

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY, KANSAS**

MEDICAL SUPPLY CHAIN, INC.,)
(Party in interest Samuel K. Lipari))
<i>Plaintiff,</i>)
v.) Case No. 05-2299
NEOFORMA, INC. <i>et al</i>) Formerly W.D. MO.
) Case No. 05-0210

**MOTION UNDER RULE 15 FOR LEAVE TO REWRITE
AND AMEND COMPLAINT TO CURE ANY DEFECTS REQUIRING
DISMISSAL REMAINING AFTER OUTCOME OF RECONSIDERATION MOTION**

I Samuel K. Lipari acting pro se and as statutory trustee of the dissolved Missouri company Medical Supply Chain, Inc. hereby respectfully request the court grant leave to rewrite and amend my complaint if required upon the outcome of this court's reconsideration of dismissal.

STATEMENT OF FACTS

1. The complaint has not been previously amended.
2. The complaint was modeled on an antitrust complaint appropriate for the Western District of Missouri where it was filed.
3. The facts alleged in the complaint adequately plead federal antitrust and RICO claims under F.R.Civ.P. Rule 8.
4. The court and some defendants have complained about whether the complaint is comprehensible.

5. The Novation defendants and now the court have erroneously stated required elements were not pled when they are clearly in the complaint.

6. Amendment is not futile, Neoforma has publicly disclosed in a corporate press release that the Novation defendants have a long term contract excluding other electronic marketplaces like Medical Supply Chain, Inc. from their member hospitals and charging a price higher than would be charged in a competitive market (See exb 1.) and Neoforma publicly merged with the other competing electronic marketplace GHX, LLC. (See exb 2.)as stated in the complaint:

“US Bancorp helped the Defendant Novation acquire control of the Defendant Neoforma and partner it with GHX LLC. creating a monopoly of over 80% of healthcare e-commerce).”

Plaintiff's complaint ¶ 369. See also ¶¶ 419-422 alleging the purpose of merging Neoforma with GHX, LLC is to eliminate competition.

7. The plaintiff can break down the paragraphs into single fact averments and has done so already over the real estate breach portion for the Jackson County District of the State of Missouri. See exb. 2.

8. The plaintiff has previously filed a motion for new trial styled as a motion for reconsideration.

MEMORANDUM OF LAW

The proper remedy for confusion over the complaint is not dismissal but instead granting the plaintiff leave to rewrite the complaint:

"In any event, even if Mr. Bolden had not been sufficiently clear about bringing the § 1981 claim under § 1983, the district court should have permitted him to amend his complaint to do so. See *Sims v. Unified Government of Wyandotte County*, 120 F. Supp.2d 938, 953 (D. Kan. 2000) (ruling that Jett remains good law, but granting leave to amend complaint "to clarify that [plaintiff] is pursuing her 42 U.S.C. § 1981 claims, to the extent that they allege municipal liability, solely through the remedies provided by 42 U.S.C. § 1983."); *Stewart v. Bd. of Commr's for Shawnee County*, 216 F.R.D. 662, 663-667 (D. Kan. 2003) (same). "[L]eave [to amend] shall be freely given when justice so requires," see Fed. R. Civ. P. 15(a), and we see absolutely no unfair prejudice the City, or any other reason not to allow Mr. Bolden to amend his complaint."

Bolden v. City of Topeka, Case No. 04-3306 at pg. 16-17 (10th Cir. 2006.)

Under Rule 15(a), a party may amend his complaint once as a matter of course before the defendant files a responsive pleading, and may amend his complaint with the court's permission after that. Even where the court's permission is required, leave to amend "shall be freely given when justice so requires." *Id.* And, the court should ordinarily allow amendment if, by doing so, plaintiff can cure the defect. See *Curley v. Perry*, 246 F.3d 1278, 1284 (10th Cir.), cert. denied, 122 S. Ct. 274 (2001);

Reynoldson v. Shillinger, 907 F.2d 124, 126 (10th Cir. 1990); *Triplett v. LeFlore County, Okla.*, 712 F.2d 444, 446 (10th Cir. 1983). *Sanders v. Yeager*, 2003 C10 131 (USCA10, 2003).

The plaintiff had previously filed a motion for reconsideration, explaining the clear error in the court's dismissal. The court should now accept this proper motion to amend under Rule 15(b):

"If a party seeks to amend a pleading following the court's grant of a motion to dismiss, the party must first move to reopen the case under Fed. R. Civ. P. 59(e) or 60(b) and then file a motion under Fed. R. Civ. P. 15 for leave to amend pursuant to the standards set out in Fed. R. Civ. P. 7. See Glenn, 868 F.2d at 371.

When a party files a proper motion for leave to amend, rule 15(a) further provides "leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a); see also *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Brever*, 40 F.3d at 1131; Glenn, 868 F.2d at 371; see generally 6 Wright et al., supra, 1473 & 1483. The liberal granting of motions for leave to amend reflects the basic policy that pleadings should enable a claim to be heard on its merits. See *Foman*, 371 U.S. at 181-82; 6 Wright et al., supra, 1473 at 521."

Calderon v. Kansas Soc. and Rehabilitation Serv., 181 F.3d 1180 at 1185-1186(10th Cir., 1999).

Respectfully Submitted,

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Certificate of Service

I certify that on March 27th, 2006 I mailed a copy of the following to:

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