

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

SAMUEL K. LIPARI,)
)
 Plaintiff,)
)
 vs.) Case No. 07-0849-CV-W-FJG
)
 GENERAL ELECTRIC COMPANY, et al.,)
)
 Defendants.)

**SUGGESTIONS OF SEPARATE DEFENDANT
SEYFARTH SHAW LLP IN OPPOSITION TO MOTION OF PLAINTIFF TO ALTER
OR AMEND JUDGMENT**

COMES NOW the separate defendant, Seyfarth Shaw LLP, and submits the following Suggestions in opposition to the Motion of plaintiff to alter or amend the judgment. This defendant submits that, despite its length, the plaintiff's motion has not raised any new matters which were not presented or which could not have been presented in opposition to the defendants' various motions to dismiss. There is no legal or factual justification for re-opening the matter at this point, or for altering or amending the judgment of dismissal ordered by the Court.

I. MOTIONS TO ALTER OR AMEND JUDGMENT MUST BE BASED ON NEW ARGUMENTS AND FACTS WHICH COULD NOT HAVE BEEN PREVIOUSLY PRESENTED.

Motions to alter or amend the court's judgment are vested in the sound discretion of the trial court.

A district court has broad discretion in determining whether to grant a motion to alter or amend judgment, and this court will not reverse absent a clear abuse of discretion by the district court. See *Harris v. Arkansas Dept. of Human Servo*, 771 F.2d 414, 416-17 (8th Cir. 1985).

Hagerman v. Yukon Energy Corp., 839 F.2d 407,413-414 (8th Cir. 1988).

Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion. However, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.

Wright, Miller & Miller, *Federal Practice and Procedure: Civil* §281.0.1, p. 124 (1995).

Such motions are not to be used to re-hash arguments already rejected by the Court, nor to raise issues which could have been raised in the first instance. As the Eighth Circuit has stated:

"Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of the summary judgment motion. The nonmovant has an affirmative duty to come forward to meet a properly supported motion for summary judgment Nor should a motion for reconsideration serve as the occasion to tender new legal theories for the first time." *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir.), as amended, 835 F.2d 710 (7th Cir. 1987) (quoting *Keene Corp. v. International Fidelity Ins. Co.*, 561 F. Supp. 656,665-66 (N.D. Ill. 1983), aff'd, 736 F.2d 388 (7th Cir. 1984»).

Hagerman v. Yukon Energy Corp., 839 F.2d 407,414 (8th Cir. 1988). Moreover, the Court in *Hagerman* held: "A motion to alter or amend judgment cannot be used to raise arguments which could have been raised prior to the issuance of judgment. *Federal Deposit Ins. Corp. v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986). See also, *Whitlock v. Midwest Acceptance Corp.*, 575 F.2d 652, 653 n.1 (8th Cir. 1978)." 839 F.2d at 414.

Motions under Rule 59(e) are not appropriate if the movant merely asks the Court to revisit issues already addressed or to hear new arguments or supporting facts that could have been presented originally. *Global Network Technologies v. Regional Airport Authority*, 122 F.3d 661 (8th Cir. [Mo.] 1997); *Concordia College Corp. v. WR. Grace Co.*, 999 F.2d 326 (8th Cir. 1993), *cert den.* 510 U.S. 1093 (1994); *Innovative Home Health Care v. P.T ~ O.T Associates*, 141 F.3d 1284 (8th

Cir. 1998). Indeed, a party's failure to present his strongest case in the first instances does not entitle him to a second chance in the form of a motion for reconsideration. Such motions are therefore not appropriate if the movant intends only that the court hear new arguments or supporting facts. *See, Capitol Indemnity Corp. v. Russellville Steel Co.*, 367 F.3d 831 (8th Cir. 2004)(new legal arguments raised for the first time on Rule 59(e) motion are untimely and cannot be considered).

Motions for reconsideration should not be used to present arguments on theories or evidence which were previously made and rejected, or which were available but not proffered. *Concordia College Corp. v. Grace*, 999 F.2d 326 (8th Cir. 1993); *Paramount Pictures Corp. v. Video Broadcasting Systems, Inc.*, 1989 WL 159369 (D. Kan. 1989) (citing *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986)).

Granting or denying a motion for new trial on the ground of newly discovered evidence rests largely in the sound discretion of the trial court; but it must first be shown to the court's satisfaction that such evidence could not, with reasonable diligence, have been produced at the trial. *United States v. Metropolitan St. Louis Sewer Dist.*, 440 F.3d 930 (8th Cir. [Mo.] 2006).

Here, there is no new evidence nor are any new legal arguments presented in plaintiff's Rule 59(e) motion. The plaintiff could have ~ and did ~ assert most of these arguments in his previous briefs. Thus, a "Motion to Reconsider" is singularly inappropriate and a waste of the Court's and the parties+time. The only new argument (for "recusal") could easily have been raised before, and the failure to raise it has waived it.

II. RECUSAL WAS NOT REQUESTED AND WOULD NOT HAVE BEEN JUSTIFIED.

Under the recusal statute, a motion to request a judge to recuse himself must be "timely." 28 U.S.C. §144. The original statute measures the time from the "term" or "session" of the Court, those

archaic terms no longer apply in most districts, such as the Western District of Missouri. Where the Court does not have "terms" or "sessions," a motion to recuse must be filed as soon as possible after the case is filed and assigned to the judge. Such a motion must be filed at the earliest possible moment after the movant learns of the facts demonstrating a basis for the claim, *Twist v. Department of Justice*, 344 F.Supp.2d 137 (D. D.C. 2004), in order to prevent a party from awaiting the outcome of the matter before taking action. *Davis v. Cities Service Oil Co.*, 420 F.2d 1278 (10th Cir. 1970). Certainly it is too late to wait until after the Court has entered judgment before seeking the recusal of the court. *United States v. Berger*, 375 F.3d 1223 (11th Cir. 2004); *Te-Ta-Ma Truth Foundation v. World Church of the Creator*, 246 F.Supp.2d 980 (N.D. Ill. 2003).

In addition, plaintiff has provided no current facts or evidence which would justify even the consideration of recusal. Rather, as with his underlying complaints, plaintiff has no more than speculation, woven together with a fair amount of imagination. Certainly, much more than this is required in order to support a request that a federal judge be recused from overseeing a case. See, e.g. *United States v. Platshorn*, 488 F.Supp. 1367 (S.D. Fla. 1980)(no recusal based on movant's speculation). +

III. THE "SHOW CAUSE" ORDER ENTERED IN THE KANSAS FEDERAL COURT WAS SATISFIED.

In his Motion, plaintiff refers to his prior, unsuccessful, efforts to assert these and similar claims in the District of Kansas. Notably, plaintiff states, at paragraph 17:

The Kansas District Court of Hon. Judge Carlos Murguia that now has the former Western District of Missouri case of *Medical Supply Chain, Inc. v. Novation LLC, et al.*, Case No. 05-0210-CV-W-ODS indicated that it was giving consideration to reopening the plaintiff's federal antitrust and racketeering claims by making a show cause

order against the defendants. See exb. 6 Judge Murguia's Show Cause Order.

Motion Under Fed. R. Civ. P. 59(e), to Alter or Amend Judgment, p. 4, ~17. So, using this exhibit (attached to these Suggestions as Exhibit A), plaintiff advises this Court that Judge Murguia was considering "reopening" *Medical Supply Chain v. Neoforma, Inc.* (the case which had previously been dismissed), after that dismissal had been affirmed by the Tenth Circuit Court of Appeals (by refusing to consider an untimely appeal from the district court's denial of a Rule 59(e) motion). *Medical Supply Chain, Inc. v. Neoforma, Inc.*, 508 F.3d 572 (Fed. 10th Cir. 2007).

The facts demonstrate otherwise. After the unsuccessful appeal, plaintiff returned to the District of Kansas and tried to resume filing pleadings (in his own name) as if the case were not closed. Plaintiff had filed a Rule 60(b) motion, which the court struck, ordering the plaintiff, Mr. Lipari, to show cause why his filings had not violated Rule 11, F.R.C.P. (Doc. 127) Undaunted, plaintiff then filed another Rule 59(e) motion to alter or amend, and included in that motion an attempt to show cause in response to the Court's order. (Doc. 128)

With that background, then, the "Show Cause Order" of May 16, 2008 arises. As noted in that Order (Exhibit A), the defendants had not filed a response to plaintiff's Rule 59 motion. Defendants were ordered to file such a response by May 27, or "the court will consider plaintiff's motion (Doc. 128) without the benefit of defendants' response, as set out in Rule 7.4." Thus, Judge Murguia did NOT say that he was "giving consideration to reopening the plaintiff's federal antitrust and racketeering claims," as alleged above in paragraph 17 of the Motion in this Court. Instead, Judge Murguia gave defendants the chance to respond to the Rule 59 motion, or the Court would rule on it without the input of the defendants.

But what happened next? Defendants filed a response to the Show Cause Order and to the Rule 59 Motion on May 23, 2008, within the time set by the Court. (Doc. 131, attached hereto as Exhibit B.) In that pleading, the defendants showed good cause by explaining that they had not responded to the Rule 59 motion because it had been filed in response to the Court's sua sponte order, and so defendants "did not believe they had a right to weigh in on the matter." *Id.*, Exhibit B, at p. 2. After defendants responded to the Rule 59 motion, Judge Murguia proceeded to rule on plaintiffs motion (Doc. 135, attached hereto as Exhibit C), denying it in no uncertain terms. And that ruling supports the position of the defendants in this case, rather than that of the plaintiff.

