

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

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

**DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTION TO
MAGISTRATE ORDER DENYING EXTENSION OF DISCOVERY**

Defendants U.S. Bancorp and U.S. Bank National Association, by and through counsel, file this response to the plaintiff's Objection to the Magistrate's Order denying the extension of discovery (Doc. 94). The plaintiff has failed to show any reason for the Court to reverse the Magistrate's Order denying an extension of the discovery deadline.

Although not labeled as such, plaintiff's objection appears to be a motion for reconsideration pursuant to D. Kan. Rule 7.3(b). Under this rule, a motion for reconsideration shall be based on (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice. Plaintiff's Objection fits none of these criteria. The Magistrate's Order clearly found that plaintiff had failed to show good cause why an extension was needed.

The plaintiff asserts no new law or change in law regarding the Magistrate's Order. Therefore, the Magistrate's Order must stand unless reversal is necessary to prevent manifest injustice or clear error.

The plaintiff's arguments of manifest injustice or clear error are unpersuasive. He incorrectly asserts that a motion for Protective Order halts all discovery in the case and has therefore been prevented from conducting discovery. Because of his alleged inability to conduct discovery, he asserts prejudice by the Court's refusal to extend the July 1, 2008 discovery deadline.

But the plaintiff's arguments are misplaced. As quoted by the plaintiff, D. Kan. Rule 26.2, states:

The filing of a motion for Protective Order pursuant to Fed. R. Civ. P. 26(c) or 30(d) shall stay the discovery *at which the motion is directed*, pending order of the Court

While defendants have sought Protective Orders relating to plaintiff's overly broad Request for Production and plaintiff's improper Notice of Deposition for Corporate Designee, these motions have not stayed all discovery in the case. Defendants' pending motions for protective orders have not prevented plaintiff from conducting any other relevant discovery, and as the Magistrate properly found, the plaintiff has failed to show good cause as to why an extension of discovery is needed. Likewise, the plaintiff has failed to show any need to correct clear error or manifest injustice.

WHEREFORE, for the above-stated reasons, to the extent the Court views plaintiff's Objection to Magistrate's Order denying extension of discovery as a motion for reconsideration, plaintiff's motion should be denied, and all current deadlines in the Case Management Order enforced.

