

**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.	)	

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**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR  
MOTION FOR PROTECTIVE ORDER**

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Defendants, U.S. BANCORP and U.S. BANK NATIONAL ASSOCIATION, by and through their attorneys Shughart, Thomson & Kilroy file this Memorandum in Support of their Motion for Protective Order. Plaintiff's First Requests for Production of Documents are overly broad and unduly burdensome on their face, given a plain reading. Therefore, defendants request the Court issue a protective order pursuant to Fed. R. Civ. P. 26(c)(1) that "the discovery not be had."

**I. NATURE OF MATTER BEFORE THE COURT**

This Court is acutely aware of this litigation. Plaintiff claims breach of contract and intentional torts relating to his allegation that in October 2002 defendants failed to provide escrow services to his former company Medical Supply Chain, Inc. On two separate occasions plaintiff has filed similar lawsuits out of the same facts and each was dismissed by this Court and upheld on appeal by the Tenth Circuit. *See, Medical Supply I*, 112 Fed. Appx. 730 (10th Cir. 2004) (unpublished); *Medical Supply II*, 508 F.3d 572 (10th Cir. 2007).

Despite the dismissal of his two prior suits, Mr. Lipari now maintains this third suit. Lipari alleges that Medical Supply Chain has dissolved and that he is the sole assignee of its interests. Lipari originally filed this action in Jackson County, Missouri. Defendants removed the case to the United States District Court, Western District of Missouri, which transferred the case to this Court. A motion to dismiss remains pending.

## **II. STATEMENT OF RELEVANT FACTS**

This Motion for Protective Order seeks relief from plaintiff's first Requests for Production served by Lipari on February 13, 2008. The requests are attached as **Exhibit A**. Lipari's Requests for Production seek information that is wholly irrelevant to the issues in this suit – even under the broadest concepts of allowable discovery – and are facially overly broad and unduly burdensome.<sup>1</sup> On March 10, 2008 defendants counsel sent an email to plaintiff in a good faith attempt to resolve this dispute. *See, Exhibit B*. On March 13, 2008, defendants called the plaintiff in another attempt to resolve this dispute but the plaintiff was unavailable. *See, Exhibit B*. Therefore, defendants seek a protective order precluding plaintiff's discovery.

## **III. ISSUE PRESENTED**

The issue presented to the Court is whether plaintiff's discovery requests are facially overly broad and unduly burdensome so as to justify a protective order under Fed. R. Civ. P. 26(c).

## **IV. ARGUMENT**

Federal Rule of Civil Procedure 26(c) states that a party may seek a protective order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or

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<sup>1</sup> Defendants recognize that a Motion for Protective Order may not issue on an objection of relevancy. But Defendants do not waive their relevancy objections or any other applicable objection that is contained in their Responses.

expense...” The party seeking a protective order has the burden of demonstrating good cause for the order. *Aikens v. Deluxe Financial Services, Inc.*, 217 F.R.D. 533, 534 (D. Kan., 2003). “Good cause” requires a specific and particular demonstration of the basis for a protective order, rather than general and conclusory statement. *Id.* But if a request is overly broad or unduly burdensome on its face, a party is not required to provide an evidentiary basis for the protective order. *Id.*, at 538; *Contracom Commodity Trading Co. v. Seaboard Corp.*, 189 F.R.D. 655, 665-666 (D. Kan., 1999). A request is overly broad and unduly burdensome on its face when it uses broad and non-descriptive terms such as “relating to” or “pertaining to” with respect to a wide variety of documents sought. *Aikens*, 217 F.R.D., at 535.

