

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
KANSAS CITY, KANSAS**

<b>MEDICAL SUPPLY CHAIN, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 05-2299-CM</b>
	)	
<b>NOVATION, LLC, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANTS' JOINT MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION TO "REWIND"**

Samuel Lipari's continued filing of unauthorized and unwarranted motions as the purported representative of Medical Supply Chain, Inc. or as a putative plaintiff in this case must be stopped. The latest in his pattern of filing unsubstantiated motions is entitled a motion to "rewind." There is no basis for filing any such motion and the defendants should not be put to any further expense in having to respond to these filings.

First, the motion itself has no legal or factual basis. Initially, the supposed legal basis, 12 U.S.C. § 1631, by its terms only applies when a court determines it lacks jurisdiction in a matter. There is no want of jurisdiction here. The purported "factual" grounds on which Mr. Lipari relies are that it was unfair for this case to have been transferred by the Western District of Missouri to this Court and, despite the case having been dismissed, all of the Court's efforts here (as well as the Western District of Missouri in transferring the case) should simply be forgotten and Mr. Lipari be given another chance.<sup>1</sup> There is nothing remaining in this case

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<sup>1</sup> Of course, this request for yet another opportunity to litigate follows on the heels of this Court's as well as the Tenth Circuit Court of Appeals' final decisions dismissing in their entirety all of the previous claims brought against US Bancorp, Piper Jaffray and certain individuals associated with those companies. Mr. Lipari's company, Medical Supply Chain, Inc., had full opportunity to litigate all of those issues and they were decided against him.

that merits its return to the Western District of Missouri. It would be an inconceivable waste of the Court's resources, to say nothing of the cost and expense to the parties, for Mr. Lipari's unsubstantiated claim of "injustice" to be given further consideration.

Second, it bears repeating that the Court denied Mr. Lipari's motion to be substituted as a plaintiff. The motion was denied at the same time that plaintiff's case was dismissed in its entirety. *See* Order dated March 7, 2006. In light of the fact that Mr. Lipari has not been substituted as a party, his filings are of no effect. Moreover, the defendants are very concerned about Mr. Lipari's continued unauthorized practice of law since he is purporting to represent the organization. *See* D. Kan. Rule 83.5.1; *In re Arnold*, 56 P.3d 259 (Kan. 2002).

Third, certain of these defendants have pending motions for an award of attorneys' fees, which the Court has previously ordered were warranted. That is all that remains of this case. Mr. Lipari's repeated motions have now caused these defendants to incur additional expenses having to respond in an action where there are no longer any claims to litigate. The defendants, while they would be justified in doing so, have resisted the temptation to file additional motions for sanctions. But their patience with Mr. Lipari is limited. The Tenth Circuit Court of Appeals has made it clear that litigants who continue to file vexatious and abusive motions, the effect of which is to simply harass parties, will not be tolerated. Courts have gone so far as to bar persons from filing additional papers absent some prior approval process. *See Johnson v. Stock*, 2005 WL 1349963 (10th Cir., June 8, 2005); *Lundahl v. NAR Inc.*, 2006 WL 1495070 (D. Idaho, May 24, 2006). Mr. Lipari's continued filing of pleadings here at least warrants some consideration of this authority given that the case has been dismissed and the Court has determined sanctions are appropriate.

Finally, at the risk of fueling Mr. Lipari's wild speculation of a conspiracy among counsel, the defendants are filing this joint response to avoid unnecessarily burdening the Court with multiple filings.

For all of these reasons, plaintiff's motion to "rewind" should be denied. Defendants further request the Court (1) deny the plaintiff's motion for reconsideration (filed March 14, 2006); (2) sustain the pending applications for attorney fees; (3) enter an order prohibiting Mr. Lipari from filing additional motions without leave of Court; and (4) for such other relief as the Court deems just, equitable and reasonable.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify a true and correct copy of the above item was filed in PDF format with the Court pursuant to its *Case Management / Electronic Case Files* program and thereby a notice of filing was e-mailed to counsel of record herein, all on the 2nd day of August, 2006.

A copy was also served via United States mail, postage prepaid, to:

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