This case has already been dismissed, but Mr. Lipari, who is not a plaintiff, persists in filing motions in this case. The court has warned him that if he continues to attempt to "resurrect" this case it could result in sanctions. Mr. Lipari has responded by filing repetitive motions in this case and by filing other cases in federal and state court that he contends are "the same case or controversy." Because Mr. Lipari has disregarded prior warnings and continues to attempt to act as plaintiff in this dismissed case, **Mr. Lipari is prohibited from submitting any other filings in this case, 05-2299, unless he is represented by counsel in this case. Mr. Lipari has ten days to file an objection. If no valid objection is filed, the filing restrictions will take effect.**

Memorandum and Order, Exhibit C, pp. 6-7 (emphasis in original). Rather than filing such an objection, plaintiff has filed a Notice of Appeal. (Doc. 136, Exhibit D, attached.)

Thus, the Court's rulings in the Kansas case provide no assistance or support for plaintiffs position in this case, in this Court.

IV. NO ARGUMENTS ARE MADE IN THE MOTION REGARDING SEYFARTH SHAWLLP.

Defendant Seyfarth Shaw is only named once in the Motion (at ,r18)and then only obliquely in connection with another defendant. No attempt is made in the Motion to demonstrate how or why the Court's order of dismissal is inappropriate or improper as to this defendant.

V. CONCLUSION.

Based upon all the foregoing arguments and authorities, defendant Seyfarth Shaw LLP prays that plaintiffs Motion Under Fed. R. Civ. P. 59(e) to Alter or Amend Judgment be denied in its entirety, and that this defendant be awarded its costs herein incurred and expended.

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Certificate of Service

I hereby certify that on August 8, 2008, I electronically filed the foregoing with the clerk of the court using the CMIECF system which will send a notice of electronic filing to the following:

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EXHIBIT A

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

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

SHOW CAUSE ORDER

On April 5, 2008, plaintiff filed a Motion to Alter or Amend Judgment and Answer to Order to Show Cause (Doc. 12S). Defendants have failed to timely submit a response to the pending motion. Rule 7.4 of the Rules of Practice provides that the "failure to file a brief or response within the time specified within [Rules 6.1 and 7.1(c)] shall constitute the waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect." D. Kan R. 7.4.

Defendants are therefore directed to show cause, in writing, on or before May 23, 2008, why plaintiff's motion (Doc. 12S) should not be granted. Defendants are further directed to file a response to plaintiff's motion on or before May 27, 2008. Where defendants fail to respond to this order, the court will consider plaintiff's motion (Doc. 12S) without the benefit of defendants' response, as set out in Rule 7.4.

IT IS SO ORDERED.

Dated this 16th day of May 2008, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge

EXHIBIT B

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

MEDICAL SUPPLY CHAIN, INC.,)
)
Plaintiff,)
)
v.) Case No. 05-2299-CM
)
NOVATION, LLC, et al.,)
)
Defendants.)

**DEFENDANTS' JOINT RESPONSE TO SAMUEL LIPARI'S MOTION TO ALTER
OR AMEND JUDGMENT (DOC. NO. 128) AND RESPONSE
TO SHOW CAUSE ORDER (DOC. NO. 130)**

Defendants, through their respective attorneys of record, file this response to Samuel Lipari's Motion to Alter or Amend Judgment, and answer the Court's May 16,2008 Show Cause Order.

As discussed herein, the Court's March 31, 2008 ruling striking Mr. Lipari's Rule 60(b) motion is well-founded and supported in both law and fact. As a consequence, the present Rule 59(e) motion likewise should be stricken. Medical Supply Chain, Inc. sought to appeal this Court's earlier rulings, including the denial of its Motion to Substitute Mr. Lipari as party plaintiff. That appeal was dismissed. 508 F.3d 572 (10th Cir. 2007). The Court of Appeals thereafter rejected Medical Supply's further request for relief from the judgment. No facts or laws have changed since either this Court's dismissal or the Tenth Circuit's ruling that in any fashion suggest Medical Supply Chain, Inc. (or its sole shareholder) can reassert the now-twice dismissed federal claims. Because Mr. Lipari is not the plaintiff, he lacks standing to pursue relief on behalf of Medical Supply Chain, Inc. and there is no authority for the Court to consider his Rule 59(e) or 60(b) motions. But even on its merits, Mr. Lipari's present motion should be denied for the following reasons:

1. The Court's Order striking Lipari's Rule 60(b) motion is not a "Judgment" subject to a Rule 59(e) motion; and

2. There has been no intervening change of law to support the motion.

3. The Court has inherent authority to strike Mr. Lipari's motions.

For these reasons, the Court should strike plaintiffs Rule 59(e) Motion to Alter Or Amend Judgment or, in the alternative, deny it on its merits.

I. Response to Show Cause Order (Doc. No. 130)

On March 31, 2008, this Court, sua sponte, struck Lipari's "Rule 60(b) Motion" (Doc. 122) and directed Lipari to show cause why he has not violated Rule 11(b). The Court further ruled that if Lipari failed to demonstrate that he has not violated Rule 11(b), the Court would sanction Lipari with both a fine and filing restrictions (Doc. 127 at p. 3). Lipari's Rule 59(e) Motion was filed in response to the Court's March 31 Order. Thus, the defendants believed the Court would determine whether Lipari had complied with its sua sponte Order and that they no right to weigh in on the matter. In other words, because Lipari's Rule 59(e) motion did not involve any issue presented by any party to the case, and because the Court had previously held that Lipari was not authorized to file pleadings in this case, defendants did not believe that the Court desired a response to that motion. In light of such circumstances, defendants suggest any neglect was inadvertent and excusable.

Pursuant to the Court's May 16, 2008 Order (Doc. 130), the defendants hereby object to Lipari's Rule 59(e) Motion.

II. Argument Opposing Mr. Lipari's Rule 59(e) Motion (Doc. No. 128)

A. Lipari lacks standing to litigate on behalf of Medical Supply Company, Inc. Therefore, like the previous Rule 60(b) motion, his Rule 59(e) motion should be stricken from the record.

Mr. Lipari continues his attempt to re-litigate this matter as a *pro se* "interested person" on behalf of his corporation even though he has never been substituted as the plaintiff and Medical Supply's appeal was dismissed. As noted in the Court's March 31, 2008 Order, as well as in numerous other pleadings and Orders in this litigation, the plaintiff in this action is Medical Supply Chain, Inc. The fact that Mr. Lipari voluntarily dissolved his corporation (after his prior lawyer was disbarred) does not automatically entitle him the right to prosecute these claims or file pleadings in his personal capacity. *See Reben v. Wilson*, 861 S.W.2d 171, 176 (Mo. App. E.D. 1993) (holding that dissolution of a corporation does not abate or suspend pending proceedings by the corporation); *Nato Indian Nation v. State of Utah*, 76 Fed. Appx. 854, 856 (10th Cir. 2003) (prohibiting corporations from appearing *pro se* and holding that a corporation must appear through a licensed attorney).

While Mr. Lipari attempted to substitute himself as the plaintiff in this action, the Court declined in its discretion to do so. *See* Doc. No. 104. In that Order, the Court noted that the substitution of Mr. Lipari would serve no purpose because the claims had been dismissed and a substitution of party would not change the outcome. *Id.* p.4. That reasoning still applies. Moreover, that ruling is the law of the case in light of plaintiff's dismissed appeal. The plaintiff in this action remains Medical Supply Chain, Inc. and there is no authority for any motion filed by Mr. Lipari, including the pending motion to alter or amend judgment. *See Phelps v. Hamilton*, 122 F.3d 1309, 1315 (10th Cir. 1997) (recognizing that "a plaintiff must maintain standing at all times throughout the litigation for a court to retain jurisdiction."). As it did with the Rule 60(b) motion, Mr. Lipari's Rule 59(e) motion should also be stricken by the Court.

- B. There is no "judgment" for the Court to alter or amend and Lipari is attempting to re-litigate settled issues.

If the Court declines to strike Mr. Lipari's Rule 59(e) motion, then it should deny it on its merits. Motions to alter or amend judgments pursuant to Rule 59(e) are extreme remedies and should only be granted to correct manifest errors of law or present newly discovered evidence. *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997). Neither is applicable here.

The Court's decision to strike Lipari's Rule 60(b) motion based on lack of standing is not a judgment subject to a Rule 59(e) motion. Rule 54(a) of the Federal Rules of Civil Procedure defines judgment as "a decree and any order which from an appeal lies." The Court's March 31 Order did not deny Lipari's Rule 60(b) motion, but rather struck it from the record due to Lipari's lack of standing. Therefore, the Court's March 31 Order is not an order "from which an appeal lies" because it did not determine any new issue as to Lipari's standing.

While Mr. Lipari argues that he may proceed *pro se* as the alleged assignee of Medical Supply's claims, this assertion is neither an assignment of error in law nor newly discovered evidence. Medical Supply has already made this same argument based on the same evidence. The Court rejected its position and Medical Supply's appeal was dismissed. Mr. Lipari cannot re-litigate the issue through successive motions under Rules 59(e) or 60(b), particularly where he is not a party in the case. *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (holding that motions under Rules 59(e) and 60(b) "are inappropriate vehicles to reargue an issue previously addressed by the court when the motion merely advances new arguments, or supporting facts which were available at the time of the original motion."); *see also Borrero v. City of Chicago*, 456 F.3d 698 (7th Cir. 2005).¹

¹ Following the Court's dismissal of this case, Mr. Lipari filed a "Motion for Reconsideration." That motion was denied and Medical Supply Chain appealed, though its appeal was dismissed as untimely. There is simply no reason ~ or legal or factual basis ~ to keep litigating issues the plaintiff has repeatedly lost.

