

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

SAMUEL K. LIPARI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:07-cv-02146-CM
	)	
U.S. BANCORP and	)	
U.S. BANK NATIONAL ASSOCIATION,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF PLAINTIFF SAMUEL K. LIPARI  
IN SUPPORT OF PLAINTIFF'S ANSWER TO SHOW CAUSE**

I Samuel K. Lipari, residing at 297 NE Bayview, in the City of Lee's Summit and in the County of Jackson of the State of Missouri was the chief executive officer of the now dissolved Missouri corporation Medical Supply Chain, Inc. I assigned all interests and rights of Medical Supply Chain, Inc. to myself on the day I dissolved the corporation with the Missouri Secretary of State. I hereby testify to the following regarding my disclosures of discovery in response to the defendants' motions for production of documents and answers to interrogatories. I also hereby testify to how I responded to the defendants fraudulent motions to compel and fraudulently procured orders to show cause, which I believe to have been made in the absence of jurisdiction by the court over this Missouri State case and in the absence of jurisdiction while the same matter or controversy is in the 10<sup>th</sup> Circuit Court of Appeals. I Samuel K. Lipari testify to the following:

**I. Plaintiff Rule 26 Compliance**

1. On June 7, 2005 I, Samuel K. Lipari served the defendants with an initial disclosure index of exhibits, *See Exhibit 20* pg. 1-7 June 7, 2005 "Initial Disclosure", an index of documents with Bates stamp and a list of witnesses served by personal service to 120 W. 12th Street Kansas City, MO in case # 05-0210-CV-W- ODS, the defendants had previously received the plaintiff's witnesses and all known addresses in 2003 as part of the plaintiff's proposed joint case management order sent to the defendants and Magistrate Waxse in 2003.

2. On April 20, 2007 I, Samuel K. Lipari again served the defendants with an updated index of exhibits and witness list. The document index, *See Exhibit 21* pg. 1-40 April 20, 2007 "Disclosure", refers to a Bates stamp number and dates that corresponds with the four volumes of evidentiary exhibits including a witness list that is categorized by reference participation and relevance. Volume I - *See Exhibit 22* pg. 1-

3972 April 20, 2007 “Lipari Trial Exhibits Volume I”, which are evidentiary document that support plaintiffs complaint and pleadings, Volume II - *See Exhibit 23* pg. 1-2848 April 20, 2007 “Lipari Trial Exhibits Volume II”, which are evidentiary documents that support plaintiff’s attempt to overcome US Banks contract breach through efforts to cover or mitigate the damages with General Electric and Michael W. Lynch, Volume III - *See Exhibit 24* pg. 1-4009 April 20, 2007 “Lipari Supplemental Trial Exhibits Volume I”, which are additional evidentiary document that support plaintiffs attempt to overcome US Banks contract breach and Volume IV - *See Exhibit 25* pg. 1-167 April 20, 2007 “Lipari Supplemental Trial Exhibits Volume II”, which are evidentiary document that further support plaintiff’s attempts to overcome US Bank and US Bancorp’s contract breach through covering or mitigating the losses with General Electric and Michael Lynch; all combined on indexed digital disk (DC) as a complete Rule 26(a)(1) disclosure record.

3. On May 3, 2007 I, Samuel K. Lipari served the defendants again with an updated index (supplemental) of exhibits and witness list. The document index, *See Exhibit 26* pg. 1-42 May 3, 2007 “Disclosure”, the index refers to a Bates stamp number and dates that corresponds with the four volumes of evidentiary exhibits including a witness list that are categorized by reference participation and relevance. Volume I - *See Exhibit 22* pg. 1-3972 April 20, 2007 “Lipari Trial Exhibits Volume I”, which are evidentiary document that support plaintiffs complaint and pleadings, Volume II - *See Exhibit 23* pg. 1-2848 April 20, 2007 “Lipari Trial Exhibits Volume II”, which are evidentiary document that support plaintiffs attempt to overcome US Banks contract breach through cover and mitigation, Volume III - *See Exhibit 24* pg. 1-4009 April 20, 2007 “Lipari Supplemental Trial Exhibits Volume I”, which are additional evidentiary document that support plaintiffs attempt to overcome US Banks contract breach through cover and mitigation and Volume IV - *See Exhibit 25* pg. 1-167 April 20, 2007 “Lipari Supplemental Trial Exhibits Volume II”, which are evidentiary document that further support plaintiffs attempts to overcome US Banks contract breach through cover and mitigation; all combined on indexed digital disk (DC) as a complete Rule 26(a)(1) disclosure record.

4. On February 9, 2008 I, Samuel K. Lipari served the defendants and the Hon. Magistrate David J. Judge Waxse, *See Exhibit 27* pg. 1-5 February 9, 2008 “Settlement Brief Notice” with a settlement brief and three volumes of evidentiary exhibits indexed by volume, exhibit number and the description of the document. Settlement Brief - *See Exhibit 28* pg. 1-107 February 9, 2008 “Lipari v US Bank Settlement Brief”, Volume I - *See Exhibit 29* pg. 1-118 February 9, 2008 “Settlement Brief Evidence Exhibits Vol. I”,

Volume II - *See Exhibit 30* pg. 1-385 February 9, 2008 “Settlement Brief Evidence Exhibits Vol. II”, and Volume III - *See Exhibit 31* pg. 1-27 February 9, 2008 “Settlement Brief Evidence Exhibits Vol. III”.

5. On March 10, 2008 the defendants through Shughart Thomson & Kilroy, P.C. Associate Jay E. Heidrick, KS Atty. Lic. #20770 emailed an objection to the plaintiff’s disclosures, *See Exhibit 32* pg. 1 March 10, 2008 “Jay Discovery Objection”. That same day on March 10, 2008 I, Samuel K. Lipari responded with a reply letter, *See Exhibit 33* pg. 1 March 10, 2008 “Reply to Defendant Discovery Objection”. In that letter I, Samuel K. Lipari agreed to resolve any issues defendant might have with regard to plaintiffs Rule 26(a)(1) disclosures.

6. On March 26, 2008 I, Samuel K. Lipari served by email the plaintiff’s answers to the defendants’ first set of interrogatories, *See Exhibit 34* pg. 1-17 March 26, 2008 “Answer to First Set of Interrogatories”.

**A. Defendants’ First Material Misrepresentations to the Court by an officer of the court over the Plaintiff’s Discovery Compliance**

7. On April 22, 2008 the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. in a pleading by Shughart Thomson & Kilroy, P.C. Associate Jay E. Heidrick, KS Atty. Lic. #20770 filed the Motion to Compel, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel” Rule 26(a)(1).

8. On April 23, 2008 the day after filing their Motion to Compel, the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. in a pleading by Shughart Thomson & Kilroy, P.C. Associate Jay E. Heidrick, KS Atty. Lic. #20770 served the plaintiff with a Golden Rule Letter, *See Exhibit 36* pg. 1-5 April 23, 2008 “Golden Rule Letter to Lipari” outlining deficiencies in plaintiff’s Rule 26(a)(1) first set of interrogatories, *See Exhibit 34* pg. 1-17 March 26, 2008 “Answer to First Set of Interrogatories”. Defendants filed their Motion to Compel, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel” Rule 26(a)(1) one day in advance of providing plaintiff with a Golden Rule Letter notice, *See Exhibit 36* pg. 1-5 April 23, 2008 “Golden Rule Letter to Lipari” the plaintiff had no opportunity to correct any deficiencies, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel” Rule 26(a)(1). Now compare the date of, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel” with the date of, *See Exhibit 36* pg. 1-5 April 23, 2008 “Golden Rule Letter to Lipari”.

