

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MEDICAL SUPPLY CHAIN, INC.,)	Case No. 05-2299-KHV
)	
Plaintiff,)	
)	
NOVATION, LLC, et al.,)	
)	
Defendants.)	
)	
)	
)	

**DEFENDANTS NEOFORMA, INC. AND ROBERT ZOLLARS MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S SUMMARY JUDGMENT MOTION**

This response is submitted on behalf of defendants Neoforma, Inc. and Robert Zollars.

Defendant Neoforma hereby joins in the opposition to the summary judgment motion being filed by defendants US Bancorp, et al. Defendant Neoforma also has pending a motion to dismiss pursuant to Rule 8.

Defendant Robert Zollars has a motion to dismiss for lack of personal jurisdiction pending and is cognizant of the doctrine that such an objection to personal jurisdiction may be waived by "formal submission in a cause, or by submission through conduct." Moore's F. Practice 3d, § 12.31[3], pp. 12-46; see also *Hamilton v. Ellis Turner, Inc.*, 197 F.3d 58, 60 (2nd Cir. 1999). To the extent that the Court needs a response from defendant Zollars with respect to the summary judgment motion, he would join with the response of the other defendants. However, he does not wish to waive his right to object to personal jurisdiction through the pending motion by such an agreement deemed a formal submission in the matter.

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

HUSCH & EPPENBERGER, LLC

By: /s/ John K. Power

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BAKER

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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