

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

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 07-CV-02146-CM-DJW
)	
U.S. BANCORP, and)	
)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR
MOTION TO COMPEL DISCOVERY RESPONSES**

Defendants' Motion to Compel Plaintiff's Discovery Responses should be granted in its entirety. The plaintiff has failed to properly and completely respond to numerous interrogatories and has failed to serve **any** responses to defendants' Requests for Production (or to produce documents in compliance therewith). Plaintiff, who bears the burden of proof on each of his causes of action, should not be permitted to withhold information particularly when he alleges in his Complaint that it is in his possession. Therefore, the Court should issue an Order compelling plaintiff's compliance with discovery.

I. NATURE OF THE MATTER BEFORE THE COURT

This Court is acutely aware of this litigation. Plaintiff claims breach of contract and intentional tort relating to the defendants' alleged failure in October 2002 to provide escrow services to his company Medical Supply Chain, Inc. On two separate occasions, plaintiff has filed similar lawsuits stemming from the same set of operative facts. This Court dismissed each of these suits which the Tenth Circuit affirmed. *See Medical Supply I*, 112 Fed. Appx. 730 (10th Cir. 2004) (unpublished); *Medical Supply II*, 508 F.3d 572 (10th Cir. 2007).

Despite the failure of his two prior suits, Mr. Lipari now maintains a third lawsuit alleging state law claims. Asserting he is the sole assignee of these claims from his defunct corporation, Lipari originally filed this action in Jackson County, Missouri. The defendants removed the case to the United States District Court, Western District of Missouri, which transferred the case to this Court. The following discovery motions are pending:

1. Defendants' Motion for Protective Order on Plaintiffs' Requests for Production (Doc. No. 59);
2. Defendants' Motion to Compel Plaintiff's Compliance with Rule 26 (Doc. No. 68);
3. Plaintiff's Motion for Protective Order against Deposition (Doc. No. 80);
4. Defendants' Motion for Protective Order for Plaintiff's Corporate Designee Notice of Deposition (Doc. No. 82).

II. STATEMENT OF FACTS RELEVANT TO THE MOTION

On March 6, 2008, defendants served their First Set of Interrogatories and First Set of Requests for Production on plaintiff. On April 22, 2008, plaintiff served his responses to defendant's interrogatories but did **not** serve any responses or provide documents in response to defendants' requests for production. A copy of plaintiff's interrogatory responses is attached as **Exhibit A**. The document requests to which plaintiff did not respond are attached as **Exhibit B**.

On April 23, 2008, defendants' attorney wrote plaintiff and enumerated various problems with plaintiff's interrogatory responses. The letter also informed the plaintiff that he had failed to offer any response to defendants' Requests for Production. A copy of the letter is attached as **Exhibit C**. The letter gave the plaintiff until May 2, 2008 to supplement his responses.

On May 6, 2008, plaintiff wrote to defendant's attorney and informed him that he was attempting to address the issues contained in the April 23 letter. That same day, defendants'

counsel responded and requested plaintiff's supplemental responses by May 12, 2008. *See Exhibit D.*

Plaintiff has failed to serve any supplemental interrogatory responses and has failed to respond to defendants' Requests for Production in their entirety. On May 20, 2008, defendants' counsel once again attempted to contact the plaintiff by telephone, but had to leave a voicemail. As such this discovery dispute remains unresolved.

III. ISSUES BEFORE THE COURT

The issues before the Court are (1) whether plaintiff's interrogatory responses are sufficient under the Federal Rules of Civil Procedure and (2) whether plaintiff should be compelled to respond to defendants' document requests and produce all responsive documents in his possession.

IV. ARGUMENT

Rule 37(a)(2)(B) of the Federal Rules of Civil Procedure states that any party may seek an order compelling another party to provide full responses to interrogatories and requests for production. As set forth below, plaintiff has failed to offer complete responses to numerous interrogatories and the defendants seek an order compelling plaintiff to do so.

Interrogatory No. 1: This interrogatory sought the precise amount of damages plaintiff claims; the calculation method for such damages; and the identity of all persons who have knowledge of such damages. In response, the plaintiff merely sets forth several claims ultimately alleging total damages of \$18,900,000,000. But plaintiff supplied no factual support or computation for how he arrived at these figures, including his calculations of \$450,000,000 in alleged lost profits to date or his claim for \$450,000,000 in damages relating to the General Electric lease. Plaintiff provided no methodology or factual basis as to how he arrived at the \$1.5 billion in federal antitrust damages—especially since there is **no** federal antitrust claim in this

suit (in fact, all federal antitrust claims have been dismissed with prejudice in the previous lawsuits). Defendants are entitled to know how plaintiff is supposedly damaged, including the amount and calculation, and plaintiff did not lodge any objections to the interrogatory. Where an interrogatory seeks specific damage calculations, non-specific answers referencing general categories of damages with no specific basis are improper. *See Continental Illinois Nat. Bank & Trust Co. of Chicago v. Caton*, 136 F.R.D. 682, 687 (D. Kan. 1991) (holding that plaintiff may not respond to an interrogatory seeking claimed damages by merely categorizing the damages sought and referencing various financial documents). A proper and complete interrogatory response is all the more important here as plaintiff has not identified any expert witness in compliance with Rule 26.