Notwithstanding this bar to the motions, Mr. Lipari constructs his argument upon this Court's decision in *Lipari v. US Bancorp, et al*, Case No. 07-CV-02146 wherein the Court has allowed that Lipari to proceed *pro se* on Medical Supply Chain, Inc.'s state law claims as the alleged assignee of all assets from Medical Supply Chain. According to Mr. Lipari, this result is different than the one in this case that denied substitution of parties, and was brought about due to the June 4, 2007 Supreme Court decision in *Erickson v. Pardus*, 127 S. Ct. 2197 (2007) (discussing Rule 8 pleading standards in a *pro se* prisoner case).

But there is no intervening change in law based upon *Erickson* or the decision in *Lipari* that compels re-litigation of the issues here. Mr. Lipari, himself, is the named plaintiff in the most recent case and the Court found there existed sufficient factual allegations for Mr. Lipari, as alleged assignee of corporate assets, to appear *pro se* as the named plaintiff in that action. Mr. Lipari originated that action and there was no motion, order, or appeal concerning substitution of parties. In contrast, this lawsuit was filed by a then-licensed lawyer in the name of the corporate entity Medical Supply Chain, Inc. and the dissolution of Medical Supply Chain (during the case) does not automatically substitute Lipari as the plaintiff. Medical Supply remains the plaintiff in this action and it must be represented by a licensed attorney-and only a licensed attorney may file pleadings on its behalf.

There is no change in law that would allow Mr. Lipari to now step into Medical Supply's place to pursue federal claims that were dismissed (twice) on the merits. Mr. Lipari is attempting to re-litigate issues that have been settled by this Court and the Court of Appeals. Therefore, his

Motion to Alter or Amend Judgment pursuant to Rule 59(e) should be denied if it is not stricken.'

C. The Court may strike Lipari's Rule 60(b) motion through its inherent authority to control its docket.

Every court is granted the inherent authority to control its docket as it sees fit. *In re Calder*, 973 F.2d 862, 868 (10th Cir. 1992) ("The court has the inherent power 'to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.") quoting *Landis v. North Am. Co.*, 299 U.S. 248,254 (1936). This inherent power includes the authority to strike motions as well as pleadings. *See Lynn v. Roberts*, 2006 WL 2850273 (D. Kan., Oct. 4, 2006); *see also Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836,841 (10th Cir. 2005).

While Mr. Lipari argues that the Court does not have authority under either Rule 12 or Rule 37 of the Federal Rules of Civil Procedure to strike his Rule 60(b) motion, these rules apply only to parties, and pleadings filed by parties in civil litigation. Mr. Lipari is not a party to the action, and motions as an interested person are not authorized pleadings in this action. As noted above, Mr. Lipari has no standing in this case to litigate on behalf of his company. Therefore, the Court may strike his filings through its inherent power to control its own docket. Moreover, the Court has authority under Rule 11(b) to *sua sponte* issue sanctions, including striking motions and any other discipline the Court in its discretion deems appropriate. *See Lynn*, 2006 WL 2850273, *5-6.

Because the Court properly struck Mr. Lipari's Rule 60(b) motion, his Motion to Alter or Amend Judgment pursuant to Rule 59(e) should be denied.

² To the extent the Court may now consider the merits of Mr. Lipari's Rule 60(b) motion, these same arguments defeat that motion. Defendants also hereby incorporate their prior arguments with respect to the Rule 60(b) motion. (Doc. No. 123).

WHEREFORE, for the above stated reasons, defendants request this Court strike plaintiff's Rule 59(e) Motion to Alter or Amend Judgment or, in the alternative, deny it on its merits, and grant defendants whatever other relief to which they are justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the above item was filed in PDF format with the Court pursuant to its *Case Management / Electronic Case Files* program and thereby a notice of filing was e-mailed to counsel of record herein, all on the 23rd day of May, 2008.

A copy was also served via United States mail, postage prepaid, to:

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EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MEDICAL SUPPLY CHAIN, INC.,)	
)	
Plaintiff,)	
)	
v.)	
	)	No. 05-2299-CM
)	
NEOFORT\1A, INC., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

On March 31, 2008, this court issued an order striking a Rule 60(b) Motion from Samuel Lipari, directing Mr. Lipari to show cause why his filings have not violated Rule 11(b), and warning Mr. Lipari of possible sanctions (Doc. 127). This case is before the court on Mr. Lipari's filing entitled, "Plaintiffs Fed. R. Civ. P. 59(e), to Alter or Amend the Judgment and Answer to Order to Show Cause" (Doc. 128). To the extent that Mr. Lipari's filing is a motion, the court strikes the present filing from the record. In addition, the court prohibits Mr. Lipari from any future *pro se* filings in this case unless timely and proper objections are filed.

I. Background

The extended history of this case is discussed in more detail in previous orders of this court and of the Tenth Circuit (Docs. 78, 104, 118). The March 31,2008 order by this court stated:

[quoting the August 7, 2006 order] The court also finds that Mr. Lipari may not substitute himself for Medical Supply. Federal Rule of Civil Procedure 25(c), which governs the procedural substitution of a party after a transfer of interest, states: "In case of any transfer of interest, the action *may* be continued by or against the original party, *unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action.*" Fed. R. Civ. P. 25(c) (emphasis added). As evidenced by the plain language of Rule 25(c), the court has discretion to allow

Mr. Lipari to substitute. *Prop-Jets, Inc. v. Chandler*, 575 F.2d 1322, 1324 (10th Cir. 1978). The court declines to exercise its discretion, however, because this case has been dismissed, and substitution will not change that outcome. (Doc. 104).

Since that filing the status of the parties has not changed. Mr. Lipari is not a plaintiff. The court does not have any notice that Mr. Lipari is now a licensed attorney. Without any intervening change in the interim, the previous conclusions regarding Mr. Lipari's ability to represent plaintiff apply to the present motion. For the above-mentioned reasons, the court strikes Mr. Lipari's pending motion (Doc. 122).

Another portion of the court's previous order is also relevant. At that time, the court warned Mr. Lipari, stating "[c]onsistent with this ruling, the court cautions Mr. Lipari against filing additional motions. Of course, plaintiff may allow Mr. Hawver or other counsel to represent it ... Future attempts to resurrect this case could result in the court imposing additional sanctions." Mr. Lipari's recent filings (Docs. 122, 125) appear to violate this warning.

Additionally, Mr. Lipari's "Rule 60(b) Motion" misstates several resolved issues, making his arguments frivolous. Mr. Lipari accuses this court of having "bias against the plaintiff" that "clearly results from the court's disbelief that the conduct complained of by the plaintiff occurred." Mr. Lipari challenges the court by noting, "[t]he plaintiff's Missouri state law antitrust claims will be filed in Independence, Missouri unnecessarily duplicating the present litigation if the present federal claims are not reopened." Before the court addressed whether the present federal case should be reopened, Mr. Lipari filed a notice that he filed a "concurrent Missouri antitrust action [on] February 25, 2008 in ... Independence Missouri." (Doc. 125).

Mr. Lipari's actions and filings appear to violate Federal Rule of Civil Procedure II(b). Under Rule II(c)(I)(B), Mr. Lipari is directed to show cause within twelve days of this order why he has not violated Rule 11(b). **If Mr. Lipari fails to demonstrate that he has not violated Rule 11(b), this court will sanction Mr. Lipari by fine and filing restrictions.** (Doc. 127).

Mr. Lipari argues that the court must correct its prior order to correct two clear errors. First, Mr. Lipari asserts that there are intervening decisions that render the prior order inconsistent. To support this assertion, Mr. Lipari relies on an order from this court in another case, *Lipari v. Us Bancorp NA*, No. 07-cv-02146-CM-DJW ("*Lipari 2007*"). In an order denying in part a motion to dismiss in that case, this court stated:

Missouri law does, however, allow a dissolved corporation to assign its claims to a third-party. See, e.g., *Smith v. Taylor-Morley, Inc.*, 929 S.W.2d 918 (Mo. Ct. App.

1996) (upholding dissolved corporation's written assignment of rights to a purchase contract). The assignee may sue to recover damages for the dissolved corporation's claims. *Id.* (holding assignee of dissolved corporation's rights under a purchase contract could sue for injuries to dissolved corporation for breach of the purchase contract). Here, plaintiff alleges that he is the assignee of all rights and interests of Medical Supply, including the claims in this lawsuit. Accepting as true all material allegations of the complaint and construing the complaint in favor of plaintiff, the court finds that plaintiff has met his burden at this stage of the proceeding. Defendant's motion is denied with respect to standing.

Lipari v. Us. Bancorp NA, 524 F. Supp. 2d 1327, 1330 (D. Kan. 2007). Because Mr. Lipari considers this case and *Lipari 2007* to be "the same case or controversy," he concludes that he must be allowed to proceed as the assignee in this case. Second, Mr. Lipari contends that this court erred because it lacks the power to strike his motions.

In response to the show cause order, Mr. Lipari accuses the undersigned judge of "unlawfully instruct[ing] the Kansas District Court Clerk to violate established policies of the Kansas District Court" to not give Mr. Lipari proper notice. Mr. Lipari argues that this violates his rights to due process and voids the orders of this court.

II. Analysis

As before, Mr. Lipari's status in this case remains unchanged. For the reasons given before, the court strikes Mr. Lipari's filing to the extent that it is a motion. While the court could conclude its analysis on prior logic alone, the court will briefly address the substantive merits of Mr. Lipari's filing for clarification.

Mr. Lipari requests this court reconsider its prior order. 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. 1998); *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); *see also Sathan Maritime Co. v. Holiday Mansion*, 177 F.R.D. 504, 505 CD.Kan. 1998) C'Appropriate circumstances for a motion to reconsider are where the court has obviously misapprehended a party's position on the facts or the law, or the court has mistakenly decided issues outside of those the parties presented for determination."). "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." *Id* at 505.

