

**IN THE UNITED STATES COURT
DISTRICT OF KANSAS**

SAMUEL K. LIPARI,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 2:07-cv-02146-CM
)	
U.S. BANCORP and)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
<i>Defendants.</i>)	

NOTICE OF SUPPLEMENTAL AUTHORITY

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and makes the following notice of newly discovered supplemental authority relevant to the defendants’ second motion for dismissal.

The parties disagree on whether the plaintiff’s complaint avers written contracts. A dispute therefore has arisen over the issue of whether an escrow account has to be in writing. The parties also dispute the nature of the relationship created by entrusting the confidential business plan with the bank.

A Kansas District court case cites a treatise and describes two kinds of accounts at banks, one of which does not require a written memorialization and also describes the relationship where property is left with the bank to be returned later:

“An ordinary bank deposit is made when a voluntary credit is taken with the bank, and for which no bank note, bill, or similar evidence of debt is given, and for which there exists a right to draw unconditionally.”*Id.* (quoting *Newmark on Bank Deposits*, § 11) (emphasis added).

“A special deposit is one for safe-keeping; and the depositor is entitled to the return of the *identical* money or thing deposited.” *Mid-City National Bank v. Mar Bldg. Corp.*, 33 Ill.App.3d 1083, 339 N.E.2d 497, 503 (1975) (citations omitted) (emphasis added); *Buena Vista Loan & Sav. Bank v. Bickerstaff*, 121 Ga.App. 470, 174 S.E.2d 219, 222 (1970) (A special deposit may include “a sealed package of money, or property or securities” delivered to an individual or entity “for the purpose of having the same safely kept, and the *identical thing* returned.”) (emphasis added). General deposits differ from special deposits in that “[t]he identical money deposited is not to be returned — only its equivalent; and the money deposited becomes the money of the bank.” *Bloomheart*, 221 P. at 281.

“Where a deposit is made generally the relation between the bank and depositor is that of debtor and creditor; but where the deposit is made specially, the relation between the bank and the depositor is that of bailor and bailee.” *Id.* (quoting *Michie on Banks and Banking*, at 1297).”

Hossain v. Rauscher Pierce Refsnes, Inc., 46 F.Supp.2d 1164 at 1170-1171 (D. Kan., 1999).

Respectfully Submitted,

S/ Samuel K. Lipari

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via email, on this 26th day of
March, 2008 to:

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