Interrogatory No. 3: This interrogatory requested the **material facts** upon which plaintiff bases his claim that the alleged escrow agreement is valid and enforceable, as well as to identify all persons who have knowledge of such facts. Plaintiff responded by stating that he contends the escrow agreement is valid and enforceable, and then identified himself, his former attorney, “the defendants Dorsey and Whitney attorney” and bank officials named in the Complaint as people with knowledge of these facts. This response is insufficient. A party may not answer an interrogatory by generally referring to pleadings or other documents. *See Williams v. Sprint/United Management Co.*, 235 FRD 494, 501 (D. Kan. 2006). Therefore, his reference to “bank officials” listed in the Complaint is insufficient. Likewise, defendants are entitled to know who is the “Dorsey & Whitney attorney” and his or her relationship to the case. Finally, the response did not set forth any **facts**—let alone the material facts—upon which plaintiff relies to support his argument that the alleged escrow agreement is valid and enforceable. Plaintiff should be compelled to fully respond to this interrogatory.

Interrogatory No. 5: In response to this interrogatory, plaintiff stated he would provide a copy or the original of the fully executed escrow agreement at issue. Plaintiff has failed to do so and should be compelled to provide this information.

Interrogatory No. 9: This interrogatory sought all **material facts** which plaintiff claims support his allegation that he is the assignee of all assets of Medical Supply Chain, Inc., as well as the identity of all persons with knowledge of such facts. Plaintiff responded that he dissolved Medical Supply Chain, Inc. and assigned all interests and property of the corporation to himself. Plaintiff then stated “the completed form is available on-line, it was also filed in *MSCI v. Novation, LLC* and was an evidentiary exhibit served upon counsel for Shughart Thomson & Kilroy, P.C.” But plaintiff has not provided a copy of this document or any other documents to support his assignment claim in this litigation. He should be ordered to provide a full response to this interrogatory.

Interrogatory No. 11: This interrogatory requested plaintiff to state the **material facts** related to his fraud allegation. Plaintiff responded by identifying the alleged misrepresentation as U.S. Bank claiming that the U.S.A. Patriot Act was its basis for denying the escrow accounts. While plaintiff contends this is a fraudulent statement, he failed to provide the date the statement was made; the person who made the statement; the day he first became aware of the falsity of this statement and how he specifically relied on this statement or omission to his detriment. Rather, plaintiff gave a general reference to his settlement brief and Complaint for the identity of further facts and witnesses. But general references to pleadings and other documents are improper and the plaintiff should be compelled to provide a full response. *Williams v. Sprint/United Management Co.*, 235 F.R.D. 494, 501 (D. Kan. 2006).

Interrogatory No. 13: This interrogatory sought the identity of all persons to whom plaintiff provided copies of Medical Supply Chain's business plan at any time. Plaintiff identified several names, but failed to provide any contact information. Plaintiff should be ordered to provide the contact information, including last known address, phone number, and email address for each of these individuals.

Interrogatory No. 14: This interrogatory sought the identity of all candidates who contacted Medical Supply Chain to enroll in its programs as referenced in the Complaint, as well as the 15 candidates mentioned in paragraph 80 and the 10 candidates mentioned in paragraph 81 of the Complaint. Plaintiff listed approximately six pages of individuals in response to this interrogatory but failed to provide any contact information. Plaintiff should be ordered to provide the last known address, phone number, and email address for each of these individuals.

Interrogatory No. 21: This interrogatory sought the specific date plaintiff alleges the defendants breached the claimed escrow agreement with Medical Supply Chain, Inc. Plaintiff provided no date, but instead repeatedly cited to his interpretation of the law of repudiation. Plaintiff should be required to provide a full response to this interrogatory.

Interrogatory Nos. 5, 6, 7, 8, 10, 12, 16 and 17: Rather than providing a response to each of these interrogatories, plaintiff simply referred defendants to the allegations stated in his Complaint. This is improper. A party may not answer an interrogatory by generally referring to his Complaint, pleadings or other documents in the case. *Williams v. Sprint/United Management Co.*, 235 F.R.D. 494, 501 (D. Kan. 2006). Therefore, the Court should order plaintiff to provide a full and complete response to each of these interrogatories.

Requests for Production: Plaintiff has failed to serve any responses or produce any documents in response to Defendants' First Requests for Production. Because he has asserted no

objection and has failed to seek a protective order, the Court should compel plaintiff to provide responses to this discovery, and to produce all responsive documents.

WHEREFORE, for the above stated reasons, defendants request the Court issue an Order compelling plaintiff to provide full and complete responses to the discovery requests listed above within seven (7) days of the Court's Order and grant defendants whatever other relief to which they are justly entitled.

Respectfully submitted,

/s/ Jay E. Heidrick

MARK A. OLTHOFF KS # 70339
SHUGHART THOMSON & KILROY, P.C.
120 W 12th Street, Suite 1700
Kansas City, Missouri 64105-1929
Telephone: (816) 421-3355
Facsimile: (816) 374-0509

ANDREW M. DeMAREA KS #16141
JAY E. HEIDRICK KS #20770
SHUGHART THOMSON & KILROY, P.C.
32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, Kansas 66210
Telephone: (913) 451-3355
Facsimile: (913) 451-3361

ATTORNEYS FOR DEFENDANTS
U.S. BANCORP and
U.S. BANK NATIONAL ASSOCIATION

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 e-mailed to any individuals who do not receive electronic notice from the Clerk) this 22nd day of May, 2008, to:

Mr. Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064

/s/ Jay E. Heidrick
Attorney for Defendants