Here, Mr. Lipari bases his filing on the need to correct clear error or prevent manifest injustice that would result from this court issuing inconsistent rulings regarding his rights as an assignee of Medical Supply Chain, Inc. in this case and in *Lipari 2007*. This court's rulings in this case and in *Lipari 2007*, however, are not inconsistent. There are two key distinctions. First, the statuses of the two cases when the seemingly inconsistent orders were issued are remarkably different. In this case, the court first held that Mr. Lipari could not represent Medical Supply Chain, Inc., and could not substitute himself as a *pro se* plaintiff, five months after the court dismissed all of Medical Supply Chain's claims in this case, noting "The court declines to exercise its discretion [to substitute Mr. Lipari as a plaintiff] ... because this case has been dismissed, and substitution will not change that outcome." (Doc. 104, at 4). This case has been dismissed. In contrast, the decision in *Lipari 2007* applied the judgment standards for a motion to dismiss for lack of standing, which require this court to accept as true all of Mr. Lipari's material allegations. Because this case and *Lipari 2007* are at different stages-this case being over, and the other at a relatively early stage-the court's judgment standards and analyses are necessarily different.

Second, the status of Mr. Lipari in relation to Medical Supply Chain, Inc. at the beginning of

this case is different from Mr. Lipari's status at the beginning of *Lipari 2007*. This case was filed on March 9, 2005. At that time, Medical Supply Chain, Inc. was the only identified plaintiff. Moreover, plaintiff did not file his notice to this court that he was the assignee of the interests of Medical Supply Chain, Inc. until May 17, 2006, identifying the date of assignment as January 27, 2006. When an assignment, or transfer, of interests takes place after the case has started, "the procedure to be followed is governed by Fed. R. Civ. P. 25(c)." *Froning's Inc. v. Johnston Feed Serv.*, 568 F.2d 108, 110 (8th Cir. 1978) (also noting that in the absence of a motion under Fed. R. Civ. P. 25(c) to substitute assignees as plaintiffs, "it is not error to continue the action in the name of the original parties."). Thus, in this case, the court analyzes Mr. Lipari's efforts to act as a plaintiff under Fed. R. Civ. P. 25(c), which allows for the court's discretion. Because this case has been dismissed, the court declines to substitute Mr. Lipari as a plaintiff. On the other hand, in *Lipari 2007*, Mr. Lipari filed that case in November 2006 as an assignee of the interests of Medical Supply Chain, Inc. from the beginning. Because he started *Lipari 2007* as a plaintiff, it is not necessary for the court to analyze whether to substitute him as a plaintiff under Fed. R. Civ. P. 25(c).

Because there are distinctions between the court's orders in this case and its order in *Lipari 2007*, the orders are not inconsistent. Because the rulings are not inconsistent, it is not necessary for the court to reconsider its prior order in this case to correct clear error.

Next, Mr. Lipari argues that the court erred by striking his motions because the court lacks authority to strike motions under the Federal Rules of Civil Procedure. Without addressing this court's authority under the Federal Rules of Civil Procedure, it is clear that this court has inherent authority to manage its docket to promote judicial efficiency and the "comprehensive disposition of cases." *Hartsel Sorines Ranch of Col. Inc. v. Bluegreen Corp.*, 296 F.3d 982, 985 (10th Cir. 2002). Moreover, this court has the inherent authority to impose sanctions to address abuses of the

judicial process. *Steinert v. Winn Group, Inc.*, 440 F.3d 1214, 1227 n.15 (10th Cir. 2006). Striking filings is a method of sanctioning. *Lynn v. Roberts*, No. 03-3464-JAR, 2005 WL 3087841, at *6 (D. Kan. Nov. 1, 2006). Consequently, in the interests of judicial efficiency, this court's striking of Mr. Lipari's filings was appropriate.

Lastly, the court considers Mr. Lipari's response to the order to show cause why he has not violated Rule II(b). Instead of attempting to explain or correct his filings, Mr. Lipari chose to accuse the undersigned judge of instructing the "Kansas District Court Clerk to violate established policies of the Kansas District Court," and of violating Mr. Lipari's due process rights.

A district court has the power to sanction a party who fails to follow local rules, federal rules, or a court order. *See Issa v. Camp USA*, 354 F.3d 1174, 1178 (10th Cir. 2003); *Lynn v. Roberts*, No. 01-3422-MLB, 2006 WL 2850273, at *6 (D. Kan. Oct. 4, 2006) (citing *Gripe v. City of Enid, Okla.*, 312 F.3d 1184, 1188 (10th Cir. 2003)). Filing restrictions are a method of sanctioning a party that persists in filing frivolous, malicious, or abusive filings. *See Custard v. Lappin*, 260 F. App'x 73, 73 (10th Cir. 2008). Filing restrictions are appropriate if they respond to "lengthy and abusive" litigation history. *Guttman v. Widman*, 188 F. App'x 691, 698 (10th Cir. 2006). The litigant must receive notice prior to the implementation of such restrictions. *Id.* The restrictions must be carefully tailored for the circumstances and provide guidelines for the litigant for how to obtain permission to file an action. *Id.*

This case has already been dismissed, but Mr. Lipari, who is not a plaintiff, persists in filing motions in this case. The court has warned him that if he continues to attempt to "resurrect" this case it could result in sanctions. Mr. Lipari has responded by filing repetitive motions in this case and by filing other cases in federal and state court that he contends are the "same case or controversy." Because Mr. Lipari has disregarded prior warnings and continues to attempt to act as

plaintiff in this dismissed case, Mr. Lipari is prohibited from submitting any other filings in this case, 05-2299, unless he is represented by counsel in this case. Mr. Lipari has ten days to file an objection. If no valid objection is filed, the filing restrictions will take effect.

IT IS THEREFORE ORDERED that Mr. Lipari's filing entitled, "Plaintiff's Fed. R. Civ. P. 59(e), to Alter or Amend the Judgment and Answer to Order to Show Cause" (Doc. 128) is stricken from the record.

IT IS FURTHER ORDERED that filing restrictions as defined above are imposed against Mr. Lipari.

Dated this 7th day of July 2008, at Kansas City, Kansas.

s/ Carlos Mur2.uia
CARLOS MURGUIA
United States District Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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'f?;'"
08 JUL 10 ~H 2: 02

MEDICAL SUPPLY CHAIN, INC.,)	
(Through assignee Samuel K. Lipari))f;:1:mrr	
SAMUEL K. LIPARI	)	1~O'BRIEN
<i>Plaintiff,</i>	)	;;L t.;
v,	)	BY ~~"OEPUTY
NOV ATION, LLC	)	A~ITY. KS
NEOFORMA, INC.)	
ROBERT J. ZOLLARS)	
VOLUNTEER HOSPITAL ASSOCIATION)	
CURT NONOMAQUE)	
UNIVERSITY HEALTHSYSTEM CONSORTIUM)	
ROBERT J. BAKER)	
US BANCORP, NA)	
US BANK)	
JERRY A. GRUNDHOFER)	
ANDREW CECERE)	
THE PIPER JAFFRAY COMPANIES)	
ANDREW S. DUFF)	
SHUGHART THOMSON & KILROY, P.c.)	
<i>Defendants.</i>)	

NOTICE OF APPEAL

Comes now the plaintiff Samuel K. Lipari, the assignee of all rights of the dissolved Missouri corporation Medical Supply Chain, Inc. and makes the following appeal from the trial court's denial of his Rule 60(b) motion on July 7,2008 based on his lack of standing after determining that the plaintiff had standing as the assignee of all rights of the dissolved Missouri corporation Medical Supply Chain, Inc. in the same matter or Article III controversy under a different style or case number.

The plaintiff also appeals the order of sanctions or loss of future rights to seek redress imposed by the Hon. Judge Carlos Murguia for relying on Judge Carlos Murguia's own order determining his capacity.

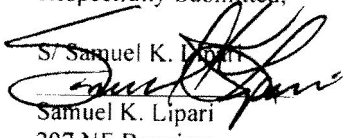
An order denying a Rule 60(b) motion is a final order for purposes of appeal. *Mohammed v. Sullivan*, 866 F.2d 258, 260 (8th Cir. 1989). The US Court of Appeals for the Tenth Circuit has jurisdiction for review to determine that the discretion exercised by the court was not guided by erroneous legal conclusions. *United States v. Johnston*, 146 F.3d 785, 792 (10th Cir.998) (quoting *Koon v. United States*. 518 U.S. 81,100,116 S.Ct. 2035,135 L.Ed.2d 392 (1996)).

The plaintiff observes that the trial court's disposal of the motion for new trial appears to be in error and a reviewable abuse of discretion similar to that described in *Jennings v. Rivers*, 394 F.3d 850 (10th Cir., 2005) "[I]n the instant case, the district court has not evaluated the denial of plaintiffs Rule

Exhibit 0

60(b)(1) motion as to Mr. Howell under the appropriate standards." The inconsistency of standing determinations in the same Article III matter or controversy appears to be the exceptional circumstances requiring relief.

Respectfully Submitted,


S/ Samuel K. Lipari

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816-365-1306

saml@medicalsupplychain.com

Prose

CERTIFICATE OF SERVICE

I certify I have sent a copy via electronic case filing to the undersigned opposing counsel and via email on 7/10/08.

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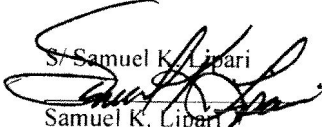
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S/ Samuel K. Lipari

Samuel K. Lipari

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

SAMUEL K. LIPARI,)
)
 Plaintiff,)
)
 vs.) Case No. 07-0849-CV-W-FJG
)
 GENERAL ELECTRIC COMPANY, et al.,)
)
 Defendants.)