9. On April 30, 2008 I, Samuel K. Lipari filed a response to defendants Motion to Compel, *See Exhibit 37* pg. 1-8 April 30, 2008 “Plaintiff Response to April 22 68 Motion to Compel”

10. On May 6, 2008 I, Samuel K. Lipari served its response to defendants Golden Rule Letter dated

April 23, 2008, *See Exhibit 38* pg. 1-45 May 6, 2008 “Response to Golden Rule Letter Dated April 23”, plaintiff’s second set of interrogatories in response to defendants Golden Rule Letter, *See Exhibit 36* pg. 1-5 April 23, 2008 “Golden Rule Letter to Lipari”, but the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. in a pleading by Shughart Thomson & Kilroy, P.C. Associate Jay E. Heidrick, KS Atty. Lic. #20770 fraudulently omitted notice to the Honorable Magistrate Judge David J. Waxse that the plaintiff did in fact respond with a second set of interrogatory answers, *See Exhibit 38* pg. 1-45 May 6, 2008 “Response to Golden Rule Letter Dated April 23”.

11. On May 7, 2008 the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. in a communication by Shughart Thomson & Kilroy, P.C. Associate Jay E. Heidrick, KS Atty. Lic. #20770 emailed the plaintiff requesting disclosure clarification, *See Exhibit 39* pg. 1-2 May 7, 2008 “Clarification of CD Rule 26 Disclosures” and suggested that the plaintiff somehow manipulated the disk format of exhibits. Later that same day I, Samuel K. Lipari responded to defendants’ request and explained that there may be a conflict between operating system programs. The defendants made no additional requests.

12. On May 17, 2008 the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. in a communication by Shughart Thomson & Kilroy, P.C. Associate Jay E. Heidrick, KS Atty. Lic. #20770 served the plaintiff with US Bank’s Preliminary List of Witnesses & Exhibits, *See Exhibit 40* pg. 1-3 May 17, 2008 “US Bank Preliminary List of Witnesses & Exhibits” with six witnesses and five exhibits and no explanation of witness relevance or addresses. The five exhibits are documents I, Samuel K. Lipari had provided to the defendants as part of my Rule 26 disclosures. The witnesses also appear to be only those from the plaintiff’s list of witnesses and the text of the complaint provided the defendants by the plaintiff.

13. On May 22, 2008 defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. in a pleading by Shughart Thomson & Kilroy, P.C. Associate Jay E. Heidrick, KS Atty. Lic. #20770 filed another Motion to Compel, *See Exhibit 41* pg. 1-3 May 22, 2008 “Motion to Compel”.

14. On June 5, 2008 I, Samuel K. Lipari emailed my second Rule 26 supplemental disclosures, *See Exhibit 42* pg. 1-3 June 5, 2008 “Second Rule 26 Supplemental Disclosures” to cure witness address deficiencies requested by the defendants that were not available to the plaintiff when the plaintiff served his Response to Golden Rule Letter Dated April 23, 2008, *See Exhibit 38* pg. 1-45 May 6, 2008 “Response to

Golden Rule Letter Dated April 23”. The defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. made no additional request for clarification or notice of any deficiencies.

## **II. Completion of the First Fraud on the Court Over Plaintiff’s Discovery Compliance**

15. On July 8, 2008 The Honorable Magistrate Judge David J. Waxse filed a Memorandum and Order based on the fraudulent misrepresentations by the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. and the order gives the appearance Magistrate Judge David J. Waxse was deceived by the defendants’ fraud on the court, *See Exhibit 43* pg. 1-5 July 8, 2008 “Memorandum and Order”.

16. On July 15, 2008 I, Samuel K. Lipari notified defendant, *See Exhibit 44* pg. 1 July 15, 2008 “Email to Jay Requesting Clarification” as to what additional Rule 26(a)(1) disclosures are needed that plaintiff has not already provided. The defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. made no additional request.

## **III. Completion of the Second Fraud on the Court Over Plaintiff’s Discovery Compliance**

17. On July 22, 2008 The Honorable Magistrate Judge Waxse filed a Memorandum and Order, *See Exhibit 45* pg. 1-12 July 22, 2008 “Memorandum and Order” in reply to defendants Motion to Compel *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel”.

### **A. Defendants’ Subsequent Misrepresentations through an officer of the court**

18. On August 18, 2008 the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. in a pleading by Shughart Thomson & Kilroy, P.C. Associate Jay E. Heidrick, KS Atty. Lic. #20770 filed a response to show cause that furthered the defendants repeated pattern of fraud, *See Exhibit 46* pg.1-2 August 18, 2008 “Defendants Response to Show Cause”.

## **IV. Completion of the Third Fraud on the Court Over Plaintiff’s Discovery Compliance**

19. On August 18, 2008 The Honorable Magistrate Judge Waxse filed a Notice and Order to Show Cause, *See Exhibit 47* pg. 1-2 August 18, 2008 “Notice and Order to Show Cause” in response to defendants response to show cause order *See Exhibit 46* pg.1-2 August 18, 2008 “Defendants Response to Show Cause”.

#### **A. Defendants' Subsequent Misrepresentations through an officer of the court**

20. On August 20, 2008 the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. in a pleading by Shughart Thomson & Kilroy, P.C. Associate Jay E. Heidrick, KS Atty. Lic. #20770 filed a Motion for Order to Show cause that attempted to complete the fraudulent scheme of repeated frauds on the court for the purpose of procuring a dismissal through fraud, *See Exhibit 48* pg. 1-3 August 20, 2008 "Defendants Motion to Show Cause".

#### **V. Completion of the Fourth Fraud on the Court Over Plaintiff's Discovery Compliance**

21. On August 25, 2008 The Honorable Magistrate Judge Waxse filed the Second Notice and Order to Show Cause *See Exhibit 49* pg. 1-6 August 25, 2008 "Second Notice and Order to Show Cause".

#### **A. PLAINTIFF HAS PRODUCED SEVEN SETS OF OVER 10,000 INDEXED EVIDENTIARY EXHIBITS WITH A SHORT ABBREVIATION AND BATES STAMP NUMBERS IN ADDITION TO SEVENTY CATEGORIZED WITNESSES ASSOCIATED BY RELEVANCE**

22. As of September 1, 2008 I, Samuel K. Lipari have produced seven set of exhibits to defendants, *See Exhibit 20* pg. 1-7 June 7, 2005 "Initial Disclosure", *See Exhibit 21* pg. 1-40 April 20, 2007 "Disclosure", *See Exhibit 26* pg. 1-42 May 3, 2007 "Disclosure" *See Exhibit 28* pg. 1-107 February 9, 2008 "Lipari v US Bank Settlement Brief", *See Exhibit 29* pg. 1-118 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. I", *See Exhibit 30* pg. 1-385 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. II", *See Exhibit 31* pg. 1-27 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. III" combining over 10,000 documents indexed by volume, exhibit number, description of the document, Bates stamp in addition to 70 categorized witnesses associated by relevance all of which contradict every fraudulent motion filed by the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. used as the basis of the order from the Honorable Magistrate Judge David J. Waxse regarding the plaintiffs Rule 26(a)(1) disclosures compliance.

23. The defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. have disclosed only five whitensess and five exhibits, *See Exhibit 40* pg. 1-3 May 17, 2008 "US Bank Preliminary List of Witnesses & Exhibits".

