

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

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:07-cv-02146-CM-DJW
)	
U.S. BANCORP and)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

**LEGAL MEMORANDUM IN SUPPORT OF
DEFENDANTS’MOTION TO COMPEL
PLAINTIFF’S COMPLIANCE WITH RULE 26(a)(1)**

The defendants, by and through their attorneys of record Shughart Thomson & Kilroy, P.C., file this Legal Memorandum in support of their motion to compel plaintiff’s compliance with Rule 26(a)(1).

The Court should order Plaintiff to amend his initial disclosures for the following reasons: (1) Plaintiff’s disclosure statement is a duplicate of his “voluntary initial disclosures” filed in *Lipari, et al. v. General Electric, et al.* Circuit Court of Jackson County, Missouri, Case No. 0616-CV07421- a case involving separate defendants and unrelated to this action; (2) The disclosures do not contain the information required by F.R.C.P. 26(a)(1); and (3) The breadth of the disclosures and the documents produced violate basic principles of discovery, as well as the intent behind the initial disclosure requirement of Rule 26(a)(1). The defendants therefore request that the Court compel Mr. Lipari to amend his initial disclosures to comply with Rule 26(a)(1). Defendants also request the Court caution Mr. Lipari that further discovery abuse in discovery will result in severe sanctions, including the possible dismissal of his claim.

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 defendants' alleged failure in October, 2002 to provide escrow services to his former 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 Appx. 730 (10th Cir. 2004) (unpublished); *Medical Supply II*, 508 F.3d 572 (10th Cir. 2007).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. 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. A motion to dismiss remains pending.

II. STATEMENT OF FACTS RELEVANT TO THE MOTION

On April 20, 2007, plaintiff served his initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). *See*, Disclosures attached as **Exhibit A**. The disclosures listed over 70 witnesses but did not list each witness' contact information or the witnesses' subjects of knowledge. *See, Id.*, pages 1 - 3. Included in the potential witnesses are Magistrate Judges Waxse and O'Hara. *Id.*, at pg. 2. Thirty- nine pages of the disclosures simply list descriptions of documents. Some of the listings contain a Bates reference, but all of the descriptions are very broad and generic. *See, Id.*, pages 3 - 41. Also accompanying the disclosures was a CD containing over 11,000 pages of documents in .pdf format. Presumably, the documents on the CD correlate to those documents listed in the disclosures.

But none of information provided appears to be relevant to this action. Rather, it appears that plaintiff has simply copied his "voluntarily initial disclosures" made in a separate action against

General Electric. *See*, “Voluntary Initial Disclosures” attached as **Exhibit B**. In fact, plaintiff’s damage statement in this case requests \$450,000,000 from “the GE defendants.” *See*, **Exhibit A**, page 41. As the Court is aware, GE is not a defendant in this action.

III. ISSUE BEFORE THE COURT

The issue before the Court is whether plaintiff’s overly broad production of irrelevant documents and identification of witnesses violates initial disclosure requirement of F.R.C.P. 26(a)(1).

IV. ARGUMENT

Rule 26(a)(1) of the Federal Rules of Civil Procedure requires a party to provide without discovery requests:

- A. The name and, if known, the address and telephone number of each witness likely to have discoverable information, as well as to identify the subject of information to which the witness may have knowledge;
- B. A copy of or description by category of all documents which the disclosing party may use to support its claims or defenses; and
- C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

See, Fed. R. Civ. P. 26(a)(1)(A-C).

The purpose of the mandatory disclosure requirements of Rule 26(a)(1) is to allow the parties to supply the “core information” that can be identified and exchanged at the outset to avoid unnecessary cost and delay. *See, e.g.*, 8 Wright & Miller, Federal Practice and Procedure, § 2053 (2d Ed. 1994). Mr. Lipari’s Rule 26(a)(1) production is far from supplying the “core information” relevant to this dispute. In fact, the disclosures are not relevant to this suit, but rather stem from a corresponding lawsuit against General Electric pending in Jackson County, Missouri. That matter

involves different parties and different issues than the case at bar. Thus, plaintiff's disclosures are irrelevant to this action.

Moreover, plaintiff's disclosures violate the intent and strict letter of Rule 26(a)(1). The witnesses identified by the plaintiff do not contain any contact information and fail to identify the subject of information known by each witness. Likewise, the documents produced by the plaintiff do not appear to have any relevance to this action and are not organized by category. Forcing defendants to interview or depose over 70 witnesses and sift through over 11,000 pages of electronic documents simply to determine relevance violates the intent behind Rule 26(a)(1) and does not prevent unnecessary burden and expense.

In the context of discovery responses, courts have routinely held that a party may not simply "dump" information on an opposing party and require that party to expend resources to determine the relevant information. *See, e.g., American International Specialty Lines Insurance Co. v. NWI-I, Inc.*, 240 F.R.D. 401, 412 (N.D. Ill. 2007) (holding that plaintiffs were not required to search over 19,000 boxes of documents to acquire relevant responsive information to the discovery requests); *Johnson v. Kraft Foods North America, Inc.*, 236 F.R.D. 535, 545 (D. Kan. 2006) (holding that plaintiff's interrogatory responses stating that he will produce all relevant information subject to a Protective Order was insufficient); *State of Colorado ex rel. Woodard v. Schmidt-Tiago Construction Co.*, F.R.D. 731, 735 (D. Colo. 1985) (requiring plaintiff that had produced thousands of documents to specifically identify which documents are responsive to a particular interrogatory or request for production).

The same analysis applies here. The purpose of Rule 26(a)(1) is to decrease cost and time by allowing the parties to quickly obtain the core information relevant to the lawsuit. But Mr. Lipari's disclosures actually *increase* the cost and burden by forcing the defendants to conduct a fishing

expedition through dozens of witnesses and thousands of documents simply to locate what – if any – relevant information exists.

The plaintiff previously represented to the defendants and the Court that he would supplement his initial disclosures by April 15, 2008. *See*, Motion for Extension of Time to Supplement, Doc. No. 55. But plaintiff has not supplemented his disclosures and this Motion is therefore necessary.

WHEREFORE the above stated reasons, defendants request the Court order Mr. Lipari to revise his initial disclosures and provide only information which is relevant to this action. Defendants also request the Court caution Mr. Lipari that further discovery abuses may result in severe sanctions, including the possible dismissal of his claims. Defendants further request all other relief to which they are justly entitled.

Respectfully submitted,

/s/ Jay E. Heidrick

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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 22nd day of April, 2008, to:

Mr. Samuel K. Lipari
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/s/ Jay E. Heidrick
Attorney for Defendants