

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

MEDICAL SUPPLY CHAIN, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:05-cv-2299-KHV-GLR
)	
NOVATION, LLC, et al.,)	
)	
Defendants.)	

**NOVATION, LLC, VHA INC.,
UNIVERSITY HEALTHSYSTEM CONSORTIUM
ROBERT BAKER AND CURT NONOMAQUE'S
MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S FIRST MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants Novation, LLC ("Novation"), VHA Inc. ("VHA"), University Healthsystem Consortium ("UHC"), Robert Baker, and Curt Nonomaque (collectively, "Defendants") respectfully request that the Court deny Plaintiff's First Motion for Partial Summary Judgment:

1. Currently pending before the Court is Defendants' Motion to Dismiss Plaintiff's Complaint for failure to state a claim.
2. Defendants' Motion to Dismiss establishes numerous independent bases for the dismissal of this lawsuit with prejudice. This lawsuit is essentially Plaintiff's third effort to pursue these claims, despite prior warnings from this Court and the 10th Circuit regarding the fundamental legal defects of its claims. Indeed, the 10th Circuit recently affirmed the dismissal of one of Plaintiff's prior cases and held that Rule 11 sanctions against Plaintiff were appropriate because the Complaint alleged frivolous claims against an individual officer of GE without any allegations that the officer had any connection to Plaintiff's injury. *See Medical Supply Chain v. General Elec.Co., et al.*, Case No. 04-3075 (10th Cir. July 26, 2005).

3. Defendants have also filed a Motion for Sanctions in this case and that motion is currently pending. As established in Defendants' Motion for Sanctions, Plaintiff's Complaint not only fails to state a legally viable claim, but also that the filing of the Complaint violates Plaintiff Counsel's responsibilities under Federal Rule of Civil Procedure 11 and 28 U.S.C. 1927.

4. In its First Motion for Partial Summary Judgment, Plaintiff seeks to impose additional burdens on the parties and this Court in its effort to have the Court issue advisory opinions regarding some issues pertaining to Racketeering Influenced Corrupt Organizations Act (RICO). However, Plaintiff's effort in this regard is often incoherent and has but the most fleeting and tenuous connection to the issues before the Court in this litigation. For example, Plaintiff's summary judgment "evidence" consists of materials from unrelated litigation, *i.e.* RICO claims against Shook, Hardy & Bacon (a law firm with no connection to this lawsuit), and Plaintiff's counsel's efforts to avoid sanctions and disbarment. As established in Defendants' Motion to Dismiss, Plaintiff is precluded from asserting RICO claims against Defendants because, Plaintiff has wholly failed to adequately plead a pattern of racketeering (or, indeed, a single act of racketeering) or a RICO injury. Thus, the questions of RICO law Plaintiff seeks to resolve by its motion are moot.

5. Plaintiff's continued motion practice during the pendency of the motions to dismiss and motions for sanctions in this case only serves to impose additional damages on Defendants' caused by Plaintiff's disregard of Rule 11 and 28 U.S.C. 1927. Because the numerous defects in Plaintiff's purported summary judgment evidence and arguments are fully set forth in the Memorandum in Opposition of Defendants UA Bancorp, U.S. Bank, Jerry S. Grundhofer, Andrew Cecere, The Piper Jaffray Companies and Andrew S. Duff to Plaintiff's

First Motion for Partial Summary Judgment, Defendants will avoid multiplying the briefing before the Court any further. Instead, Defendants hereby join and incorporate, for all purposes and as if set forth in full herein, the arguments and objections set forth in the Memorandum in Opposition of Defendants UA Bancorp, U.S. Bank, Jerry S. Grundhofer, Andrew Cecere, The Piper Jaffray Companies and Andrew S. Duff to Plaintiff's First Motion for Partial Summary Judgment.

WHEREFORE, for all of these reasons, Defendants request that the Court deny Plaintiff's First Motion for Partial Summary Judgment and grant Defendants all other relief to which they are entitled.

HUSCH & EPPENBERGER, LLC

By: /s/ John K. Power

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2005, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following::

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