

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

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

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR ATTORNEYS' FEES**

Plaintiff Medical Supply Chain, Inc.'s claims in this case were dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. (*See* Memorandum and Order dated March 7, 2006.) The Memorandum and Order also granted the below-named Defendants' Motion for Sanctions, awarding their attorneys' fees and costs because of Plaintiff's (and its former counsel's) violations of Fed. R. Civ. P. 11 and 28 U.S.C. § 1927. Defendants therefore move the Court to enter an Order determining the amount of attorneys' fees incurred by Defendants in opposing Plaintiff's Complaint and awarding that amount to Defendants.

Defendants' counsel has analyzed the billing records applicable to this matter. The billing records applicable to the case are attached to this memorandum as Exhibits A and B. The records identify each time entry by date, the attorney or paralegal performing the work, time expended, and amount. Each time entry also contains a description of the work performed.

After closely analyzing the billing records, Defendants' counsel has determined that the total amount of attorneys' fees incurred in successfully opposing Plaintiff's Complaint is \$59,856.41. (*See* Ex. C, Declaration of Mark A. Olthoff, at ¶ 3.)

The \$59,856.41 figure is verified and sworn pursuant to the Declaration of Mark A. Olthoff. (See Ex. C.) Only that work done and expenses incurred for responding to the March 9, 2005 Complaint is included. (*Id.* ¶¶ 3, 6.) Based on Defendants' counsel's detailed review of the billing records, and personal knowledge of the work completed, the attorneys' fees sought are true, accurate, and reasonable. (*Id.* at ¶¶ 7-9.) Moreover, the work underlying the attorneys' fees was necessary to properly oppose Plaintiff's Complaint and obtain dismissal. (*Id.* at ¶¶ 3, 4, 6-9; Exhibits A, B to Memorandum.)

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court enter an Order determining that Defendants should be awarded \$59,856.41 in attorneys' fees.

/s/ Mark A. Olthoff

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ATTORNEYS FOR DEFENDANTS US
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JERRY A. GRUNDHOFER, ANDREW CECERE
AND ANDREW S. DUFF

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 27th day of March, 2006.

/s/ Mark A. Olthoff
Attorney for Defendants