

**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' MOTION TO DISMISS PURSUANT TO RULE 12(b)(6) AND RULE 8 OF
THE FEDERAL RULES OF CIVIL PROCEDURE**

Defendants U.S. BANCORP and U.S. BANK NATIONAL ASSOCIATION file this Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) and Rule 8 of the Federal Rules of Civil Procedure. In support of this Motion, Defendants plead as follows:

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted. As shown below, plaintiff has failed to allege facts that show a plausible entitlement to relief:
 - a. Breach of Contract- Count I- Plaintiff's allegations show there was no written contract between the parties and the statute of frauds prevents plaintiff from maintaining a cause of action based upon an oral agreement. Therefore, his breach of contract action must fail.
 - b. Fraud- Count II- To recover on a fraud theory, the plaintiff must plead facts showing that the defendant made a false representation with the intent to cause the plaintiff to act or refrain from acting. Plaintiff has failed to allege that defendants made any false representation or that defendants intended to cause the plaintiff to act or refrain from acting. Additionally, fraud is a tort claim and plaintiff may not maintain a cause of action in tort where the claimed breach of the duty is purely contractual.
 - c. Misappropriation of Trade Secrets- Count III- Defendants' alleged disclosure of plaintiff's alleged trade secrets to US BANCORP- PIPER JAFFRAY is not actionable. According to plaintiff's Complaint, he had already voluntarily disclosed these trade secrets to PIPER JAFFRY, thus defeating his misappropriation of trade secrets claim.

- d. Breach of Fiduciary Duty- Count IV- Plaintiff has failed to allege facts that show a fiduciary relationship existed between the parties. Moreover, breach of fiduciary duty is a tort and plaintiff may not maintain a cause of action in tort where the alleged breach of the duty is purely contractual. Finally, plaintiff's allegations that defendants breached a fiduciary duty by misappropriating his trade secrets are preempted by the Missouri Uniform Trade Secrets Act.
- e. Prima Facie Tort- Count V- Plaintiff has failed to allege an intentional wrongful act to support his claim for *prima facie* tort and has otherwise failed to allege facts that show a plausible entitlement to relief.

2. Defendants are filing herewith a Memorandum in Support of this motion and incorporate by reference all arguments made therein.

WHEREFORE, all of these reasons, defendants request that the Court enter its Order dismissing plaintiff's Complaint with prejudice and for all other relief to which the defendants are justly entitled.

Respectfully submitted,

/s/ Jay E. Heidrick

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ATTORNEYS FOR DEFENDANTS
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U.S. BANK NATIONAL ASSOCIATION

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 this 19th day of December, 2007, to:

Mr. Ira Dennis Hawver, Esq.
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Attorney for Plaintiff

/s/ Jay Heidrick
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