**SUGGESTIONS OF SEPARATE DEFENDANT
SEYFARTH SHAW LLP IN OPPOSITION TO MOTION OF PLAINTIFF TO ALTER
OR AMEND JUDGMENT**

COMES NOW the separate defendant, Seyfarth Shaw LLP, and submits the following Suggestions in opposition to the Motion of plaintiff to alter or amend the judgment. This defendant submits that, despite its length, the plaintiff's motion has not raised any new matters which were not presented or which could not have been presented in opposition to the defendants' various motions to dismiss. There is no legal or factual justification for re-opening the matter at this point, or for altering or amending the judgment of dismissal ordered by the Court.

I. MOTIONS TO ALTER OR AMEND JUDGMENT MUST BE BASED ON NEW ARGUMENTS AND FACTS WHICH COULD NOT HAVE BEEN PREVIOUSLY PRESENTED.

Motions to alter or amend the court's judgment are vested in the sound discretion of the trial court.

A district court has broad discretion in determining whether to grant a motion to alter or amend judgment, and this court will not reverse absent a clear abuse of discretion by the district court. See *Harris v. Arkansas Dept. of Human Serv.*, 771 F.2d 414, 416-17 (8th Cir. 1985).

Hagerman v. Yukon Energy Corp., 839 F.2d 407, 413-414 (8th Cir. 1988).

Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion. However, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.

Wright, Miller & Miller, *Federal Practice and Procedure: Civil* §2810.1, p. 124 (1995).

Such motions are not to be used to re-hash arguments already rejected by the Court, nor to raise issues which could have been raised in the first instance. As the Eighth Circuit has stated:

"Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of the summary judgment motion. The nonmovant has an affirmative duty to come forward to meet a properly supported motion for summary judgment Nor should a motion for reconsideration serve as the occasion to tender new legal theories for the first time." *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir.), as amended, 835 F.2d 710 (7th Cir. 1987) (quoting *Keene Corp. v. International Fidelity Ins. Co.*, 561 F. Supp. 656, 665-66 (N.D. Ill. 1983), aff'd, 736 F.2d 388 (7th Cir. 1984)).

Hagerman v. Yukon Energy Corp., 839 F.2d 407, 414 (8th Cir. 1988). Moreover, the Court in *Hagerman* held: "A motion to alter or amend judgment cannot be used to raise arguments which could have been raised prior to the issuance of judgment. *Federal Deposit Ins. Corp. v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986). See also, *Whitlock v. Midwest Acceptance Corp.*, 575 F.2d 652, 653 n.1 (8th Cir. 1978)." 839 F.2d at 414.

Motions under Rule 59(e) are not appropriate if the movant merely asks the Court to revisit issues already addressed or to hear new arguments or supporting facts that could have been presented originally. *Global Network Technologies v. Regional Airport Authority*, 122 F.3d 661 (8th Cir. [Mo.] 1997); *Concordia College Corp. v. W.R. Grace Co.*, 999 F.2d 326 (8th Cir. 1993), *cert den.* 510 U.S. 1093 (1994); *Innovative Home Health Care v. P.T. – O.T. Associates*, 141 F.3d 1284 (8th

Cir. 1998). Indeed, a party's failure to present his strongest case in the first instances does not entitle him to a second chance in the form of a motion for reconsideration. Such motions are therefore not appropriate if the movant intends only that the court hear new arguments or supporting facts. *See, Capitol Indemnity Corp. v. Russelville Steel Co.*, 367 F.3d 831 (8th Cir. 2004)(new legal arguments raised for the first time on Rule 59(e) motion are untimely and cannot be considered).

Motions for reconsideration should not be used to present arguments on theories or evidence which were previously made and rejected, or which were available but not proffered. *Concordia College Corp. v. Grace*, 999 F.2d 326 (8th Cir. 1993); *Paramount Pictures Corp. v. Video Broadcasting Systems, Inc.*, 1989 WL 159369 (D. Kan 1989) (citing *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986)).

Granting or denying a motion for new trial on the ground of newly discovered evidence rests largely in the sound discretion of the trial court; but it must first be shown to the court's satisfaction that such evidence could not, with reasonable diligence, have been produced at the trial. *United States v. Metropolitan St. Louis Sewer Dist.*, 440 F.3d 930 (8th Cir. [Mo.] 2006).

Here, there is no new evidence nor are any new legal arguments presented in plaintiff's Rule 59(e) motion. The plaintiff could have – and did – assert most of these arguments in his previous briefs. Thus, a “Motion to Reconsider” is singularly inappropriate and a waste of the Court's and the parties' time. The only new argument (for “recusal”) could easily have been raised before, and the failure to raise it has waived it.

II. RECUSAL WAS NOT REQUESTED AND WOULD NOT HAVE BEEN JUSTIFIED.

Under the recusal statute, a motion to request a judge to recuse himself must be “timely.” 28 U.S.C. §144. The original statute measures the time from the “term” or “session” of the Court, those

archaic terms no longer apply in most districts, such as the Western District of Missouri. Where the Court does not have “terms” or “sessions,” a motion to recuse must be filed as soon as possible after the case is filed and assigned to the judge. Such a motion must be filed at the earliest possible moment after the movant learns of the facts demonstrating a basis for the claim, *Twist v. Department of Justice*, 344 F.Supp.2d 137 (D. D.C. 2004), in order to prevent a party from awaiting the outcome of the matter before taking action. *Davis v. Cities Service Oil Co.*, 420 F.2d 1278 (10th Cir. 1970). Certainly it is too late to wait until after the Court has entered judgment before seeking the recusal of the court. *United States v. Berger*, 375 F.3d 1223 (11th Cir. 2004); *Te-Ta-Ma Truth Foundation v. World Church of the Creator*, 246 F.Supp.2d 980 (N.D. Ill. 2003).

In addition, plaintiff has provided no current facts or evidence which would justify even the consideration of recusal. Rather, as with his underlying complaints, plaintiff has no more than speculation, woven together with a fair amount of imagination. Certainly, much more than this is required in order to support a request that a federal judge be recused from overseeing a case. See, e.g. *United States v. Platshorn*, 488 F.Supp. 1367 (S.D. Fla. 1980)(no recusal based on movant’s speculation). +

III. THE “SHOW CAUSE” ORDER ENTERED IN THE KANSAS FEDERAL COURT WAS SATISFIED.

In his Motion, plaintiff refers to his prior, unsuccessful, efforts to assert these and similar claims in the District of Kansas. Notably, plaintiff states, at paragraph 17:

The Kansas District Court of Hon. Judge Carlos Murguia that now has the former Western District of Missouri case of *Medical Supply Chain, Inc. v. Novation LLC*, et al., Case No. 05-0210-CV-W-ODS indicated that it was giving consideration to reopening the plaintiff’s federal antitrust and racketeering claims by making a show cause

order against the defendants. See exb. 6 Judge Murguia's Show Cause Order.

Motion Under Fed. R. Civ. P. 59(e), to Alter or Amend Judgment, p. 4, ¶17. So, using this exhibit (attached to these Suggestions as Exhibit A), plaintiff advises this Court that Judge Murguia was considering "reopening" *Medical Supply Chain v. Neoforma, Inc.* (the case which had previously been dismissed), after that dismissal had been affirmed by the Tenth Circuit Court of Appeals (by refusing to consider an untimely appeal from the district court's denial of a Rule 59(e) motion). *Medical Supply Chain, Inc. v. Neoforma, Inc.*, 508 F.3d 572 (Fed. 10th Cir. 2007).

The facts demonstrate otherwise. After the unsuccessful appeal, plaintiff returned to the District of Kansas and tried to resume filing pleadings (in his own name) as if the case were not closed. Plaintiff had filed a Rule 60(b) motion, which the court struck, ordering the plaintiff, Mr. Lipari, to show cause why his filings had not violated Rule 11, F.R.C.P. (Doc. 127) Undaunted, plaintiff then filed another Rule 59(e) motion to alter or amend, and included in that motion an attempt to show cause in response to the Court's order. (Doc. 128)

With that background, then, the "Show Cause Order" of May 16, 2008 arises. As noted in that Order (Exhibit A), the defendants had not filed a response to plaintiff's Rule 59 motion. Defendants were ordered to file such a response by May 27, or "the court will consider plaintiff's motion (Doc. 128) without the benefit of defendants' response, as set out in Rule 7.4." Thus, Judge Murguia did NOT say that he was "giving consideration to reopening the plaintiff's federal antitrust and racketeering claims," as alleged above in paragraph 17 of the Motion in this Court. Instead, Judge Murguia gave defendants the chance to respond to the Rule 59 motion, or the Court would rule on it without the input of the defendants.

But what happened next? Defendants filed a response to the Show Cause Order and to the Rule 59 Motion on May 23, 2008, within the time set by the Court. (Doc. 131, attached hereto as Exhibit B.) In that pleading, the defendants showed good cause by explaining that they had not responded to the Rule 59 motion because it had been filed in response to the Court's sua sponte order, and so defendants "did not believe they had a right to weigh in on the matter." *Id.*, Exhibit B, at p. 2. After defendants responded to the Rule 59 motion, Judge Murguia proceeded to rule on plaintiff's motion (Doc. 135, attached hereto as Exhibit C), denying it in no uncertain terms. And that ruling supports the position of the defendants in this case, rather than that of the plaintiff.

This case has already been dismissed, but Mr. Lipari, who is not a plaintiff, persists in filing motions in this case. The court has warned him that if he continues to attempt to "resurrect" this case it could result in sanctions. Mr. Lipari has responded by filing repetitive motions in this case and by filing other cases in federal and state court that he contends are "the same case or controversy." Because Mr. Lipari has disregarded prior warnings and continues to attempt to act as plaintiff in this dismissed case, **Mr. Lipari is prohibited from submitting any other filings in this case, 05-2299, unless he is represented by counsel in this case. Mr. Lipari has ten days to file an objection. If no valid objection is filed, the filing restrictions will take effect.**

Memorandum and Order, Exhibit C, pp. 6-7 (emphasis in original). Rather than filing such an objection, plaintiff has filed a Notice of Appeal. (Doc. 136, Exhibit D, attached.)

