

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

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 06-1012-CV-W-FJG
)	
U.S. BANCORP, et al.,)	
)	
Defendants.)	

**ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANTS U.S. BANCORP AND U.S. BANK NATIONAL ASSOCIATION**

Defendants U.S. Bancorp and U.S. Bank National Association (“U.S. Bank”), by and through their attorneys and for their answer and affirmative defenses in this case, state and allege as follows:

Defendants have answered and responded to the Complaint to the best of their abilities with respect to those allegations that are reasonably capable of an answer consisting of a simple admit, deny or denied because defendants are without sufficient knowledge or information to form a belief whether to admit or deny the allegations in the paragraph. However, rather than a short and plain statement of the case as required by Fed. R. Civ. P. 8(a)(2) and 8(e)(1), this Complaint is confusing, argumentative and prolix. To that extent and because of it, defendants have denied certain especially lengthy, complex and confusing paragraphs *in toto*. In addition, all of the claims of plaintiff are deficient by reason of the strict pleading required by Fed. R. Civ. P. 9(b) or the causes of action fail to state claims upon which relief may be granted as a matter of law and fact under Fed. R. Civ. P. 12(b)(6).

I. JURISDICTION

1. Defendants, while denying that plaintiff has any viable claims, admit that subject matter jurisdiction exists in this Court as alleged in their Notice of Removal. Otherwise, defendants deny the allegations in Paragraphs 1-5 of plaintiff's Complaint.

II. VENUE

2. Defendants deny the conclusions of law and averments in paragraphs 6-7 of plaintiff's Complaint.

III. PROCEDURAL HISTORY

3. In answer to paragraphs 8-34, defendants admit that Medical Supply Chain, Inc. previously filed identical claims in prior lawsuits in federal courts in Kansas and Missouri asserting both federal and state law claims; that Medical Supply Chain, Inc. sought to appeal the district court dismissals of those cases; that the Tenth Circuit Court of Appeals had previously affirmed the dismissal of federal claims in the first filed case; and that both the Tenth Circuit Court of Appeals and Kansas District Court have sanctioned Medical Supply Chain, Inc.'s prior counsel; but defendants lack sufficient knowledge or information to permit them to form a belief whether to admit or deny the remaining allegations in paragraphs 8-34 of the plaintiff's Complaint and, therefore, deny the same.

IV. PARTIES

4. Defendants lack sufficient knowledge or information to permit them to form a belief whether to admit or deny the allegations in paragraphs 35-37 of plaintiff's Complaint and, therefore, deny the same.

5. Defendants admit the allegations in paragraph 38 of plaintiff's Complaint.

6. In answer to paragraph 39 of plaintiff's Complaint, defendants admit that U.S. Bank National Association is a national bank subject to the National Bank Act with its headquarters located in Minneapolis, Minnesota, but denies all other allegations in paragraph 39 of the Complaint.

V. INTRODUCTION

7. In answer to paragraphs 40-44, defendants lack sufficient knowledge or information to permit them to form a belief whether to admit or deny the allegations in paragraphs 40-44 of the Complaint and, therefore, deny the same.

VI. STATEMENT OF FACTS

8. In answer to paragraphs 49-54 of the plaintiff's Complaint, defendants lack sufficient knowledge or information to permit them to form a belief whether to admit or deny the allegations in paragraphs 49-54 of the Complaint and, therefore, deny the same.

9. In answer to paragraphs 55-70 of the plaintiff's Complaint, defendants lack sufficient knowledge or information to permit them to form a belief whether to admit or deny the allegations in paragraphs 55-70 of the Complaint and, therefore, deny the same.

10. In answer to paragraphs 71-82 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 71-82 of plaintiff's Complaint and, therefore, deny the same.

11. Defendants admit that someone purporting to act on behalf of Medical Supply Chain, Inc. contacted U.S. Bank, but lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the remaining allegations in paragraph 83 of plaintiff's Complaint and, therefore, deny the same.

12. In answer to paragraphs 84-88 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 84-88 of plaintiff's Complaint and, therefore, deny the same.

13. In answer to paragraphs 89-91 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 89-91 of plaintiff's Complaint and, therefore, deny the same.

14. In answer to paragraphs 92-94 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 92-94 of plaintiff's Complaint and, therefore, deny the same.

15. In answer to paragraphs 95-107 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 95-107 of plaintiff's Complaint and, therefore, deny the same.

16. In answer to paragraphs 108-114 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 108-114 of plaintiff's Complaint and, therefore, deny the same.

17. In answer to paragraphs 115-140 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 115-140 of plaintiff's Complaint and, therefore, deny the same.

18. In answer to paragraphs 141-150 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or

deny the allegations in paragraphs 141-150 of plaintiff's Complaint and, therefore, deny the same.

19. In answer to paragraphs 151-178 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 151-178 and, therefore, deny the same.

20. In answer to paragraphs 179-187 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 179-187 of plaintiff's Complaint and, therefore, deny the same.

21. In answer to paragraphs 188-200 of plaintiff's Complaint, defendants lack sufficient knowledge of information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 188-200 of plaintiff's Complaint and, therefore, deny the same.

22. In answer to paragraphs 201-207 of plaintiff's Complaint, defendants admit that plaintiff sought preliminary injunctive relief which was denied, that plaintiff filed a notice of interlocutory appeal which was denied, that the Kansas District Court dismissed plaintiff's prior action, that plaintiff's "motion for new trial" was denied and that the Tenth Circuit Court of Appeals dismissed the interlocutory appeal as moot, but defendants deny all other legal conclusions and averments in paragraphs 201-207 of plaintiff's Complaint.