24. I, Samuel K. Lipari last submitted an index of exhibits May 3, 2007, *See Exhibit 26* pg. 1-42 May 3, 2007 "Disclosure" The Disclosure identifies a corresponding Bates stamp located in the upper right hand side of plaintiffs disclosure documents which references each specific evidentiary document, *See Exhibits 22, 23* "Lipari Trial Volume I, II", and *See Exhibits 24, 25* "Lipari Supplement Trial Exhibits Volume I, II." In addition, on February 9, 2008 I, Samuel K. Lipari served defendants and The Honorable

Magistrate Judge David J. Waxse with plaintiff's settlement brief and three volumes of evidentiary exhibits, *See Exhibit 27* pg. 1-5 February 9, 2008 "Settlement Brief Notice", and *See Exhibits 29, 30, 31* "February 9, 2008 Settlement Brief Evidence Exhibits Vol. I, II, III", indexed by volume, exhibit number, description of the document and totaling 530 pages. The settlement brief explained and referenced each evidentiary document's relevance to the plaintiff's complaint and its role in supporting the elements of the plaintiff's claims, answering every interrogatory question posed by the defendants even exceeding the scope the defendants were entitled to through discovery by identifying the legal theory of the plaintiff relevant to each document and element.

25. Going back to the beginning of this matter or controversy on June 7, 2005 I, Samuel K. Lipari served an initial index of exhibits with referenced Bates stamped and a list of witnesses associated by relevance, *See Exhibit 20* pg. 1-7 June 7, 2005 "Initial Disclosure". As this matter or controversy developed over time I, Samuel K. Lipari submitted subsequent disclosures indexed with Bates stamp and added additional witnesses, *See Exhibit 21* pg. 1-40 April 20, 2007 "Disclosure" and again on May 3, 2007, *See Exhibit 26* pg. 1-42 May 3, 2007 "Disclosure". Plaintiff **Exhibits 21, 26** were provided to defendant on an indexed digital disk (CD) as required by electronic discovery Rules.

26. In addition to my submitting production of discovery request three times with two electronic copies prior to defendants April 22, 2008 Motion to Compel Rule 26(a)(1), I, Samuel K. Lipari also submitted to the defendants for the purpose of additional disclosures and served notice to The Honorable Magistrate Judge David J. Waxse, plaintiff's Settlement Brief Notice with three volumes of additional evidence, *See Exhibit 27* pg. 1-5 February 9, 2008 "Settlement Brief Notice", *See Exhibit 28* pg. 1-107 February 9, 2008 "Lipari v US Bank Settlement Brief" with three volumes of evidentiary documents, Vol. I, II, III, *See Exhibits 29, 30, 31* February 9, 2008 "Settlement Brief Evidence Exhibits Vol. I, II, III" indexed paragraph-by-paragraph totaling 530 pages of additional evidence all of which contradict every fraudulent motion filed by the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. and the order from The Honorable Magistrate Judge David J. Waxse regarding the plaintiffs Rule 26(a)(1) disclosures compliance.

#### **VI. Defendant's Rule 26(a)(1) Compliance**

27. To date (September 1, 2008) I, Samuel K. Lipari have received no electronic discovery from defendants and the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. continue to misrepresent to the court that they have produced discovery

relevant to their defense, *See Exhibit 40* pg. 1-3 May 17, 2008 “US Bank Preliminary List of Witnesses & Exhibits” where the documents are merely copies of the plaintiff’s production, not the emails and original electronic files of US Bank and US Bancorp that the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. were under notice to preserve and instead appear to have destroyed with the intent to obstruct justice.

**A. DEFENDANTS HAVE ONLY PRODUCED 41 PAGES OF DOCUMENTS  
ALL ON PAPER COPIED FROM PLAINTIFF’S OWN DISCLOSURES AND  
116 PAGES OF BANK STATEMENTS DESPITE REQUEST FOR ONLY ELECTRONIC FILES**

28. To date (September 1, 2008) I Samuel K. Lipari have received no electronic discovery from the defendants and the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. continue to misrepresent to The Honorable Magistrate Judge Waxse that 116 pages of plaintiff’s bank statements showing that the plaintiff was in fact a valued customer of US Bank and 41 pages of documents copied from plaintiff previously submitted disclosures is compliance to the Honorable Magistrate Judge David J. Waxse for defendants’ Rule 26(a)(1) discovery obligation to the plaintiff.

29. The Honorable District Court Judge Carlos Murguia and the Honorable Magistrate Judge David J. Waxse continue to illustrate bias and prejudice against the plaintiff or in the alternative have made discovery rulings procured through the defendants’ fraud on the court as I, Samuel K. Lipari believe the evidentiary record contained herein plainly shows and that I, Samuel K. Lipari have and did comply with Rule 26(a)(1) in advance of defendants’ first, second and third Motions to Compel or Show Cause, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel” and again May 22, 2008, *See Exhibit 41* pg. 1-3 May 22, 2008 “85 Motion to Compel”, and again *See Exhibit 48* pg. 1-3 August 20, 2008 “Defendants Motion to Show Cause”.

30. In addition, the Honorable District Court Judge Carlos Murguia and the Honorable Magistrate Judge David J. Waxse through adoption of the defendants’ filings through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. have accepted fraudulent assertions by the defendants in pleadings by Shughart Thomson & Kilroy, P.C. associate Jay E. Heidrick, KS Atty. Lic. #20770 that the plaintiff has not complied with his discovery obligations, in order for the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. to obtain sanctions and ultimately the dismissal of the plaintiff’s claims; which is also threatened in defendants’ last filing, a pleading by Shughart Thomson & Kilroy, P.C. associate Jay E. Heidrick, KS Atty.



Lic. #20770, *See Exhibit 48* pg. 1-3 August 20, 2008 “Defendants Motion to Show Cause” and the Honorable Magistrate Judge Waxse’s last order *See Exhibit 49* pg. 1-6 August 25, 2008 “Second Notice and Order to Show Cause”.

31. The Honorable District Court Judge Carlos Murguia and the Honorable Magistrate Judge David J. Waxse appear to I, Samuel K. Lipari as having ignored the evidentiary record provided to them by the plaintiff and have instead relied on the fraudulent and misleading assertions of the defendant through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. to participate in the defendants’ fraudulent scheme to procure through fraud a dismissal of my claims through the court’s bias and prejudiced orders against me.

32. I, Samuel K. Lipari believe the defendants’ assertions to the court are nothing more than a perversion of the law, the facts and the record contained herein at the expense of lives, taxpayers and judicial resources.

33. The defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. continue to make materially false misrepresentations to the court which grants those motions over my objections to this court’s subject matter jurisdiction and memorandums of law and fact contradicting those misrepresentations and their legal effect, which are known to the defendants, the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. and Hon. Magistrate Judge David J. Waxse to be false from the evidence, the record and the plaintiffs pleadings which were served on the Honorable District Court Judge Carlos Murguia and the Honorable Magistrate Judge David J. Waxse. In addition the Honorable Magistrate Judge David J. Waxse and later the Honorable District Court Judge Carlos Murguia received the settlement evidence on July 10, 2008 as an exhibit to Lipari Objection to Order of Magistrate Judge Order to Compel (doc. 97) which refers in the second paragraph to the settlement brief and supporting volumes of evidentiary documents as exhibits which were submitted to Hon. Magistrate Judge David J. Waxse and the defendants back on February 9, 2008, *See Exhibit 30* pg. 1-5 February 9, 2008 “Settlement Brief Notice”, *Exhibit 29* pg. 1-118 February 9, 2008 ‘Settlement Brief Evidence Exhibits Vol. I’, *Exhibit 30* pg. 1-385 February 9, 2008 ‘Settlement Brief Evidence Exhibits Vol. II’, *Exhibit 31* pg. 1-27 February 9, 2008 “Settlement Brief Evidence Exhibits Vol. III”.