Thus, the Court's rulings in the Kansas case provide no assistance or support for plaintiff's position in this case, in this Court.

IV. NO ARGUMENTS ARE MADE IN THE MOTION REGARDING SEYFARTH SHAW LLP.

Defendant Seyfarth Shaw is only named once in the Motion (at ¶18), and then only obliquely in connection with another defendant. No attempt is made in the Motion to demonstrate how or why the Court's order of dismissal is inappropriate or improper as to this defendant.

V. CONCLUSION.

Based upon all the foregoing arguments and authorities, defendant Seyfarth Shaw LLP prays that plaintiff's Motion Under Fed. R. Civ. P. 59(e) to Alter or Amend Judgment be denied in its entirety, and that this defendant be awarded its costs herein incurred and expended.

SPENCER FANE BRITT & BROWNE LLP

/s/ J. Nick Badgerow
J. Nick Badgerow #35885
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(913) 345-8100
(913) 345-0736 (Facsimile)
nbadgerow@spencerfane.com
ATTORNEYS FOR DEFENDANT
SEYFARTH SHAW LLP

Certificate of Service

I hereby certify that on August 8, 2008, I electronically filed the foregoing with the clerk of the court using the CM/ECF system which will send a notice of electronic filing to the following:

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Lee's Summit, MO 64064
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ATTORNEY FOR BRADLEY J. SCHLOZMAN

s/ J. Nick Badgerow
ATTORNEY FOR DEFENDANT
SEYFARTH SHAW LLP

EXHIBIT A

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

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

SHOW CAUSE ORDER

On April 8, 2008, plaintiff filed a Motion to Alter or Amend Judgment and Answer to Order to Show Cause (Doc. 128). Defendants have failed to timely submit a response to the pending motion. Rule 7.4 of the Rules of Practice provides that the “failure to file a brief or response within the time specified within [Rules 6.1 and 7.1(c)] shall constitute the waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect.” D. Kan R.7.4.

Defendants are therefore directed to show cause, in writing, on or before May 23, 2008, why plaintiff’s motion (Doc. 128) should not be granted. Defendants are further directed to file a response to plaintiff’s motion on or before May 27, 2008. Where defendants fail to respond to this order, the court will consider plaintiff’s motion (Doc. 128) without the benefit of defendants' response, as set out in Rule 7.4.

IT IS SO ORDERED.

Dated this 16th day of May 2008, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge

EXHIBIT B

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

MEDICAL SUPPLY CHAIN, INC.,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 05-2299-CM
)	
NOVATION, LLC, et al.,)	
)	
Defendants.)	

**DEFENDANTS’ JOINT RESPONSE TO SAMUEL LIPARI’S MOTION TO ALTER
OR AMEND JUDGMENT (DOC. NO. 128) AND RESPONSE
TO SHOW CAUSE ORDER (DOC. NO. 130)**

Defendants, through their respective attorneys of record, file this response to Samuel Lipari’s Motion to Alter or Amend Judgment, and answer the Court’s May 16, 2008 Show Cause Order.

As discussed herein, the Court’s March 31, 2008 ruling striking Mr. Lipari’s Rule 60(b) motion is well-founded and supported in both law and fact. As a consequence, the present Rule 59(e) motion likewise should be stricken. Medical Supply Chain, Inc. sought to appeal this Court’s earlier rulings, including the denial of its Motion to Substitute Mr. Lipari as party plaintiff. That appeal was dismissed. 508 F.3d 572 (10th Cir. 2007). The Court of Appeals thereafter rejected Medical Supply’s further request for relief from the judgment. No facts or laws have changed since either this Court’s dismissal or the Tenth Circuit’s ruling that in any fashion suggest Medical Supply Chain, Inc. (or its sole shareholder) can reassert the now-twice dismissed federal claims. Because Mr. Lipari is not the plaintiff, he lacks standing to pursue relief on behalf of Medical Supply Chain, Inc. and there is no authority for the Court to consider his Rule 59(e) or 60(b) motions. But even on its merits, Mr. Lipari’s present motion should be denied for the following reasons:

1. The Court's Order striking Lipari's Rule 60(b) motion is not a "Judgment" subject to a Rule 59(e) motion; and
2. There has been no intervening change of law to support the motion.
3. The Court has inherent authority to strike Mr. Lipari's motions.

For these reasons, the Court should strike plaintiff's Rule 59(e) Motion to Alter Or Amend Judgment or, in the alternative, deny it on its merits.

I. Response to Show Cause Order (Doc. No. 130)

On March 31, 2008, this Court, sua sponte, struck Lipari's "Rule 60(b) Motion" (Doc. 122) and directed Lipari to show cause why he has not violated Rule 11(b). The Court further ruled that if Lipari failed to demonstrate that he has not violated Rule 11(b), the Court would sanction Lipari with both a fine and filing restrictions (Doc. 127 at p. 3). Lipari's Rule 59(e) Motion was filed in response to the Court's March 31 Order. Thus, the defendants believed the Court would determine whether Lipari had complied with its sua sponte Order and that they no right to weigh in on the matter. In other words, because Lipari's Rule 59(e) motion did not involve any issue presented by any party to the case, and because the Court had previously held that Lipari was not authorized to file pleadings in this case, defendants did not believe that the Court desired a response to that motion. In light of such circumstances, defendants suggest any neglect was inadvertent and excusable.

Pursuant to the Court's May 16, 2008 Order (Doc. 130), the defendants hereby object to Lipari's Rule 59(e) Motion.

II. Argument Opposing Mr. Lipari's Rule 59(e) Motion (Doc. No. 128)

- A. **Lipari lacks standing to litigate on behalf of Medical Supply Company, Inc. Therefore, like the previous Rule 60(b) motion, his Rule 59(e) motion should be stricken from the record.**

Mr. Lipari continues his attempt to re-litigate this matter as a *pro se* “interested person” on behalf of his corporation even though he has never been substituted as the plaintiff and Medical Supply’s appeal was dismissed. As noted in the Court’s March 31, 2008 Order, as well as in numerous other pleadings and Orders in this litigation, the plaintiff in this action is Medical Supply Chain, Inc. The fact that Mr. Lipari voluntarily dissolved his corporation (after his prior lawyer was disbarred) does not automatically entitle him the right to prosecute these claims or file pleadings in his personal capacity. *See Reben v. Wilson*, 861 S.W.2d 171, 176 (Mo. App. E.D. 1993) (holding that dissolution of a corporation does not abate or suspend pending proceedings by the corporation); *Nato Indian Nation v. State of Utah*, 76 Fed. Appx. 854, 856 (10th Cir. 2003) (prohibiting corporations from appearing *pro se* and holding that a corporation must appear through a licensed attorney).

While Mr. Lipari attempted to substitute himself as the plaintiff in this action, the Court declined in its discretion to do so. *See* Doc. No. 104. In that Order, the Court noted that the substitution of Mr. Lipari would serve no purpose because the claims had been dismissed and a substitution of party would not change the outcome. *Id.* p.4. That reasoning still applies. Moreover, that ruling is the law of the case in light of plaintiff’s dismissed appeal. The plaintiff in this action remains Medical Supply Chain, Inc. and there is no authority for any motion filed by Mr. Lipari, including the pending motion to alter or amend judgment. *See Phelps v. Hamilton*, 122 F.3d 1309, 1315 (10th Cir. 1997) (recognizing that “a plaintiff must maintain standing at all times throughout the litigation for a court to retain jurisdiction.”). As it did with the Rule 60(b) motion, Mr. Lipari’s Rule 59(e) motion should also be stricken by the Court.

B. There is no “judgment” for the Court to alter or amend and Lipari is attempting to re-litigate settled issues.

If the Court declines to strike Mr. Lipari's Rule 59(e) motion, then it should deny it on its merits. Motions to alter or amend judgments pursuant to Rule 59(e) are extreme remedies and should only be granted to correct manifest errors of law or present newly discovered evidence. *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997). Neither is applicable here.

The Court's decision to strike Lipari's Rule 60(b) motion based on lack of standing is not a judgment subject to a Rule 59(e) motion. Rule 54(a) of the Federal Rules of Civil Procedure defines judgment as "a decree and any order which from an appeal lies." The Court's March 31 Order did not deny Lipari's Rule 60(b) motion, but rather struck it from the record due to Lipari's lack of standing. Therefore, the Court's March 31 Order is not an order "from which an appeal lies" because it did not determine any new issue as to Lipari's standing.

While Mr. Lipari argues that he may proceed *pro se* as the alleged assignee of Medical Supply's claims, this assertion is neither an assignment of error in law nor newly discovered evidence. Medical Supply has already made this same argument based on the same evidence. The Court rejected its position and Medical Supply's appeal was dismissed. Mr. Lipari cannot re-litigate the issue through successive motions under Rules 59(e) or 60(b), particularly where he is not a party in the case. *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (holding that motions under Rules 59(e) and 60(b) "are inappropriate vehicles to reargue an issue previously addressed by the court when the motion merely advances new arguments, or supporting facts which were available at the time of the original motion."); *see also Borrero v. City of Chicago*, 456 F.3d 698 (7th Cir. 2005).¹

¹ Following the Court's dismissal of this case, Mr. Lipari filed a "Motion for Reconsideration." That motion was denied and Medical Supply Chain appealed, though its appeal was dismissed as untimely. There is simply no reason – or legal or factual basis – to keep litigating issues the plaintiff has repeatedly lost.

