

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

<b>MEDICAL SUPPLY CHAIN, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 05-CV-0210-CV-ODS</b>
	)	
<b>NOVATION, LLC, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**NOTICE OF SECOND DEFENDANT THREAT OF SANCTIONS**

Comes now the plaintiff Medical Supply Chain, Inc. and its counsel Bret D. Landrith, and gives notice to the court that a second threat of sanctions has been made against the plaintiff and its counsel by the defendants. This time, the defendants Novation, LLC, VHA Inc., University Healthsystem Consortium, Robert Baker and Curt Nonomaque are threatening Medical Supply and its counsel with sanctions if the complaint is not withdrawn or changed in 21 days. See Exb.s 1,2,3. Medical Supply Chain, Inc. and its counsel are giving this notice to alert the court they are waiving the 21 day notice requirement under Fed. R. Civ. P. 11(1)(A).

Medical Supply observes the defendants are attempting to rehash their baseless dismissals that failed to address transactions or privities between the parties warranting any claim or issue preclusion. The defendants were required under clear US Supreme Court and Eighth Circuit authority to identify transactions that occurred before the filing or amendment of the Medical Supply Kansas District court complaint and which of those transactions are now precluded. The May 13<sup>th</sup>, 2005 ruling by Judge Murguia stating the Kansas case was closed in 2003, before much of the current charged conduct. Judge Murguia's ruling is also fatal to the defendants' dismissal and sanction arguments. The Kansas court also expressly dismissed without prejudice all of the plaintiff's state law claims which included its intellectual property claims. Dismissal without prejudice means Medical Supply is entitled to bring them again. Doing so is not sanctionable. In fact, in his dismissal order for the General Electric case, Judge Murguia refused to grant John K. Power's (then representing the GE defendants) motion for sanctions precisely because the state law claims were not facially without merit and could be raised in another forum.

Medical Supply will present facts proving each element of each of its claims. John K. Power represents defendants that are in Medical Supply Chain, Inc.'s market and who have combined with and made agreements with Neoforma, Inc. The corporate disclosures to this court have already stipulated this. Medical Supply has been injured by John K. Power's clients' publicized exclusive agreements unreasonably restraining trade and repeatedly kept out of this market by the other acts described in this complaint. As things stand currently, even before Medical Supply introduces evidence, the only lawful resolution of this conflict can be a finding of Sherman 1 per se antitrust prohibited conduct necessitating treble damages of Medical Supply's business plan expectations.

Instead of writing sanction motions, Medical Supply is compiling thousands of pages of electronic documents supporting its claims for Rule 26 disclosure. The defendants' counsel might better spend their time meeting their clients and learning what happened in the hospital supply industry and why it such a pressing matter of public concern.

Respectfully Submitted

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#### **Certificate of Service**

I certify that on May 18th, 2005 I have served the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

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