34. The plaintiff believes the defendant’s arguments in pleadings by Shughart Thomson & Kilroy, P.C. associate Jay E. Heidrick, KS Atty. Lic. #20770 about the quality and structure of plaintiff’s

evidentiary disclosures are fraudulent and frivolous as plainly visible from the document indexes and formatting of the evidence provided digitally and partially in paper to the defendants, and that this fraud is identical in motivation and effect to the false assertions in pleadings including Motions to dismiss and motions for sanctions over the last six years by the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. through Shughart Thomson & Kilroy, P.C. shareholder Steven D. Ruse KS lic. #11461; Shughart Thomson & Kilroy, P.C. shareholder Mark A. Olthoff, KS Atty. Lic. # 70339; shareholder Andrew M. DeMarea, KS #16141; former associate Jonathan H. Gregor, KS Atty. Lic. # #50443; former associate Logan W. Overman, KS Atty. Lic. # #55002; and associate Jay E. Heidrick, KS Atty. Lic. #20770 about the contents of the plaintiff's complaints that are demonstrably false on the face of Shughart Thomson & Kilroy, P.C.'s pleadings and misrepresent controlling legal authority and even the language of the U.S. Congress in public laws creating statutes granting private rights of action including those private rights of action expressly created by the USA PATRIOT Act (Public Law Pub.L. 107-56) and the clearly established controlling authorities of the US Supreme Court including *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955) providing for the plaintiff's right to not sue all antitrust co-conspirators in a single action for which this court erroneously sanctioned the plaintiff; that a prior judgment could bar subsequent claims contrary to *Lawlor*, 349 U.S. at 329, 75 S.Ct. 865 for which this court also erroneously sanctioned the plaintiff; and that under *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 91 S.Ct. 795, 28 L.Ed.2d 77 (1971) providing for the plaintiff's right to bring antitrust and RICO claims (*Bankers Trust*, 859 F.2d at 1096) each time a plaintiff suffers an injury caused by an illegal act of the defendants because a cause of action accrues to recover damages based on that injury for which this court erroneously sanctioned the plaintiff. All of which the Hon. District Court Judge Carlos Murguia adopted even over the plaintiff's timely notices of the clear errors in motions to reconsider, Rule 60 Motions and answers to show cause.

#### **VII. Plaintiff's Compliance with defendants' discovery production requests and interrogatories**

35. To date (September 1, 2008) I, Samuel K. Lipari have complied with each request for production of documents and each set of interrogatories propounded by the defendants.

36. I, Samuel K. Lipari had already complied with defendants' fraudulently procured Order to Compel before it or the Motion to Compel was served on the plaintiff, *See Exhibits 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31.*

“April 22, 2008 Doc. 68 Motion to Compel Order: Order filed July 22, 2008

07/22/2008 103 MEMORANDUM AND ORDER granting in part and denying in part 68 Motion to Compel. On or before 7/30/2008, Plaintiff shall serve an amended Rule 26(a)(1)(A)(i) witness disclosure statement in compliance with this Memorandum and Order. On or before 7/30/2008, Plaintiff shall serve a supplemental Rule 26(a)(1)(A)(ii) document disclosure statement or serve amended Rule 26(a)(1)(A)(ii) document disclosures in compliance with this Memorandum and Order. On or before 8/13/2008, Plaintiff shall show cause why he should not be required to pay a portion of the reasonable fees and expenses that Defendants incurred in making their Motion to Compel. Signed by Magistrate Judge David J. Waxse on 7/22/2008. (bh) (Entered: 07/22/2008)

37. The plaintiff had already complied with defendants' First Motion to Compel before it was served on the plaintiff, *See Exhibits 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31.*

#### **A. The Material Fraudulent Misrepresentations to The Court in the First Motion to Compel**

##### “MOTION TO COMPEL COMPLIANCE WITH RULE 26(a)(1)

The defendants, by and through their attorneys of record Shughart Thomson & Kilroy, P.C., file this Motion to Compel Plaintiff's Compliance with Rule 26(a)(1). In support of this Motion, defendants state as follows:

1. On April 20, 2007, plaintiff served his initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1). *See, Doc. No. 26.*”

**Exhibit 35** pg. 1-3 April 22, 2008 “68 Motion to Compel”

38. On April 20, 2008 the plaintiff did not file or serve anything to defendants. On March 26, 2008 thirty days earlier than represented to the court, I, Samuel K. Lipari served my answers to the defendants' first set of interrogatories, *See Exhibit 34* pg. 1-17 March 26, 2008 “Answer to First Set of Interrogatories”.

“2. The disclosures are essentially duplicates of his disclosures made in a corresponding lawsuit Jackson County, Missouri captioned *Lipari, et al. v. General Electric, et al.* Circuit Court of Jackson County, Missouri, Case No. 0616-CV07421. Neither defendant is a party to that action, and plaintiff's disclosures are therefore irrelevant to this suit.”

**Exhibit 35** pg. 1-3 April 22, 2008 “68 Motion to Compel”

39. If the court and defendants had reviewed the record they will find that Missouri, Case No. 0616-CV07421 are the contract state claims dismissed without prejudice stemming from similar conduct participated in by the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. for the purpose of committing extrinsic fraud by preventing the plaintiff from covering or mitigating his damages from US Bank and US Bancorp's breach through the third parties General Electric and Michael W. Lynch. This conduct is tortious interference with a business expectancy under Missouri law and the damages are equal to what the plaintiff would have obtained in his transaction with General Electric and what he would have obtained through capitalizing his corporation's entry into the market for hospital supplies with Michael w. Lynch's assistance. The Hon. Carlos Murguia was served evidence of this tortious interference in the plaintiff's business expectancies with General Electric in the

absence of a property interest by the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. in the form of sealed affidavits for attorneys' fees listing conferences with General Electric's counsel Husch, Blackwell & Sanders LLP then called Husch Eppenberger. LLC.

"3. Additionally, plaintiff's disclosures fail to comply with the intent and letter of Rule 26(a)(1). His disclosures list over 70 witnesses but do not list contact information or subjects of knowledge. Thirty-nine pages of his disclosures contain broad and generic descriptions of documents— none of which appear relevant to this suit. Finally, plaintiff provides a compact disc which contains over 11,000 pages of documents that again lack relevance to this suit."

**Exhibit 35** pg. 1-3 April 22, 2008 "68 Motion to Compel"

40. As of September 1, 2008 I, Samuel K. Lipari have produced seven set of exhibits to defendants, *See Exhibit 20* pg. 1-7 June 7, 2005 "Initial Disclosure", *See Exhibit 21* pg. 1-40 April 20, 2007 "Disclosure", *See Exhibit 26* pg. 1-42 May 3, 2007 "Disclosure" *See Exhibit 28* pg. 1-107 February 9, 2008 "Lipari v US Bank Settlement Brief", *See Exhibit 29* pg. 1-118 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. I", *See Exhibit 30* pg. 1-385 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. II", *See Exhibit 31* pg. 1-27 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. III" combining over 10,000 documents indexed by volume, exhibit number, description of the document, Bates stamp in addition to 70 categorized witnesses associated by relevance all of which contradict every fraudulent motion filed by the defendants and order from The Honorable Magistrate Judge David J. Waxse regarding the plaintiffs Rule 26(a)(1) disclosures compliance..

41. On April 20, 2007 and May 3, 2007 I, Samuel K. Lipari served the defendants with an updated index of exhibits and witness list. The document index, *See Exhibit 26* pg. 1-42 May 3, 2007 "Disclosure", refers to a Bates stamp number and dates that corresponds with the four volumes of evidentiary exhibits including a witness list that are categorized by reference to witness participation and relevance. Volume I - *See Exhibit 22* pg. 1-3972 May 3, 2007 "Lipari Trial Exhibits Volume I", which are evidentiary document that support plaintiffs complaint and pleadings, Volume II - *See Exhibit 23* pg. 1-2848 May 3, 2007 "Lipari Trial Exhibits Volume II", which are evidentiary documents that support plaintiff's attempt to overcome US Banks contract breach, Volume III - *See Exhibit 24* pg. 1-4009 May 3, 2007 "Lipari Supplemental Trial Exhibits Volume I", which are additional evidentiary document that support plaintiffs attempt to overcome US Banks contract breach and Volume IV - *See Exhibit 25* pg. 1-167 May 3, 2007 "Lipari Supplemental Trial Exhibits Volume II", which are evidentiary documents that further support plaintiff's attempts to overcome US Bank's contract breach all combined on indexed digital disks (DC) as a

complete Rule 26(a)(1) disclosure record.

