

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

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

**DEFENDANTS’ RESPONSE TO PLAINTIFF’S “ANSWER TO ORDER”**

Defendants U.S. Bancorp and U.S. Bank National Association file this Response to plaintiff’s “Answer to Order.” In support of its Response, defendants plead as follows:

1. In the current action, the plaintiff purports to allege the following causes of action:
  - (a) Breach of Contract – Count I, page 45 of plaintiff’s Complaint;
  - (b) Common Law Fraud – Count II, page 49 of plaintiff’s Complaint;
  - (c) Misappropriation of Trade Secrets – Count III, page 61 of plaintiff’s Complaint;
  - (d) Breach of Fiduciary Duty – Count IV, page 63 of plaintiff’s Complaint;
  - (e) *Prima Facie* Tort – Count V, page 66 of plaintiff’s Complaint.

2. Defendants do not dispute that causes of action bearing these same titles were pled in *Medical Supply I* and/or *Medical Supply II*.

3. Specifically responding to Paragraphs 4 and 5 of plaintiff’s “Answer to Order,” defendants state that these paragraphs are nonsensical and defendants fail to see how they are related to any matter before this Court. To the extent Paragraphs 4 or 5 are an attempt to resurrect claims or allegations dismissed with prejudice in either *Medical Supply I* or *Medical Supply II*, then defendants object to the suggestions as barred by *res judicata* or collateral estoppel.

4. By filing this Response, defendants do not waive any rights to further contest the sufficiency of plaintiff's pleadings and/or plaintiff's causes of action.

Respectfully submitted

/s/ Jay E. Heidrick

MARK A. OLTHOFF KS Fed. #70339

SHUGHART THOMSON & KILROY, P.C.

1700 Twelve Wyandotte Plaza

120 W 12th Street

Kansas City, Missouri 64105

[molthoff@stklaw.com](mailto:molthoff@stklaw.com)

(816) 421-3355

(816) 374-0509 (FAX)

ANDREW M. DeMAREA

KS #16141

JAY E. HEIDRICK

KS #20770

SHUGHART THOMSON & KILROY, P.C.

32 Corporate Woods, Suite 1100

9225 Indian Creek Parkway

Overland Park, Kansas 66210

[ademarea@stklaw.com](mailto:ademarea@stklaw.com)

[jheidrick@stklaw.com](mailto:jheidrick@stklaw.com)

(913) 451-3355

(913) 451-3361 (FAX)

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on December 6, 2007 I filed a copy of the foregoing with the Court's ECF system which automatically sent copies to the following people:

Mr. Ira Dennis Hawver  
6993 Highway 92  
Ozawkie, KS 66070  
hawverlaw@earthlink.net  
*Attorney for Plaintiff*

/s/ Jay E. Heidrick  
Attorney for Defendants