

**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’ RESPONSE TO AND CONDITIONAL JOINDER IN PLAINTIFF’S
STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE
UNDER FRCP 41(A).**

Defendants, by and through their attorneys, Shughart, Thomson & Kilroy, now file this response to and conditional joinder in plaintiff’s stipulation for voluntary dismissal with prejudice under FRCP 41(a). Defendants state as follows:

1. On September 4, 2008, the Court dismissed four of the five counts in plaintiff’s Complaint.
2. On October 15, 2008, plaintiff filed a pleading styled “Stipulation for Order of Dismissal of Remaining Claims Pursuant to Federal Rule of Civil Procedure 41(A)(2).” *See* Doc. No. 147. In this stipulation, the plaintiff attempts to voluntarily dismiss with prejudice his claim in Count III for misappropriation of trade secrets, which is the only remaining claim in this suit.

3. Rule 41(a) of the Federal Rules of Civil Procedure states that, after the opposing party has answered or filed a motion for summary judgment, dismissal may be accomplished only by stipulation or court order.

4. Rule 41(a)(2) grants the Court authority to condition dismissal upon terms the Court deems proper.

5. Given the lengthy history of contentious litigation among these parties, defendants believe that justice requires conditions be placed upon the plaintiff's request for dismissal. In this case alone, the Court has determined that defendants are entitled to attorney fees for plaintiff's non-compliance with discovery (Doc. No.115); the Court has issued show cause orders why the case should not be dismissed for plaintiff's non-compliance (Doc. Nos. 114 & 120); and the Court has recently ordered plaintiff (again) to show cause why he should not be required to pay defendants' attorneys' fees for non-compliance with discovery (Doc. No. 145). These ruling are in addition to the previous sanctions levied against the plaintiff's former company and his former attorney in *Medical Supply I & II*. Justice and equity demand that plaintiff not be permitted to avoid his conduct that has increased defendants' costs in this litigation and taken up so much of the Court's time and resources.

6. Defendants join in plaintiff's voluntary dismissal with prejudice. However, any order or judgment of dismissal should reflect that plaintiff has been ordered to pay defendants' attorneys' fees for his non-compliance as ordered in Doc. No. 115, as well as all applicable costs of the action.