“4. Defendants have made repeated good faith efforts to resolve this dispute with the plaintiff. See, Correspondence attached as Exhibit 1; Response to Motion for Extension to Supplement, Doc. No. 56. Plaintiff indicated to defendants and the Court that he would supplement his disclosures by April 15, 2008. See, Doc. No. 55. But he has failed to do so. “

**Exhibit 35** pg. 1-3 April 22, 2008 “68 Motion to Compel”

42. Defendants’ false statement contradicts the record. On March 26, 2008 I, Samuel K. Lipari served by email the answers to the defendants’ first set of interrogatories, *See Exhibit 34* pg. 1-17 March 26, 2008 “Answer to First Set of Interrogatories” and on April 23, 2008 defendants served the plaintiff with a Golden Rule Letter, *See Exhibit 36* pg. 1-5 April 23, 2008 “Golden Rule Letter to Lipari” outlining deficiencies in plaintiff’s Rule 26(a)(1) first set of answers to defendants’ interrogatories, *See Exhibit 34* pg. 1-17 March 26, 2008 “Answer to First Set of Interrogatories”. The defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. filed their Motion to Compel, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel” Rule 26(a)(1) one day in advance of providing the plaintiff with a Golden Rule Letter notice, *See Exhibit 36* pg. 1-5 April 23, 2008 “Golden Rule Letter to Lipari.” The plaintiff had no opportunity to correct any deficiencies before defendants filed their April 22, 2008 Motion to Compel, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel” Rule 26(a)(1). I, Samuel K. Lipari have compared the date of the motion, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel” with the date of, *See Exhibit 36* pg. 1-5 April 23, 2008 “Golden Rule Letter to Lipari”. The defendants through the false conduct and misrepresentation of their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. created and mailed the required Golden Rule letter after they had already filed their motion to compel.

“5. Defendants are filing a supporting legal memorandum herewith and incorporate by reference all arguments made therein.”

**Exhibit 35** pg. 1-3 April 22, 2008 “68 Motion to Compel”

43. I, Samuel K. Lipari had already complied with the defendants’ fraudulently procured Order to Compel dated July 8, 2008 before the order was entered by the Hon. Magistrate Judge David J. Waxse:

“May 22, 2008 Doc. 85 Motion to Compel Order: Order filed July 8, 2008

07/08/2008 96 MEMORANDUM AND ORDER granting 85 Motion to Compel. Plaintiff shall, within fourteen days of the date of this Order, produce all documents responsive to Defendants' First Set of Requests for Production and serve supplemental responses to Defendants' First Interrogatories No. 1, 3, 5-14, 16-17, and 21. Plaintiff shall, within twenty-one (21) days of the date of this Order, show cause in a pleading filed with the Court, why he should not be required to pay the reasonable fees and expenses that Defendants have incurred in making their Motion to Compel. Signed by Magistrate Judge David J. Waxse on 7/8/2008. (bh) (Entered: 07/08/2008)”

44. The plaintiff had already complied with defendants' fraudulently procured Order to Compel before it or the Motion to Compel was served on the plaintiff, *See Exhibits 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31.*

## **B. The Material Fraudulent Misrepresentations to The Court in the Second Motion to Compel**

### “DEFENDANTS’ MOTION TO COMPEL DISCOVERY RESPONSES

Defendants, U.S. Bancorp and U.S. Bank National Association, by and through their attorneys Shughart, Thomson & Kilroy, file this Motion to Compel Discovery Responses. In support of this Motion, defendants state as follows:

“1. On March 6, 2008, defendants served their First Set of Interrogatories and First Set of Requests for Production on plaintiff.”

**Exhibit 41** pg. 1-3 May 22, 2008 “85 Motion to Compel”

45. To date, I Samuel K. Lipari have only received from the defendants a response with only five witnesses and five exhibits on May 17, 2008 not as defendants again misrepresented to the court March 6, 2008, *See Exhibit 40* pg. 1-3 May 17, 2008 “US Bank Preliminary List of Witnesses & Exhibits” and May 17, 2008 is 30 days after defendants filed there Motion to Compel Rule 26(a)(1) against plaintiff, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel”, five days before defendants filed their second Motion to Compel, *See Exhibit 41* pg. 1-3 May 22, 2008 “85 Motion to Compel”.

46. The defendants filed their first Motion to Compel against the plaintiff, *See Exhibit 35* pg. 1-3 April 22, 2008 “68 Motion to Compel” 30 days before the plaintiff had received any Rule 26(a)(1) disclosures from the defendants, *See Exhibit 40* pg. 1-3 May 17, 2008 “US Bank Preliminary List of Witnesses & Exhibits” and 3 years after plaintiff served his first Rule 26(a)(1) initial disclosures, *See Exhibit 20* pg. 1-7 June 7, 2005 “Initial Disclosure”. I Samuel K. Lipari have received no electronic discovery from the defendants and the defendants continue to make fraudulent misrepresentations to the court. Somehow The Honorable Magistrate Judge David J. Waxse has accepted the defendants' 5 witnesses and 5 exhibits as defendants Rule 26(a)(1) obligation to plaintiff.

“2. On April 22, 2008, plaintiff served his responses to defendant's Interrogatories, but did not serve any responses or otherwise provide documents in response to defendant's request for Production.”

**Exhibit 35** pg. 1-3 May 22, 2008 “68 Motion to Compel”

47. Statement of facts paragraph two is a continuation of the fraud on the court by the defendants and was accepted by the Honorable District Court Judge Carlos Murguia and the Honorable Magistrate Judge Waxse who appear to have been deceived and ordered a Motion to Compel procured from the defendants' fraud. On April 22, 2008 I, Samuel K. Lipari did not file or serve anything to defendants. On

March 26, 2008 thirty days earlier than represented to the court, I, Samuel K. Lipari served the first answers to defendants' first set of interrogatories, *See Exhibit 34* pg. 1-17 March 26, 2008 "Answer to First Set of Interrogatories".

48. As of September 1, 2008 I, Samuel K. Lipari have produced seven set of exhibits to defendants, *See Exhibit 20* pg. 1-7 June 7, 2005 "Initial Disclosure", *See Exhibit 21* pg. 1-40 April 20, 2007 "Disclosure", *See Exhibit 26* pg. 1-42 May 3, 2007 "Disclosure" *See Exhibit 28* pg. 1-107 February 9, 2008 "Lipari v US Bank Settlement Brief", *See Exhibit 29* pg. 1-118 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. I", *See Exhibit 30* pg. 1-385 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. II", *See Exhibit 31* pg. 1-27 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. III" combining over 10,000 documents indexed by volume, exhibit number, description of the document, Bates stamp in addition to 70 categorized witnesses associated by relevance all of which contradict every fraudulent motion filed by the defendants and order from the Honorable Magistrate Judge David J. Waxse regarding the plaintiffs Rule 26(a)(1) disclosure compliance.

"3. Plaintiff's responses to Interrogatory Nos. 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17 and 21 are insufficient in that they fail to provide the information requested by each Interrogatory."

