. 02-2539-CM.

May 13, 2005.

Bret D. Landrith, Topeka, KS, for Plaintiff.
Andrew M. Demarea, Steven D. Ruse, Shughart Thomson & Kilroy, Overland Park, KS, Mark A. Olthoff, Shughart Thomson & Kilroy, PC, Kansas City, MO, for Defendants.

MEMORANDUM AND ORDER

MURGUIA, J.
*1 This matter comes before the court on defendants' unopposed Motion for Attorney Fees (Doc. 54). Defendants filed their Motion for Attorney Fees pursuant to the Tenth Circuit Court of Appeals' December 30, 2004 Order awarding defendants attorney fees incurred in opposing plaintiff's appeal of this court's June 16, 2003 Order dismissing plaintiff's amended complaint. The Tenth Circuit remanded the case to this court for determination of the amount of attorney fees to be awarded. Defendants have set forth an affidavit and billing records in support of their claim that they incurred $23,956.00 in attorney fees in opposing plaintiff's appeal. Plaintiff did not respond to defendants' Motion.

Attorney fees are traditionally determined using the "formula of a reasonable number of hours times a reasonable hourly fee." *Sheldon v. Vermonty*, 107 Fed. Appx. 828, 833 (10th Cir.2004)."[T]he fee applicant bears the burden of ... documenting the appropriate hours expended and hourly rates." *Mares v. Credit Bureau of Raton*, 801 F.2d 1197, 1201 (10th Cir.1986) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)). However, "[t]here is no precise rule or formula for making these determinations." *Hensley*, 461 U.S. at 436.

The court has reviewed defendants' affidavit and detailed billing records in support of its Motion. Defendants claim $23,956.00 in fees. This figure represents 91.7 hours of work performed on the appeal at an average rate of $260.00 per hour. The court finds that the number of hours expended in opposing plaintiff's appeal and the hourly rate set forth by defendants are both reasonable. Accordingly, the court hereby awards defendants $23,956.00 in attorney fees pursuant to the Tenth Circuit's December 30, 2004 Order. The court finds that the $23,956.00 is a reasonable amount in light of the hours expended opposing plaintiff's appeal.

IT IS THEREFORE ORDERED that defendants' Motion for Attorney Fees (Doc. 54) is granted.

IT IS FURTHER ORDERED that defendants are hereby awarded $23,956.00 in attorney fees pursuant to the Tenth Circuit's December 30, 2004 Order.

D.Kan.,2005.
Medical Supply Chain, Inc. v. U.S. Bancorp, NA
Not Reported in F.Supp.2d, 2005 WL 2122675 (D.Kan.)

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EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MEDICAL SUPPLY CHAIN, INC., Plaintiff, v. NEOFORMA, INC., et al., Defendants.	)	CIVIL ACTION No. 05-2299-CM

ORDER

Pending before the court are Defendants' Motion for Attorney's Fees (Doc. 85) and Defendants' Accounting of Attorneys' Fees and Costs (Doc. 100).

I. Background

On March 9, 2005, plaintiff Medical Supply Chain, Inc. ("Medical Supply") filed the above-captioned case in the United States District Court for the Western District of Missouri, case number 05-2010-CV-W-ODS. Plaintiff brought suit against Neoforma, Inc.; Robert J. Zollars; Volunteer Hospital Association, Inc. ("VHA"); Curt Nonomaque; University Healthsystem Consortium; Robert J. Baker; US Bancorp NA; U.S. Bank National Association; Jerry A. Grundhofer; Andrew Cesare;[1] Piper Jaffray Companies; Andrew S. Duff; Shughart Thomson & Kilroy, P.C.;[2] and Novation, LLC. Plaintiff's 115 page complaint alleges sixteen counts including claims for price restraint under the Sherman Act, restraint of trade and monopolization under both federal and Missouri law, conspiracy,

[1] Throughout the docket sheet, this defendant's last name was spelled numerous different ways. The court will use "Cesare," the spelling most often used by defendant's counsel.

[2] Plaintiff's complaint names "Shughart Thomson & Kilroy Watkins Boulware, P.C." but the law firm's correct name is "Shughart Thomson & Kilroy, P.C.".

EXHIBIT 4

tortious interference with contract or business expectancy, breach of contract, breach of fiduciary duty, fraud, prima facie tort, and claims under RICO and the USA PATRIOT Act.

The Western District of Missouri court transferred the case to this court on July 14, 2005. On March 7, 2006, this court dismissed plaintiff's case after finding that each of plaintiff's federal claims failed to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6) and declining to retain supplemental jurisdiction over plaintiff's state law claims. The court also found that claim preclusion barred several of plaintiff's claims. Furthermore, the court held that plaintiff's 115 page complaint violates Federal Rules of Civil Procedure 8(a) and 8(e)(1), and granted sanctions in the form of attorney fees and costs to defendants pursuant to Federal Rule of Civil Procedure 11(b) and 28 U.S.C. § 1927. At issue here is the reasonable amount of defendants' attorney fees and costs.