23. In answer to paragraphs 208-225 of plaintiff's Complaint, defendants lack sufficient knowledge or information in order to permit them to form a belief whether to admit or deny the allegations in paragraphs 208-225 of plaintiff's Complaint and, therefore, deny the same.

VII. CLAIMS

24. Defendants deny the allegations in paragraph 194 of plaintiff's Complaint.¹

COUNT I – BREACH OF CONTRACT

25. In answer to paragraph 195 of plaintiff's Complaint, defendants incorporate their responses to all preceding paragraphs of plaintiff's Complaint as if fully stated herein.

26. Defendants deny the allegations in paragraphs 196-207 of plaintiff's Complaint.

COUNT II - FRAUD

27. In answer to paragraph 208 of plaintiff's Complaint, defendants incorporate their responses to all preceding paragraphs of plaintiff's Complaint as if fully stated herein.

28. Defendants deny the allegations in paragraphs 209-224 of plaintiff's Complaint.

COUNT III – TRADE SECRETS

29. In answer to paragraph 225 of plaintiff's Complaint, defendants incorporate their responses to all preceding paragraphs of plaintiff's Complaint as if fully stated herein.

30. Defendants deny the allegations in paragraphs 226-233 of plaintiff's Complaint.

COUNT IV – BREACH OF FIDUCIARY DUTY

31. In answer to paragraph 234 of plaintiff's Complaint, defendants incorporate their responses to all preceding paragraphs of plaintiff's Complaint as if fully stated herein.

32. Defendants deny the allegations in paragraphs 235-246 of plaintiff's Complaint.

COUNT V – PRIMA FACIE TORT

33. In answer to paragraph 247 of plaintiff's Complaint, defendants incorporate their responses to all preceding paragraphs of plaintiff's Complaint as if fully stated herein.

34. Defendants deny the allegations in paragraphs 248-257 of plaintiff's Complaint.

¹ Plaintiff's Complaint begins renumbering all subsequent paragraphs beginning with 194.

VIII. PRAYER FOR RELIEF

35. Defendants deny the allegations in paragraphs 258-264 of plaintiff's Complaint.

36. Defendants deny all other allegations, claims, conclusions and causes of action asserted in plaintiff's Complaint not otherwise admitted herein.

WHEREFORE, having fully answered plaintiff's Complaint, defendants U.S. Bancorp and U.S. Bank pray for judgment in their favor and against plaintiff, for their costs and attorneys' fees incurred herein and for such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred by reason of the failure to state a claim upon which relief may be granted.

2. Plaintiff's claims are barred and/or should be transferred from this Court to the United States District Court for the District of Kansas, as venue is appropriate and proper in the District of Kansas.

3. This Court is not the appropriate venue for the claims in light of the prior actions in the District of Kansas.

4. Plaintiff's claims are barred by reason of prior orders and judgments of the Kansas District Court which have been affirmed by the Tenth Circuit Court of Appeals and, thus, constitute res judicata and/or collateral estoppel.

5. Plaintiff's claims are barred by the applicable statutes of limitation, statutes of repose, and/or claims periods.

6. Plaintiff's claims are barred in whole or in part by reason of lack of standing and the plaintiff's lack of capacity. Notwithstanding Lipari's contentions, he is not the real party in interest to the alleged claims, if any.

7. Plaintiff's claims are barred by reason of the failure or lacks of consideration.

8. It is denied there was any contract between plaintiff and any defendant in relation to the allegations in the Complaint. In the alternative, however, any such alleged contract would be unenforceable to the extent it is barred by the statute of frauds.

9. It is denied there was any contract between plaintiff and any defendant in relation to the allegations in the Complaint. In the alternative, however, plaintiff's recovery for any alleged breach of contract would be barred or reduced by virtue of the failure of a condition precedent, lacks or failure of consideration, and/or indefinite terms of the alleged agreement.

10. Defendants assert their right to recover attorneys' fees from plaintiff pursuant to applicable Court Rules, federal statutes and Orders, including but not limited to Fed. R. Civ. P. 11 and 28 U.S.C. § 1927.

11. Plaintiff's claims for fraud are deficient and barred by reason of the failure to comply with Fed. R. Civ. P. 9(b).

12. The valid business decision not to provide the alleged escrow account(s) to plaintiff was reasonable and is thereby protected from plaintiff's claims.

13. Plaintiff's claims are barred in whole or in part by reason of the lack of damages. Alternatively, plaintiff's claims for damages are speculative and conjectural.

14. Plaintiff's claims are barred for the reason defendants' actions were factually and legally justified and/or privileged.

15. Plaintiff's claims are barred in whole or in part by plaintiff's failure to mitigate damages.

16. Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel and/or ratification.

17. To the extent plaintiff's claims may, might or could arise under the National Bank Act, then these claims are barred by federal preemption principles.

18. To the extent applicable, plaintiff's claims are barred in whole or part by reason of the plaintiff's own conduct, negligence or failure to prevent consequences over which it had or has control.

19. Plaintiff's claims are barred in whole or part for the reason that plaintiff Lipari is not the proper party in interest. These claims, if any, are property of Medical Supply Chain, Inc.

20. Plaintiff's claims are barred in whole or in part because plaintiff may not represent the corporate entity Medical Supply Chain, Inc. whether or not plaintiff had voluntarily and intentionally caused its dissolution.

21. Defendant reserves the right to assert additional defenses as may be revealed in discovery or as justice may require.

Respectfully submitted,

/s/ Mark A. Olthoff

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was filed electronically with the above-captioned court, with notice of case activity to be generated and sent electronically by the Clerk of said court (with a copy to be mailed to any individuals who do not receive electronic notice from the Clerk) this 21st day of December, 2006, to:

Samuel K. Lipari
297 N.E. Bayview
Lee's Summit, MO 64064

/s/ Mark A. Olthoff
Attorney for Defendant