**Exhibit 35** pg. 1-3 May 22, 2008 "68 Motion to Compel"

49. On March 10, 2008 I, Samuel K. Lipari received an email subject: "Lipari v. US Bank-Plaintiff's First Requests for Production...", *See Exhibit 32* pg. 1 March 10, 2008 "Jay Discovery Objection". After receiving defendants email March 10, 2008 I, Samuel K. Lipari sent a letter to the defendants, *See Exhibit 33* pg. 1 March 10, 2008 "Reply to Defendant Discovery Objection" expressing interest to comply with defendants request. On March 26, 2008 I, Samuel K. Lipari complied with defendants request, *See Exhibit 34* pg. 1-17 March 26, 2008 "Answer to First Set of Interrogatories" on April 22, 2008 one day prior to receiving defendants golden rule letter concerning deficiencies in plaintiffs First Set of Interrogatories, *See Exhibit 36* pg. 1-5 April 23, 2008 "Golden Rule Letter to Lipari" defendants filed a Motion to Compel Rule 26(a)(1), *See Exhibit 35* pg. 1-3 April 22, 2008 "68 Motion to Compel". The defendants did not give plaintiff an opportunity to cure any deficiencies before filling a Motion to Compel; in fact defendants filled its Motion to Compel in advance of providing plaintiff notice or an opportunity to cure any deficiencies. This evidences the defendants' continuation of fraud on the court and the Honorable Magistrate Judge David J. Waxse was deceived ignoring the plaintiff's objections by ordering a Motion to Show Cause.

"4. Plaintiff should be ordered to provide full responses and documents in response to defendants'

Requests for Production. Likewise, because he did not offer any objections, plaintiff should be ordered to provide full and complete responses to Interrogatory Nos. 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17 and 21.”

**Exhibit 35** pg. 1-3 May 22, 2008 “68 Motion to Compel”

50. Statement of facts paragraph four is a continuation of the fraud on the court by the defendants and was accepted by the Honorable District Court Judge Carlos Murguia and the Honorable Magistrate Judge Waxse who were deceived by this paragraph into finding that the plaintiff had not answered some of the defendants’ interrogatories fully or produced all the requested documents when in fact the plaintiff had supplemented both the disclosures of documents and the answers to interrogatories which the defendants’ omitted from disclosing to the court. As of September 1, 2008 I, Samuel K. Lipari have produced seven set of exhibits to defendants, *See Exhibit 20* pg. 1-7 June 7, 2005 “Initial Disclosure”, *See Exhibit 21* pg. 1-40 April 20, 2007 “Disclosure”, *See Exhibit 26* pg. 1-42 May 3, 2007 “Disclosure” *See Exhibit 28* pg. 1-107 February 9, 2008 “Lipari v US Bank Settlement Brief”, *See Exhibit 29* pg. 1-118 February 9, 2008 “Settlement Brief Evidence Exhibits Vol. I”, *See Exhibit 30* pg. 1-385 February 9, 2008 “Settlement Brief Evidence Exhibits Vol. II”, *See Exhibit 31* pg. 1-27 February 9, 2008 “Settlement Brief Evidence Exhibits Vol. III” combining over 10,000 documents indexed by volume, exhibit number, description of the document, Bates stamp in addition to 70 categorized witnesses associated by relevance all of which contradict every fraudulent motion filed by the defendants and the order from the Honorable Magistrate Judge Waxse regarding the plaintiffs Rule 26(a)(1) disclosure compliance.

51. When I, Samuel K. Lipari learned by the defendant’s letter (See **Exhibit 36** pg. 1-5 April 23, 2008 “Golden Rule Letter” ) of deficiencies, I complied with the defendants request and submitted a supplemental disclosure addressing deficiencies brought to plaintiff’s attention then on May 6, 2008 I, Samuel K. Lipari responded with an additional 28 pages of interrogatories *See Exhibit 38* pg. 1-45 May 6, 2008 “Response to Golden Rule Letter Dated April 23”. On May 7, 2008 I, Samuel K. Lipari received an email subject: “Documents on CD for Rule 26 disclosures...”

“Sam-

In your response to our Motion to Compel, you indicated that the CD of documents you provided were searchable. That is not the case. The files are password protected that prevent any type of OCR, re-printing as a .pdf and searching. Please provide the password that will allow us to change the security setting for these files and make them searchable. Or please provide us with a new CD that allows OCR and searchable functions. Thanks.

Jay”

**Exhibit 39** pg. 1-2 May 7, 2008 “Clarification of CD Rule 26 Disclosures”

52. On that same day I, Samuel K. Lipari responded with an explanation to defendant *See Exhibit*



39 pg. 1-2 May 7, 2008 “Clarification of CD Rule 26 Disclosures”.

“Jay,

Sorry for the misunderstanding. I have not password protected any of the files. I think we are using two different meanings of searchable, the table of contents leads you to documents by keywords. Some are scanned images where keyword searching, cutting and pasting is not possible. Some were made into pdfs with the software I could afford, not Adobe and you have to go into the properties section to alter or save. You are no doubt inconvenienced but that is the software I have and the form I have created and store the pdfs in the normal course of business. You on the other hand give me only the paper versions of MS Word documents for the few docs you have produced in discovery even though I have requested only electronic documents. I hope this helps. Best regards, S~”

**Exhibit 39** pg. 1-2 May 7, 2008 “Clarification of CD Rule 26 Disclosures”

### **C. The Material Fraudulent Misrepresentations to The Court in the Third Motion to Compel**

53. On May 22, 2008 the defendants filed another Motion to Compel, *See Exhibit 41* pg. 1-3 May 22, 2008 “85 Motion to Compel”.

54. On June 5, 2008 I, Samuel K. Lipari responded with additional witness addresses, *See Exhibit 42* pg. 1-3 June 5, 2008 “Second Rule 26 Supplemental Disclosures”.

55. On July 15, 2008 I, Samuel K. Lipari emailed defendant and ask what additional information is need to comply with the courts order, *See Exhibit 44* pg. 1 July 15, 2008 “Email to Jay Requesting Clarification”

“5. Defendants certify that they have made a good faith attempt to resolve this discovery dispute. On April 23, 2008, defendants sent a letter to plaintiff outlining the deficiencies in his discovery responses. Plaintiff contacted defendants’ attorney on May 6, 2008, indicating that he was attempting to comply with the Golden Rule letter. Defendants’ attorney responded that same day and requested plaintiff’s supplemental responses by May 12, 2008. But plaintiff has failed to serve any supplemental responses to defendants’ interrogatories and has not served any responses to defendants’ Requests for Production. On May 20, 2008, defendants’ counsel attempted to contact plaintiff via telephone, but could not reach him.”

**Exhibit 35** pg. 1-3 May 22, 2008 “68 Motion to Compel”

56. Despite the best efforts of the plaintiff to cooperate and meet the defendants discovery demands, having already repeatedly produced every document in an organized indexed fashion and repeatedly answering every interrogatory even disclosing requested legal theories and other information beyond the scope of discovery demands, the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. filed a Motion to Compel, *See Exhibit 35* April 22, 2008 “68 Motion to Compel” Rule 26(a)(1) the day before giving notice to plaintiff *See Exhibit 36* pg. 1-5 April 23, 2008 “Golden Rule Letter to Lipari” about any deficiencies and the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. have asserted their conduct is in good faith.

57. I, Samuel K. Lipari didn't contact defendant on May 6, 2008, plaintiff served defendants with twenty seven additional pages of interrogatories, *See Exhibit 38* pg. 1-45 May 6, 2008 "Response to Golden Rule Letter Dated April 23".

58. I, Samuel K. Lipari served my supplemental response May 6, 2008, *See Exhibit 38* pg. 1-45 May 6, 2008 "Response to Golden Rule Letter Dated April 23" six days before defendant made its request deadline of May 12, 2008. Plaintiff's first response to defendants request was made March 26, 2008, *See Exhibit 34* pg. 1-17 March 26, 2008 "Answer to First Set of Interrogatories".