Notwithstanding this bar to the motions, Mr. Lipari constructs his argument upon this Court's decision in *Lipari v. US Bancorp, et al*, Case No. 07-CV-02146 wherein the Court has allowed that Lipari to proceed *pro se* on Medical Supply Chain, Inc.'s state law claims as the alleged assignee of all assets from Medical Supply Chain. According to Mr. Lipari, this result is different than the one in this case that denied substitution of parties, and was brought about due to the June 4, 2007 Supreme Court decision in *Erickson v. Pardus*, 127 S. Ct. 2197 (2007) (discussing Rule 8 pleading standards in a *pro se* prisoner case).

But there is no intervening change in law based upon *Erickson* or the decision in *Lipari* that compels re-litigation of the issues here. Mr. Lipari, himself, is the named plaintiff in the most recent case and the Court found there existed sufficient factual allegations for Mr. Lipari, as alleged assignee of corporate assets, to appear *pro se* as the named plaintiff in that action. Mr. Lipari originated that action and there was no motion, order, or appeal concerning substitution of parties. In contrast, this lawsuit was filed by a then-licensed lawyer in the name of the corporate entity Medical Supply Chain, Inc. and the dissolution of Medical Supply Chain (during the case) does not automatically substitute Lipari as the plaintiff. Medical Supply remains the plaintiff in this action and it must be represented by a licensed attorney—and only a licensed attorney may file pleadings on its behalf.

There is no change in law that would allow Mr. Lipari to now step into Medical Supply's place to pursue federal claims that were dismissed (twice) on the merits. Mr. Lipari is attempting to re-litigate issues that have been settled by this Court and the Court of Appeals. Therefore, his

Motion to Alter or Amend Judgment pursuant to Rule 59(e) should be denied if it is not stricken.²

C. The Court may strike Lipari's Rule 60(b) motion through its inherent authority to control its docket.

Every court is granted the inherent authority to control its docket as it sees fit. *In re Calder*, 973 F.2d 862, 868 (10th Cir. 1992) (“The court has the inherent power ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’”) quoting *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). This inherent power includes the authority to strike motions as well as pleadings. *See Lynn v. Roberts*, 2006 WL 2850273 (D. Kan., Oct. 4, 2006); *see also Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 841 (10th Cir. 2005).

While Mr. Lipari argues that the Court does not have authority under either Rule 12 or Rule 37 of the Federal Rules of Civil Procedure to strike his Rule 60(b) motion, these rules apply only to parties, and pleadings filed by parties in civil litigation. Mr. Lipari is not a party to the action, and motions as an interested person are not authorized pleadings in this action. As noted above, Mr. Lipari has no standing in this case to litigate on behalf of his company. Therefore, the Court may strike his filings through its inherent power to control its own docket. Moreover, the Court has authority under Rule 11(b) to *sua sponte* issue sanctions, including striking motions and any other discipline the Court in its discretion deems appropriate. *See Lynn*, 2006 WL 2850273, *5-6.

Because the Court properly struck Mr. Lipari's Rule 60(b) motion, his Motion to Alter or Amend Judgment pursuant to Rule 59(e) should be denied.

² To the extent the Court may now consider the merits of Mr. Lipari's Rule 60(b) motion, these same arguments defeat that motion. Defendants also hereby incorporate their prior arguments with respect to the Rule 60(b) motion. (Doc. No. 123).

WHEREFORE, for the above stated reasons, defendants request this Court strike plaintiff's Rule 59(e) Motion to Alter or Amend Judgment or, in the alternative, deny it on its merits, and grant defendants whatever other relief to which they are justly entitled.

Respectfully submitted,

/s/ Mark A. Olthoff

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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the above item was filed in PDF format with the Court pursuant to its *Case Management / Electronic Case Files* program and thereby a notice of filing was e-mailed to counsel of record herein, all on the 23rd day of May, 2008.

A copy was also served via United States mail, postage prepaid, to:

Mr. Samuel K. Lipari
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Lee's Summit, MO 64064-3400

/s/ Mark A. Olthoff

Attorney for Defendants

EXHIBIT C

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

MEDICAL SUPPLY CHAIN, INC.,)
)
 Plaintiff,)
)
 v.)
)
 NEOFORMA, INC., et al.,)
)
 Defendants.)

No. 05-2299-CM

MEMORANDUM AND ORDER

On March 31, 2008, this court issued an order striking a Rule 60(b) Motion from Samuel Lipari, directing Mr. Lipari to show cause why his filings have not violated Rule 11(b), and warning Mr. Lipari of possible sanctions (Doc. 127). This case is before the court on Mr. Lipari’s filing entitled, “Plaintiff’s Fed. R. Civ. P. 59(e), to Alter or Amend the Judgment and Answer to Order to Show Cause” (Doc. 128). To the extent that Mr. Lipari’s filing is a motion, the court strikes the present filing from the record. In addition, the court prohibits Mr. Lipari from any future *pro se* filings in this case unless timely and proper objections are filed.

I. Background

The extended history of this case is discussed in more detail in previous orders of this court and of the Tenth Circuit (Docs. 78, 104, 118). The March 31, 2008 order by this court stated:

[quoting the August 7, 2006 order] The court also finds that Mr. Lipari may not substitute himself for Medical Supply. Federal Rule of Civil Procedure 25(c), which governs the procedural substitution of a party after a transfer of interest, states: “In case of any transfer of interest, the action *may* be continued by or against the original party, *unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action.*” Fed. R. Civ. P. 25(c) (emphasis added). As evidenced by the plain language of Rule 25(c), the court has discretion to allow

Exhibit C

Mr. Lipari to substitute. *Prop-Jets, Inc. v. Chandler*, 575 F.2d 1322, 1324 (10th Cir. 1978). The court declines to exercise its discretion, however, because this case has been dismissed, and substitution will not change that outcome. (Doc. 104).

Since that filing the status of the parties has not changed. Mr. Lipari is not a plaintiff. The court does not have any notice that Mr. Lipari is now a licensed attorney. Without any intervening change in the interim, the previous conclusions regarding Mr. Lipari's ability to represent plaintiff apply to the present motion. For the above-mentioned reasons, the court strikes Mr. Lipari's pending motion (Doc. 122).

Another portion of the court's previous order is also relevant. At that time, the court warned Mr. Lipari, stating "[c]onsistent with this ruling, the court cautions Mr. Lipari against filing additional motions. Of course, plaintiff may allow Mr. Hawver or other counsel to represent it . . . Future attempts to resurrect this case could result in the court imposing additional sanctions." Mr. Lipari's recent filings (Docs. 122, 125) appear to violate this warning.

Additionally, Mr. Lipari's "Rule 60(b) Motion" misstates several resolved issues, making his arguments frivolous. Mr. Lipari accuses this court of having "bias against the plaintiff" that "clearly results from the court's disbelief that the conduct complained of by the plaintiff occurred." Mr. Lipari challenges the court by noting, "[t]he plaintiff's Missouri state law antitrust claims will be filed in Independence, Missouri unnecessarily duplicating the present litigation if the present federal claims are not reopened." Before the court addressed whether the present federal case should be reopened, Mr. Lipari filed a notice that he filed a "concurrent Missouri antitrust action [on] February 25, 2008 in . . . Independence Missouri." (Doc. 125).

Mr. Lipari's actions and filings appear to violate Federal Rule of Civil Procedure 11(b). Under Rule 11(c)(1)(B), Mr. Lipari is directed to show cause within twelve days of this order why he has not violated Rule 11(b). **If Mr. Lipari fails to demonstrate that he has not violated Rule 11(b), this court will sanction Mr. Lipari by fine and filing restrictions.** (Doc. 127).

Mr. Lipari argues that the court must correct its prior order to correct two clear errors. First, Mr. Lipari asserts that there are intervening decisions that render the prior order inconsistent. To support this assertion, Mr. Lipari relies on an order from this court in another case, *Lipari v. U.S. Bancorp NA*, No. 07-cv-02146-CM-DJW ("*Lipari 2007*"). In an order denying in part a motion to dismiss in that case, this court stated:

Missouri law does, however, allow a dissolved corporation to assign its claims to a third-party. *See, e.g., Smith v. Taylor-Morley, Inc.*, 929 S.W.2d 918 (Mo. Ct. App.

1996) (upholding dissolved corporation's written assignment of rights to a purchase contract). The assignee may sue to recover damages for the dissolved corporation's claims. *Id.* (holding assignee of dissolved corporation's rights under a purchase contract could sue for injuries to dissolved corporation for breach of the purchase contract). Here, plaintiff alleges that he is the assignee of all rights and interests of Medical Supply, including the claims in this lawsuit. Accepting as true all material allegations of the complaint and construing the complaint in favor of plaintiff, the court finds that plaintiff has met his burden at this stage of the proceeding. Defendant's motion is denied with respect to standing.

Lipari v. U.S. Bancorp NA, 524 F. Supp. 2d 1327, 1330 (D. Kan. 2007). Because Mr. Lipari considers this case and *Lipari 2007* to be "the same case or controversy," he concludes that he must be allowed to proceed as the assignee in this case. Second, Mr. Lipari contends that this court erred because it lacks the power to strike his motions.

In response to the show cause order, Mr. Lipari accuses the undersigned judge of "unlawfully instruct[ing] the Kansas District Court Clerk to violate established policies of the Kansas District Court" to not give Mr. Lipari proper notice. Mr. Lipari argues that this violates his rights to due process and voids the orders of this court.

II. Analysis

As before, Mr. Lipari's status in this case remains unchanged. For the reasons given before, the court strikes Mr. Lipari's filing to the extent that it is a motion. While the court could conclude its analysis on prior logic alone, the court will briefly address the substantive merits of Mr. Lipari's filing for clarification.