- 1. Plaintiff’s discovery requests are facially overly broad and unduly burdensome in that they seek generic and non-descriptive categories of documents which have no relevance to this matter. Therefore, the Court should issue a protective order that plaintiff is not entitled to such broad discovery.**

Each of plaintiff’s Requests for Production, attached as **Exhibit A**, are facially overly broad and unduly burdensome. These overly broad and generic document requests do not comply with Rule 34 of the Federal Rules of Civil Procedure and necessitate the entry of a Protective Order, pursuant to Rule 26. Each of these requests is analyzed below:

**Request No. 1:** This request is overly broad and unduly burdensome on its face, in that it does not describe documents to be produced with reasonable particularity. Plaintiff’s request for “all records, forms, statements, applications, credit reports, correspondence, call records, documents, contracts, [and] computer notifications displaying on bank teller and supervisor computer terminals . . .” does not request a specific type or category of document, but rather seeks every piece of paper and electronic file concerning the plaintiff, his former attorney and his former corporation. The request does not describe the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34. Rather, it requires the defendants to guess as to

what documents may be responsive. Such a request is improper. *Contracom Commodity Trading Co. v. Seaboard Corp.*, 29 F.R.D. 655, 665-666 (D. Kan., 1999); *Aikens v. Deluxe Financial Services, Inc.*, 217 F.R.D. 533, 538 (D. Kan., 2003) (holding that facially overly broad requests “requires the answering party to ‘engage in mental gymnastics to determine what information may or may not be remotely responsive.’”). This request is overly broad and unduly burdensome, especially given the minimal relevance of these documents.

**Request No. 2:** This request is facially overly broad and unduly burdensome in that it seeks “all communications, internal or external or between US Bank, NA, US Bancorp Inc., US Bancorp/Piper Jaffray, Dorsey & Whitney, LLP and KPMG, LLP . . .” Such broad and non-descriptive terms do not comply with Rule 34 of the Federal Rules of Civil Procedure and are facially overlybroad and unduly burdensome – especially given the lack of any relevance to this suit. Therefore, a protective order is appropriate. *See, Id.*

**Request No. 3:** This request is facially overly broad and unduly burdensome in that it seeks “The documents related to” investigations of plaintiff and Medical Supply Chain. Again, this vague and descriptive term does not describe the documents sought with reasonable particularity as required in Rule 34 of the Rules of Federal Civil Procedure. The request is facially overly broad, unduly burdensome and lacks any relevance to the issues set forth in plaintiff’s petition. Therefore a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure is appropriate.

**Request No. 4:** The request is facially overly broad and unduly burdensome in that it seeks every communication between the plaintiff and defendants’ attorneys from January 1, 1999 through February 12, 2008. This would require the defendants to copy every letter, email, pleading and fax sent to the plaintiff or received from the plaintiff for the past six years of

litigation. Given this high burden and expense to the defendants – and in light of the low relevancy of this request – a protective order is justified.

**Request No. 5:** This request is facially overly broad and unduly burdensome in that it seeks “All documents related to....” As specifically stated in *Aikens* and *Contracom*, requests that seek “all documents related to” are facially overly broad and unduly burdensome sufficient to justify a Protective Order under Rule 26(c). *See, Aikins*, 217 F.R.D., at 538. The request also violates Rule 34 in that it fails to describe the documents sought with reasonable particularity.

**Request No. 6:** This request is facially overly broad and unduly burdensome in that it would require defendants to search all of its previous external and internal web pages for the past six years looking for anything related to Piper Jaffray and its start-up venture capital funds for healthcare. Because the request has no relevance to any issue in this suit, requiring defendants to undertake this search presents an undue burden and expense to the defendants.

**Request No 7:** This request is facially overly broad and unduly burdensome in that it requests “all notes, research materials [sic] related to . . .” Requests that use broad and generic terms such as “related to” are facially overly broad and unduly burdensome sufficient to warrant a Protective Order under Rule 26(c) – especially when the documents by the plaintiff have no relevance to the issues in this lawsuit. *See, Aikins*, 217 F.R.D., at 538.

