

Clerk of the Court
Western Division at Kansas City
Charles Evans Whittaker Courthouse
400 E. 9th Street
Kansas City, Missouri 64106

RE: Error in Re-docketing *Medical Supply Chain, Inc. v Neoforma et al*, Case No. 05-0210-CV-W-ODS as *Samuel K. Lipari v US Bank NA, et al* Case No. 06-1012-CV-W-FJG

Dear Clerk of the Court

Your office has erroneously docketed *Medical Supply Chain, Inc. v Neoforma et al*, Case No. 05-0210-CV-W-ODS, now transferred to the District of Kansas where it is captioned *Medical Supply Chain, Inc. v Neoforma et al*, Case No. 05-2299-CM and is and is appealed to the Tenth Circuit US Court of Appeals as *Medical Supply Chain, Inc. and Samuel Lipari v. Neoforma, et al.*, Case No. 06-3331.

The supplemental state law claims (¶¶252-329 including Trade Secret Relief at ¶¶325,325, ¶448, ¶454, ¶¶479-482, ¶¶488-494, Count XI, Damages For Breach Of Contract ¶¶538-543, Count XII Damages For Breach Of Fiduciary Duty ¶¶544-553) in Case No. 05-2299-CM complaint that Kansas District Judge Carlos Murguia declined federal jurisdiction over on 03/07/2006 subsequently became the concurrent state jurisdiction case captioned *Samuel K. Lipari v US Bank NA, et al* Missouri 16th Cir. State Court Case No. 0616-CV32307 within the savings clause of 28 U.S.C. § 1367(d). The plaintiff is identified as the successor in interest to Medical Supply Chain, Inc. and the defendants are two defendants of the non-diverse federal action where the federal defendant Shughart Thomson & Kilroy shares Missouri domicile with the plaintiff. Both US Bank NA and US Bancorp NA declined to appeal Judge Murguia's order. If later events such as the plaintiff's successful appeal or US Bank NA and US Bancorp NA are granted relief from their counsel Mark A. Olthoff's (MO #38572) inadvertence, the claims can be returned to federal court where Judge Murguia retains continuing jurisdiction under 28 U.S.C. § 1367(a). The Eight Circuit has specifically observed:

“While the district court's power to exercise jurisdiction under the "same case or controversy" requirement in 28 U.S.C. § 1367(a) is one ordinarily resolved on the pleadings, the court's decision to exercise **that jurisdiction "is one which remains open throughout the litigation."** *United Mine Workers v. Gibbs*, 383 U.S. 715, 727, 86 S.Ct. 1130, 1139-40, 16 L.Ed.2d 218 (1966) (discussion of pendent jurisdiction and discretionary power of federal trial court to refuse to hear state law claims, now codified by 28 U.S.C. § 1367).”

Innovative Home Health Care, Inc. v. P.T.-O.T. Associates of the Black Hills, 141 F.3d 1284 at 1287-88 (C.A.8 (S.D.), 1998).

Consequently, the plaintiff respectfully calls attention to the Clerk of the Court that it has no jurisdiction to overturn Judge Murguia's order on 03/07/2006 over the claims captioned *Samuel K. Lipari v US Bank NA, et al* Missouri 16th Cir. State Court Case No. 0616-CV32307 which are concurrent and the same case or controversy as the federal court case *Medical Supply Chain, Inc. v Neoforma et al*, Case No. 05-2299-CM under 28 U.S.C. § 1367(a). Diversity jurisdiction removal under 28 U.S.C. § 1441 *et seq* is inapplicable where a US District Court in the District of Kansas is already exercising original jurisdiction over the parties' federal questions.

Respectfully submitted,

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cc: Mark A. Olthoff's (MO #38572), 12 Wyandotte Plaza, 120 W. 12th Street, Ste 1700, KCMO 64105