59. As of September 1, 2008 I, Samuel K. Lipari have produced seven sets of exhibits to defendants, *See Exhibit 20* pg. 1-7 June 7, 2005 "Initial Disclosure", *See Exhibit 21* pg. 1-40 April 20, 2007 "Disclosure", *See Exhibit 26* pg. 1-42 May 3, 2007 "Disclosure" *See Exhibit 28* pg. 1-107 February 9, 2008 "Lipari v US Bank Settlement Brief", *See Exhibit 29* pg. 1-118 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. I", *See Exhibit 30* pg. 1-385 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. II", *See Exhibit 31* pg. 1-27 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. III" combining over 10,000 documents indexed by volume, exhibit number, description of the document, Bates stamp in addition to 70 categorized witnesses associated by relevance all of which contradict every fraudulent motion filed by the defendants and order from The Honorable Magistrate Judge Waxse regarding the plaintiffs Rule 26(a)(1) disclosure compliance. The plaintiff has complied with defendants' fraudulently procured Order to Compel before it or the Motion to Compel was served on the plaintiff, *See Exhibits 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31*.

60. I, Samuel K. Lipari never received any calls from defendant. Plaintiff's phone is on his person 24 hours a day 7 days a week and has a voice mail feature for leaving messages. No call was made and I, Samuel K. Lipari never received a message.

61. On August 25, 2008 the court filed the following order (doc 120)

"120 SECOND NOTICE AND ORDER TO SHOW CAUSE". Defendants' Motion for Order to Show Cause 118 is granted. Plaintiff Samuel K. Lipari is required to show cause to United States District Judge Carlos Murguia, in a pleading filed by 9/8/08, why this case should not be dismissed with prejudice, or other sanctions imposed, pursuant to Federal Rule of Civil Procedure 37(b)(2)(A) for failure to comply with the Courts 7/8/08 Order (doc. 96), and/or pursuant to Federal Rules of Civil Procedure 16(f) and 37(b)(2)(A) for failure to participate in the preparation of a joint proposed pretrial order. Signed by Magistrate Judge David J. Waxse on 8/25/08. (mh) (Entered: 08/25/2008)"

**Exhibit 49** pg. 1-6 August 25, 2008 "Second Notice and Order to Show Cause"

62. The above order is in error because of the fraudulent misrepresentations described in the preceding paragraphs and because I, Samuel K. Lipari sent the defendants and Magistrate Judge David J.

Waxse a joint pretrial order, See **Exhibit 51** August 21, 2008 “Plaintiff’s Pretrial Order” (email cover letter to Magistrate Waxse)) evidencing cooperation with the defendants as ordered by the court (see also **Exhibit 9** of the Answer to Show cause Order Plaintiff’s Combined Pretrial Order) at 1:54pm on the same day the defendants had sent to Magistrate Judge David J. Waxse a pretrial order at 12:31pm with only the defendants’ portions included. See **Exhibit 50** August 21, 2008 Defendants’s Pretrial Order (email cover letter to Magistrate Waxse). See also **Exhibit 8** of the Answer to Show cause Order.

63. On August 20, 2008 the defendants filed the following Motion for Order to Show Cause with a repetition of the above described materially false misrepresentations about the plaintiff’s compliance with discovery except the defendants are no longer making the false assertion that that the plaintiff has not produced or needs to produce documents requested by the defendants and the defendants revealed their fraudulent scheme had the goal of procuring the dismissal of the plaintiff’s claims:

“118 MOTION FOR ORDER TO SHOW CAUSE

Defendants, by and through counsel Shughart Thomson & Kilroy, P.C., move this Court for an Order requiring the plaintiff to show cause why this action should not be dismissed (or other sanctions levied) under Rule 37(b)(2)(A) for his failure to comply with the Court’s July 8, 2008 discovery Order. In support of this Motion, defendants state as follows:

1. On July 8, 2008, the Court ordered plaintiff, within 14 days of the Order, to serve supplemental responses to defendants’ First Interrogatories Nos. 1, 3, 5-14, 16, 17 and 21; and to produce all documents responsive to defendants’ First Request for Production. The Court also ordered the plaintiff, within 21 days of the Order, to show cause why he should not be required to pay the reasonable fees and expenses the defendants incurred for their Motion to Compel. *See*, Memorandum and Order, Doc. # 96.”

**Exhibit 48** pg. 1-3 August 20, 2008 “Defendants Motion to Show Cause”

64. As I, Samuel K. Lipari have shown from the above sworn information and documentary exhibits, I had answered the defendants’ First Interrogatories Nos. 1, 3, 5-14, 16, 17 and 21 and I had produced all documents responsive to defendants’ First Request for Production before that these requests were made and several times in response to the defendants’ requests.

“2. On July 10, 2008, plaintiff filed an Objection to Magistrate’s Order, asking for District Court review of the July 8, 2008 Order. *See*, Doc. # 97. But the plaintiff did not seek to stay the Order under D. Kan. Rule 72.1.4(d).”

**Exhibit 48** pg. 1-3 at ¶ 2 August 20, 2008 “Defendants Motion to Show Cause”

65. I, Samuel K. Lipari having as shown in the above sworn information and documentary exhibits, answered the defendants’ First Interrogatories Nos. 1, 3, 5-14, 16, 17 and 21 and I had produced all documents responsive to defendants’ First Request for Production before that these requests were made and several times in response to the defendants’ requests; therefore I, Samuel K. Lipari believe I did not need to file a motion seek to stay the Order under D. Kan. Rule 72.1.4(d) and if any non frivolous dispute still

exists with the defendants my conduct cannot be sanctioned because "substantially justified." See *Fitz, Inc. v. Ralph Wilson Plastics Co.*, 174 F.R.D. 587, 591 (D.N.J.1997) (noting that, in the context of Rule 37 sanctions, "substantial justification" occurs when there is a "genuine dispute concerning compliance") (citing *Pierce v. Underwood*, 487 U.S. 552, 565, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988)).

"3. Simply filing an Objection to Magistrate's Order does not relieve a party's obligation to comply with the order, absent an Order to Stay under D. Kan. Rule 72. See, *Kelly v. Market USA*, 2003 WL 21089075, \*2 (D. Kan. 2003) (holding that *pro se* plaintiff's refusal to comply with the magistrate's order to produce discovery was unexcused even though the plaintiff had filed an objection to the order). A copy of the *Kelly* decision is attached as Exhibit A."

**Exhibit 48** pg. 1-3 at ¶ 3 August 20, 2008 "Defendants Motion to Show Cause"

66. I, Samuel K. Lipari hereby reassert the response in the above paragraph regarding my actual compliance and substantial justification making a motion for stay under D. Kan. Rule 72.1.4(d) unnecessary.

"4. The plaintiff has not produced any documents or supplemental responses in accordance with the Court's Order, and has also failed to respond to the Court's Show Cause Order."

**Exhibit 48** pg. 1-3 at ¶ 4 August 20, 2008 "Defendants Motion to Show Cause"

67. I, Samuel K. Lipari having as shown in the above sworn information and documentary exhibits, answered the defendants' First Interrogatories Nos. 1, 3, 5-14, 16, 17 and 21 and I had produced all documents responsive to defendants' First Request for Production before these requests were made and several times in response to the defendants' requests; therefore I, Samuel K. Lipari believe the above statement is an intentional fraud on the court by the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. perpetuating a pattern of material misrepresentations by the defendants to have my claims dismissed through a sanction procured through this and similar frauds described above.