**Request No. 8:** This request is facially overly broad and unduly burdensome in that it seeks “all communications, studies, reports or other documents related to . . .” As stated in *Aikens*, document requests that use omnibus and generic terms such as “related to” are facially overly broad and unduly burdensome. *Id.* The request presents an undue burden on the defendants because the request has no relation to any issue in this suit. This request also does

not describe the documents sought with reasonable particularity as required by Rule 34 of the Federal Rules of Civil Procedure.

**Request No. 9:** This request is overly broad and unduly burdensome on its face in that it seeks “all communications with the Royal Bank of Canada and the Edward Jones Company concerning the potential sale of US Bancorp/Piper Jaffray.” The plaintiff’s use of the term “concerning the potential sale of . . .” is an omnibus phrase that is facially overly broad and unduly burdensome – especially since the request seeks information that is wholly irrelevant to this cause of action. *See, Id.; Contracom*, 189 F.R.D., 665. The use of terms that are facially overly broad and unduly burdensome is sufficient to justify a Protective Order under Rule 26(c).

**Request No. 10:** This request is overly broad and unduly burdensome on its face in that it seeks all communications “related to the plaintiff and or (*sic*) Medical Supply Chain, Inc.” The use of omnibus terms such as “relating to” is facially overly broad and unduly burdensome sufficient to justify the entrance of a Protective Order under Rule 26(c) – especially because the documents sought have no relevance to this suit. *See, Id.*

**Request No. 11:** This request is overly broad and unduly burdensome on its face in that it seeks production of “All communications and other documents related to . . .” The use of vague and cryptic terms such as “other documents” and “related to” is facially overly broad and unduly burdensome sufficient to justify a Protective Order under Rule 26(c) – especially because the documents sought have no relevance to this suit. *See, Id.*

**Request No. 12:** This request is facially overly broad and unduly burdensome in that it seeks “all communications . . . related to . . .” The request also seeks all communications related to “witnesses.” The use of vague and generic terms such as “related to” is facially overly broad

and unduly burdensome sufficient to justify a Protective Order under Rule 26(c) – especially because the documents sought have no relevance to this suit. *See, Id.*

**Request No. 14:** This request is overly broad and unduly burdensome on its face in that it seeks a wide variety of communications “concerning the plaintiff, his dissolved company, witnesses or former counsel, including communications by . . .” Use of the broad and generic term “concerning” is an omnibus term that is facially overly broad and unduly burdensome and sufficient to justify the entrance of a Protective Order under Rule 26(c) – especially since the documents sought have no relevance to this suit. *See, Id.*

Each of the above requests is so broad that “the respondent is left to guess what documents are responsive.” *Contracom Commodity Trading Co. v. Seaboard Corp.*, 29 F.R.D. 655, 665-666 (D. Kan., 1999); *Aikens v. Deluxe Financial Services, Inc.*, 217 F.R.D. 533, 538 (D. Kan., 2003) (holding that facially overly broad requests “requires the answering party to ‘engage in mental gymnastics to determine what information may or may not be remotely responsive.’”).

“When a request is overly broad on its face, the party seeking discovery has the burden to show the relevancy of the request.” *Johnson v. Kraft Foods North America, Inc.*, 236 F.R.D. 535, 542 (D. Kan., 2006). If a request is overly broad and unduly burdensome on its face, a party is entitled to a Protective Order if “the burden or expense is unreasonable in light of the benefits to be secured from the discovery.” *Hammond v. Lowes Homes Centers, Inc.*, 216 F.R.D. 666, 674 (D. Kan., 2003). None of the requests in **Exhibit A**, seek documents that are relevant to defendants’ alleged refusal to provide escrow services to the plaintiff in October 2002. Plaintiff’s requests are facially unduly burdensome and overly broad and offer little or no relevancy to the claims or defenses in this matter. The Court should therefore enter a protective



**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 17th day of March 2008, to:

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

/s/ Jay E. Heidrick \_\_\_\_\_  
Attorney for Defendants