Mr. Lipari requests this court reconsider its prior order. 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. 1998); *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. Schmuck Mkts., Inc.*, 869 F. Supp. 895, 897 (D. Kan. 1994) (citations omitted); D. Kan. Rule 7.3 (listing three bases for reconsideration of order); *see also Sithon Maritime Co. v. Holiday Mansion*, 177 F.R.D. 504, 505 (D. Kan. 1998) (“Appropriate circumstances for a motion to reconsider are where the court has obviously misapprehended a party’s position on the facts or the law, or the court has mistakenly decided issues outside of those the parties presented for determination.”). “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.” *Id.* at 505.

Here, Mr. Lipari bases his filing on the need to correct clear error or prevent manifest injustice that would result from this court issuing inconsistent rulings regarding his rights as an assignee of Medical Supply Chain, Inc. in this case and in *Lipari 2007*. This court’s rulings in this case and in *Lipari 2007*, however, are not inconsistent. There are two key distinctions. First, the statuses of the two cases when the seemingly inconsistent orders were issued are remarkably different. In this case, the court first held that Mr. Lipari could not represent Medical Supply Chain, Inc., and could not substitute himself as a *pro se* plaintiff, five months after the court dismissed all of Medical Supply Chain’s claims in this case, noting “The court declines to exercise its discretion [to substitute Mr. Lipari as a plaintiff] . . . because this case has been dismissed, and substitution will not change that outcome.” (Doc. 104, at 4). This case has been dismissed. In contrast, the decision in *Lipari 2007* applied the judgment standards for a motion to dismiss for lack of standing, which require this court to accept as true all of Mr. Lipari’s material allegations. Because this case and *Lipari 2007* are at different stages—this case being over, and the other at a relatively early stage—the court’s judgment standards and analyses are necessarily different.

Second, the status of Mr. Lipari in relation to Medical Supply Chain, Inc. at the beginning of

this case is different from Mr. Lipari's status at the beginning of *Lipari 2007*. This case was filed on March 9, 2005. At that time, Medical Supply Chain, Inc. was the only identified plaintiff. Moreover, plaintiff did not file his notice to this court that he was the assignee of the interests of Medical Supply Chain, Inc. until May 17, 2006, identifying the date of assignment as January 27, 2006. When an assignment, or transfer, of interests takes place after the case has started, "the procedure to be followed is governed by Fed. R. Civ. P. 25(c)." *Froning's Inc. v. Johnston Feed Serv.*, 568 F.2d 108, 110 (8th Cir. 1978) (also noting that in the absence of a motion under Fed. R. Civ. P. 25(c) to substitute assignees as plaintiffs, "it is not error to continue the action in the name of the original parties."). Thus, in this case, the court analyzes Mr. Lipari's efforts to act as a plaintiff under Fed. R. Civ. P. 25(c), which allows for the court's discretion. Because this case has been dismissed, the court declines to substitute Mr. Lipari as a plaintiff. On the other hand, in *Lipari 2007*, Mr. Lipari filed that case in November 2006 as an assignee of the interests of Medical Supply Chain, Inc. from the beginning. Because he started *Lipari 2007* as a plaintiff, it is not necessary for the court to analyze whether to substitute him as a plaintiff under Fed. R. Civ. P. 25(c).

Because there are distinctions between the court's orders in this case and its order in *Lipari 2007*, the orders are not inconsistent. Because the rulings are not inconsistent, it is not necessary for the court to reconsider its prior order in this case to correct clear error.

Next, Mr. Lipari argues that the court erred by striking his motions because the court lacks authority to strike motions under the Federal Rules of Civil Procedure. Without addressing this court's authority under the Federal Rules of Civil Procedure, it is clear that this court has inherent authority to manage its docket to promote judicial efficiency and the "comprehensive disposition of cases." *See Hartsel Springs Ranch of Col. Inc. v. Bluegreen Corp.*, 296 F.3d 982, 985 (10th Cir. 2002). Moreover, this court has the inherent authority to impose sanctions to address abuses of the

judicial process. *Steinert v. Winn Group, Inc.*, 440 F.3d 1214, 1227 n.15 (10th Cir. 2006). Striking filings is a method of sanctioning. *Lynn v. Roberts*, No. 03-3464-JAR, 2005 WL 3087841, at *6 (D. Kan. Nov. 1, 2006). Consequently, in the interests of judicial efficiency, this court's striking of Mr. Lipari's filings was appropriate.

Lastly, the court considers Mr. Lipari's response to the order to show cause why he has not violated Rule 11(b). Instead of attempting to explain or correct his filings, Mr. Lipari chose to accuse the undersigned judge of instructing the "Kansas District Court Clerk to violate established policies of the Kansas District Court," and of violating Mr. Lipari's due process rights.

A district court has the power to sanction a party who fails to follow local rules, federal rules, or a court order. *See Issa v. Comp USA*, 354 F.3d 1174, 1178 (10th Cir. 2003); *Lynn v. Roberts*, No. 01-3422-MLB, 2006 WL 2850273, at *6 (D. Kan. Oct. 4, 2006) (citing *Gripe v. City of Enid, Okla.*, 312 F.3d 1184, 1188 (10th Cir. 2003)). Filing restrictions are a method of sanctioning a party that persists in filing frivolous, malicious, or abusive filings. *See Custard v. Lappin*, 260 F. App'x 73, 73 (10th Cir. 2008). Filing restrictions are appropriate if they respond to "lengthy and abusive" litigation history. *Guttman v. Widman*, 188 F. App'x 691, 698 (10th Cir. 2006). The litigant must receive notice prior to the implementation of such restrictions. *Id.* The restrictions must be carefully tailored for the circumstances and provide guidelines for the litigant for how to obtain permission to file an action. *Id.*

This case has already been dismissed, but Mr. Lipari, who is not a plaintiff, persists in filing motions in this case. The court has warned him that if he continues to attempt to "resurrect" this case it could result in sanctions. Mr. Lipari has responded by filing repetitive motions in this case and by filing other cases in federal and state court that he contends are the "same case or controversy." Because Mr. Lipari has disregarded prior warnings and continues to attempt to act as

plaintiff in this dismissed case, **Mr. Lipari is prohibited from submitting any other filings in this case, 05-2299, unless he is represented by counsel in this case. Mr. Lipari has ten days to file an objection. If no valid objection is filed, the filing restrictions will take effect.**

IT IS THEREFORE ORDERED that Mr. Lipari's filing entitled, "Plaintiff's Fed. R. Civ. P. 59(e), to Alter or Amend the Judgment and Answer to Order to Show Cause" (Doc. 128) is stricken from the record.

IT IS FURTHER ORDERED that filing restrictions as defined above are imposed against Mr. Lipari.

Dated this 7th day of July 2008, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

08 JUL 10 PM 2:02

MEDICAL SUPPLY CHAIN, INC.,)
(Through assignee Samuel K. Lipari))
SAMUEL K. LIPARI)
Plaintiff,)
v.)
NOVATION, LLC)
NEOFORMA, INC.)
ROBERT J. ZOLLARS)
VOLUNTEER HOSPITAL ASSOCIATION)
CURT NONOMAQUE)
UNIVERSITY HEALTHSYSTEM CONSORTIUM)
ROBERT J. BAKER)
US BANCORP, NA)
US BANK)
JERRY A. GRUNDHOFER)
ANDREW CECERE)
THE PIPER JAFFRAY COMPANIES)
ANDREW S. DUFF)
SHUGHART THOMSON & KILROY, P.C.)
Defendants.)

TIMOTHY M. O'BRIEN
CLERK
BY TJA DEPUTY
AT KANSAS CITY, KS
Case No. 05-2299

NOTICE OF APPEAL

Comes now the plaintiff Samuel K. Lipari, the assignee of all rights of the dissolved Missouri corporation Medical Supply Chain, Inc. and makes the following appeal from the trial court's denial of his Rule 60(b) motion on July 7, 2008 based on his lack of standing after determining that the plaintiff had standing as the assignee of all rights of the dissolved Missouri corporation Medical Supply Chain, Inc. in the same matter or Article III controversy under a different style or case number.

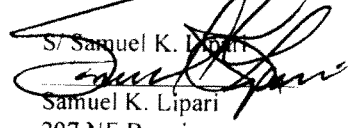
The plaintiff also appeals the order of sanctions or loss of future rights to seek redress imposed by the Hon. Judge Carlos Murguia for relying on Judge Carlos Murguia's own order determining his capacity.

An order denying a Rule 60(b) motion is a final order for purposes of appeal. *Mohammed v. Sullivan*, 866 F.2d 258, 260 (8th Cir. 1989). The US Court of Appeals for the Tenth Circuit has jurisdiction for review to determine that the discretion exercised by the court was not guided by erroneous legal conclusions. *United States v. Johnston*, 146 F.3d 785, 792 (10th Cir.1998) (quoting *Koon v. United States*, 518 U.S. 81, 100, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996)).

The plaintiff observes that the trial court's disposal of the motion for new trial appears to be in error and a reviewable abuse of discretion similar to that described in *Jennings v. Rivers*, 394 F.3d 850 (10th Cir., 2005) "[I]n the instant case, the district court has not evaluated the denial of plaintiff's Rule

60(b)(1) motion as to Mr. Howell under the appropriate standards." The inconsistency of standing determinations in the same Article III matter or controversy appears to be the exceptional circumstances requiring relief.

Respectfully Submitted,



S/ Samuel K. Lipari

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CERTIFICATE OF SERVICE

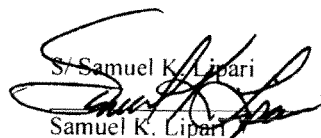
I certify I have sent a copy via electronic case filing to the undersigned opposing counsel and via email on 7/10/08.

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S/ Samuel K. Lipari
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