

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

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 06-1012-CV-W-FJG
)	
U.S. BANCORP and)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

**DEFENDANTS’ MOTION TO DISMISS PLAINTIFF’S COMPLAINT OR, IN THE
ALTERNATIVE, MOTION TO TRANSFER**

Defendants U.S. Bancorp and U.S. Bank National Association (U.S. Bank) now file this Motion to Dismiss Plaintiff’s Complaint, or in the alternative, Motion to Transfer. In support of its Motion, defendants state as follows:

1. The plaintiff’s Complaint should be dismissed. Plaintiff does not have standing to assert a claim on behalf of a dissolved corporation, and the claims in plaintiff’s Complaint are barred by the doctrine of *res judicata*. Additionally, the plaintiff’s Complaint fails to comply with Rule 8 of the Federal Rules of Civil Procedure and fails to state a claim upon which relief should be granted. Therefore, plaintiff’s Complaint should be dismissed in its entirety with prejudice
2. Further, allegations concerning District Judge Kathryn Vratil; District Judge Carlos Murguia; Magistrate Judge James P. O’Hara; and the law firm of Shughart Thomson & Kilroy, P.C. should be stricken from the Complaint as scandalous, immaterial and frivolous.
3. In the alternative, should the Court not dismiss plaintiff’s Complaint, this matter should be transferred to the United States District Court for the District of Kansas. Plaintiff’s Complaint arises from a claimed cause of action which has been dismissed on two prior

occasions by Judge Carlos Murguia of the United States District Court, District of Kansas; one such decision remains on appeal with the Tenth Circuit Court of Appeals. Given the long procedural history in the District of Kansas and the pending action in the Tenth Circuit Court of Appeals of one of plaintiff's exact prior claims against these same defendants, this matter should be transferred to the District of Kansas for further proceedings.

4. Defendants have filed Suggestions in Support of this Motion and incorporate by reference all arguments in the Suggestions as if fully set forth herein.

For the above-stated reasons, defendants request the following relief:

- a. That this Court dismiss this matter, in its entirety, with prejudice;
- b. That this Court strike all allegations relating to District Judge Kathryn Vratil; District Judge Carlos Murguia; Magistrate Judge James P. O'Hara; and the law firm of Shughart Thomson & Kilroy, P.C.;
- c. In the alternative, defendants request this matter be transferred to the United States District Court, District of Kansas, for further proceedings;
- d. All other relief to which they are justly entitled.

Respectfully submitted.

/s/ Mark A. Olthoff

MARK A. OLTHOFF

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