"5. Rule 37(b)(2)(A) states that if a party fails to comply with a court's discovery order, the court may levy sanctions on the party, including dismissal of the action. Because the plaintiff has failed to comply with the July 8, 2008 Order, the defendants request the Court order the plaintiff to show cause why this matter should not be dismissed or other sanctions issued pursuant to Rule 37(b)(2)(A)."

**Exhibit 48** pg. 1-3 at ¶ 5 August 20, 2008 "Defendants Motion to Show Cause"

68. I, Samuel K. Lipari believe that paragraph 5 exposes and documents the fraudulent scheme of the defendants through their agent the law firm of Jack Kilroy, Jr. President and CEO of Shughart Thomson & Kilroy, P.C. to procure the dismissal of my claims through fraud that had earlier been concealed in the defendant response to the show cause order at 6:30 am on August 18, 2008 and upon which my affidavit of prejudice against this court, also dated August 18, 2008 was made.

### VIII. Plaintiff's Rule 56(a) Summary Judgment disclosures

69. The plaintiff's initial and subsequent disclosures, *See Exhibit 20* pg. 1-7 June 7, 2005 "Initial Disclosure", *See Exhibit 21* pg. 1-40 April 20, 2007 "Disclosure", *See Exhibit 26* pg. 1-42 May 3, 2007 "Disclosure", *See Exhibit 22* pg. 1-3972 April 20, 2007 "Lipari Trial Exhibits Volume I", *See Exhibit 23* pg. 1-2848 April 20, 2007 "Lipari Trial Exhibits Volume II", *See Exhibit 24* pg. 1-4009 April 20, 2007 "Lipari Supplemental Trial Exhibits Volume I", *See Exhibit 25* pg. 1-167 April 20, 2007 "Lipari Supplemental Trial Exhibits Volume II", *See Exhibit 29* pg. 1-118 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. I", *See Exhibit 30* pg. 1-385 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. II", *See Exhibit 31* pg. 1-27 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. III", documented the plaintiff's complaint, despite the plaintiff's repeated objections the defendants have obtained closure of discovery preventing any additional evidence except the documents provided by the plaintiff and the witnesses identifies in the plaintiff's complaint and witness disclosures for utilization by either party for a dispositive motion under Rule 59.

70. I, Samuel K. Lipari have provided emails, *See Exhibit 54* pg. 1 October 7, 2002 "Lipari email Notice of Changes to Escrow Agreement" (the "escrow agreement"), and *See Exhibit 55* pg. 1 October 8, 2002 "Kabbes email Signature of Accepted Changes", between the plaintiff's former corporation Medical Supply Chain, Inc. and US Bank forming a written contract to provide escrow agency and escrow accounts (the "contract to provide escrow accounts"). Three days later on October 11, 2002 plaintiff requested escrow release information from Mr. Kabbes, *See Exhibit 56* pg. 1 October 11, 2002 "Lipari Request for Escrow Release Language", so that escrow funds would be available for plaintiff to service the loan with Doug Lewis at US Bank Noland Rd., Independence Mo. branch. The escrow agreement prior to Mr. Kabbes change request, *See Exhibit 52* pg. 1-6 October 6, 2002 "Escrow Agreement Before Kabbes Changes", sent to Mr Kabbes on October 6 and the escrow agreement after plaintiff made the requested changes, *See Exhibit 53* pg. 1-6 October 7, 2002 "Escrow Agreement After Kabbes Changes. **Exhibit 54** and **Exhibit 55** were disclosed to defendants on February 9, 2008 *See Exhibit 29* pg. 1-118 February 9, 2008 "Settlement Brief Evidence Exhibits Vol. I" Table of Contents pg. 2, **Exhibits 7** Lipari email to Kabbes 10-7-02, **Exhibit 8** Escrow Agreement with changes for Brian Kabbes' approval, **Exhibit 9** Escrow Agreement with Brian Kabbes' signature block affixed, **Exhibit 10** Lipari email to Brian Kabbes with

proposed release 10-11-02, and **Exhibit 11** Lipari email to Brian Kabbes 10-14-02 and thoroughly briefed on the evidence, *See Exhibit 28* pg. 1-107 February 9, 2008 “Lipari v US Bank Settlement Brief”.

71. I, Samuel K. Lipari have provided documentation with the emails forming a contract to provide escrow agency and accounts (the “contract to provide escrow accounts”) and an escrow deposit contract (the “escrow agreement”) , *See Exhibit 53* pg. 1-6 October 7, 2002 “Escrow Agreement After Kabbes Changes” authorized by Brian Kabbes, *See Exhibit 55* pg. 1 October 8, 2002 “Kabbes email Signature of Accepted Changes” US Bank’s Corporate Trust Department Vice President that I had to give a benefit and US Bank received a benefit when the escrow deposit document (the “escrow agreement”) was changed to designate a treasury fund owned by US Bancorp *See Exhibit 53* pg. 1-6 October 7, 2002 “Escrow Agreement After Kabbes Changes” pg. 2 Section 4 Investments.

72. I, Samuel K. Lipari have provided documentation that I have been injured ¶¶ 1-77 of this document by the defendants fighting the existence of a contract between the plaintiff and US Bank to provide escrow agency and escrow accounts despite their prohibition against denying the existence, *See Exhibit 55* pg. 1 October 8, 2002 “Kabbes email Signature of Accepted Changes”, benefits or effect of the contract *See Exhibit 53* pg. 1-6 October 7, 2002 “Escrow Agreement After Kabbes Changes” pg. 2 Section 4 Investments after receiving a benefit under Missouri law including the procurement of the present show cause order *See Exhibit 47* pg. 1-2 August 18, 2008 “Notice and Order to Show Cause” and again *See Exhibit 49* pg. 1-6 August 25, 2008 “Second Notice and Order to Show Cause”, which has greatly taxed me and interfered in my launching of a new business outside of the institutional hospital supply market monopolized by the defendants with their co-conspirators Neoforma, Inc now GHX LLC; Novation LLC and the General Electric Company.

73. I, Samuel K. Lipari in having provided the evidence supporting ¶ 72 above have provided the defendants with evidence that US Bank NA with the aid of US Bancorp Inc., its parent company have breached their contract with my former corporation Medical Supply Chain, Inc. by breaching the contract to provide escrow accounts’ inherent duty of good faith and fair dealing.

74. I, Samuel K. Lipari in having provided the evidence supporting ¶¶ 70 thru 73 above have provided the defendants with evidence that US Bank NA with the aid of US Bancorp Inc. have breached a fiduciary duty to me existing at Missouri law recognizing agreements to provide escrow agency and to act as an escrow account facility including the contract to provide escrow accounts between my former

corporation Medical Supply Chain, Inc. and US Bank are fiduciary obligations creating duties breached by the defendants in denying the existence, benefits or effect of the contract to provide escrow accounts.

75. I, Samuel K. Lipari in having provided the evidence supporting ¶¶ 70 thru 73 above have provided the defendants with evidence that US Bank NA with the aid of US Bancorp Inc. have deprived me of counsel, injured persons assisting me, tortuously interfered with my efforts to cover or mitigate the damages from US Bank's breach by interfering with my litigation against General Electric where US Bank and US Bancorp had no legal interest.

76. I, Samuel K. Lipari have been injured by US Bank and US Bancorp tortuously interfering with my business expectancies for legal representation by Hawver Law Office and Steven Siegel Hanson, LLP.

I hereby swear certifying that the above stated facts and attachments are true to the best of my knowledge and recollection.

Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_

Notary

Subscribed and sworn before me on \_\_\_\_\_ Date \_\_\_\_\_

#### **Index of Affidavit Exhibits**

Exhibit 20 pg. 1-7 June 7, 2005 "Initial Disclosure"

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**CERTIFICATE OF SERVICE**

I certify I have sent a copy to the undersigned opposing counsel via electronic filing on 9/2/08.

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