II. Standard

The court follows a two-step process to determine an award of reasonable attorney fees and costs. The initial estimate is calculated by multiplying the number of hours reasonably expended by a reasonable hourly fee, resulting in the "lodestar" amount. *Blum v. Stenson*, 465 U.S. 886, 888 (1984); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The court may then adjust upward or downward from the lodestar as necessary. *Blum*, 465 U.S. at 888.

The party moving for attorney fees "bears the burden of . . . documenting the appropriate hours expended and the hourly rate." *Case v. Unified Sch. Dist. No. 233, Johnson County, Kan.*, 157 F.3d 1243, 1249 (10th Cir. 1998). To satisfy its burden, therefore, the party must submit "meticulous, contemporaneous time records that reveal, for each lawyer for whom fees are sought, all hours for which compensation is requested and how those hours were allotted to specific tasks." *Id.* at 1250

(citing *Ramos v. Lamm*, 713 F.2d 546, 553 (10th Cir. 1983)). "The prevailing party must make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." *Robinson v. City of Edmond*, 160 F.3d 1275, 1280 (10th Cir. 1998). The court will reduce the hours claimed if the attorneys' records are inadequate or fail to precisely document the time necessary to complete specific tasks. *Hensley*, 461 U.S. at 433-34; *Case*, 157 F.3d at 1250.

III. Analysis

A. Defendants US Bancorp NA; U.S. Bank National Association; Jerry A. Grundhofer; Andrew Cesare; Piper Jaffray Companies; and Andrew S. Duff's Motion for Attorney Fees (Doc. 85)

Defendants US Bancorp NA, U.S. Bank National Association, Jerry A. Grundhofer, Andrew Cesare, Piper Jaffray Companies, and Andrew S. Duff request $59,856.41 in attorney fees, which they assert represent the work done and expenses incurred in responding to plaintiff's March 9, 2005 complaint and obtaining dismissal of this case. In support of this request, the law firm of Shughart Thomson & Kilroy in Kansas City, Missouri submitted to the court numerous bills for legal services rendered. The bills were divided between two sets of clients: (1) US Bancorp NA, U.S. Bank National Association, Jerry A. Grundhofer, and Andrew Cesare; and (2) Piper Jaffray Companies and Andrew S. Duff. Plaintiff does not oppose the reasonableness of these fees.

The court's examination of the two sets of bills revealed numerous errors and inconsistencies. First, each set of clients was billed for what appears to be identical work. For example, the first entry for each bill states that Mark Olthoff devoted .3 hours to "analysis of new complaint," for which each client was billed $85.50 ($285 an hour multiplied by .3 hours). Neither the bills themselves nor Mr. Olthoff's declaration address this issue. Second, although Mr. Olthoff's declaration, which was signed under penalty of perjury, lists the hourly rates for each attorney who worked on the case, the hourly rates actually billed to the clients are inflated for all but one attorney by as much as seventeen

percent. The court reiterates that defendants bear the burden of accurately demonstrating, through meticulous records, the hours expended and the hourly rates charged for each attorney. *Case*, 157 F.3d at 1249-50.

For the above-mentioned reasons, the court finds that these defendants have not met their burden. As such, the court denies defendants' motion for attorney fees without prejudice with leave to re-file within five (5) days of this Order. Failure to sufficiently address each of the above-mentioned issues will result in the court denying defendants' motion.

B. Defendants Novation, LLC; VHA Inc.; University Healthsystem Consortium; Robert Baker; and Curt Nonomaque's Accounting of Attorneys' Fees and Costs (Doc. 100)

Defendants Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker, and Curt Nonomaque seek a total of $54,889.55 in attorney fees and costs. The law firm of Vison & Elkins, LLP in Dallas, Texas requests $50,711[3] in attorney fees, and the law firm of Husch & Eppenberger, LLC in Kansas City, Missouri requests $4,178.55 in attorney fees and costs. Plaintiff does not oppose the reasonableness of these fees.

The court finds that these defendants have met their burden of submitting "meticulous, contemporaneous time records." *Id.* at 1250. Furthermore, the court finds that the hours claimed, the hourly rate of each attorney, and the documentation of time is reasonable. As such, the court hereby awards these defendants $54,889.55 in attorney fees and costs.

IT IS THEREFORE ORDERED that Defendants US Bancorp NA, U.S. Bank National Association, Jerry A. Grundhofer, Andrew Cesare, Piper Jaffray Companies, and Andrew S. Duff's

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[3] By the court's calculation, the amount Vison & Elkins billed to defendants totals $57,270.39. This discrepancy was not discussed in the affidavit of Kathleen Bone Spangler, Of Counsel attorney for Vison & Elkins. Since the amount requested is considerably lower than the amount billed, the court will use the amount requested.

Motion for Attorney Fees (Doc. 85) is denied without prejudice. Defendants shall have five (5) days from this Order to re-file their motion for attorney fees.

IT IS FURTHER ORDERED that Defendants Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker, and Curt Nonomaque's request for attorney fees is granted as set forth above. Defendants are hereby awarded $54,889.55 in attorney fees and costs from plaintiff, to be divided as follows: $50,711 to the law firm of Vison & Elkins, LLP in Dallas, Texas and $4,178.55 to the law firm of Husch & Eppenberger, LLC in Kansas City, Missouri.

Dated this 7th day of August 2006, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge