

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

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

OBJECTION TO MAGISTRATE’S ORDERS OF 8/18/08

Comes now the plaintiff appearing *pro se* and while objecting to the jurisdiction of this court after the notice of appeal, makes the following objection to the orders dated 08/18/2008 requiring the plaintiff to show cause and pay fees by Magistrate Judge David J. Waxse.

STATEMENT OF FACTS

1. The plaintiff made a pretrial affidavit of bias on August 18, 2008.
2. The Hon. Judge Carlos Murguia has not yet responded to the affidavit of bias.
3. The order of 08/20/2008 is by Magistrate Hon. Judge David J. Waxse not the trial judge:

“08/20/2008
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ORDER regarding 114 Notice and Order to Show Cause. The Court has reviewed Plaintiff's reply (doc. 113) to Defendants' response (doc. 111) regarding Plaintiff's asserted noncompliance with the Court's 7/22/08 Order (doc. 103). Plaintiff's filing of the reply does not relieve Plaintiff of the obligation to respond to the Order to Show Cause. Plaintiff shall file his response to the Order to Show Cause on or before 8/27/08. Entered by Magistrate Judge David J. Waxse on 8/20/08. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.)
(mh) (Entered: 08/20/2008)

4. The orders were made after the plaintiff filed a Notice of Appeal in this same matter or controversy, divesting this court of jurisdiction.

MEMORANDUM OF LAW

The plaintiff has filed an affidavit under 28 USC § 144 over the court’s proceeding to exert jurisdiction in a biased and prejudiced manner against the plaintiff despite being given conclusive notice that the plaintiff’s appeal has not been dismissed as sought by the defendants (the plaintiff supplied the court a copy of the August 11, 2008 Order of the Tenth Circuit) and this court was under the controlling

law of this circuit deprived of jurisdiction on July 11, 2008. See Plaintiff's Objection to Magistrate's Order of 08/20/08.

The plaintiff has consistently argued that the federal court lacks jurisdiction over his concurrent state court action which was erroneously removed from the State of Missouri 16th Circuit court on the grounds of diversity and has only the jurisdiction over these claims as pendant state law claims dismissed without prejudice in *MSC v. Neoforma, Inc.* Case No. 05-2299. However, this court lost jurisdiction over this matter in controversy on July 11, 2008 under controlling precedent of the Tenth Circuit in *United States v. Prows*, 448 F.3d 1223, 1228 (10th Cir. 2006) (recognizing the general rule that a notice of appeal divests the district court of jurisdiction over substantive claims)."

This court erroneously continued to exert jurisdiction but on August 11, 2008 the Tenth Circuit issued an order in *MSCI v Neoforma, Inc.* Case No. 08-3187 denying dismissal of the appeal. This court's jurisdiction under Case No. 07-CV-02146-CM-DJW as a removed state court action over 05-2299's pendant state law claims is impacted by the special rule applicable to exclusive jurisdiction over federal antitrust claims *Holmes Financial Associates, Inc. v. Resolution Trust Corp.*, 33 F.3d 561 (C.A.6 (Tenn.), 1994) and this court will permanently lose jurisdiction 1) under the exclusive federal jurisdiction rule, 2) the reversal of the dismissal of the plaintiff's federal and pendant claims in 05-2299, and 3) the recognition that the removal never had the required complete diversity of citizenship for 28 U.S.C. § 1332 and must be remanded under 28 U.S.C. § 1447 (c)'s requirement that "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded".

The appeal concerns whether this is the same matter in controversy as *MSCI v. Neoforma et al* Case No. 05-2299 and whether substantive claims related to substantive claims still included in this case over the same conduct (aspects of the issues involved in the appeal halting this court under *U.S. v. Salzano*, 994 F.Supp. 1321 (D. Kan., 1998)) were lawfully dismissed in light of the US Supreme Court's overturning of the Tenth Circuit Rule 12(b)(6) standard or practice used by this court in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007) (2007). This court's orders subsequent to the July 11, 2008 Notice of Appeal are "null and void" under *Garcia v. Burlington Northern R.R. Co.*, 818 F.2d 713, 721 (10th Cir.1987).

CONCLUSION

Whereas the trial judge has not reviewed the plaintiff's affidavit of prejudice or has not made an order regarding that review, under 28 USC § 144 there are no further proceedings in this court and because this court lost jurisdiction due to the notice of appeal filed on July 11, 2008, the magistrate's orders are void for want of jurisdiction.

Respectfully Submitted,

S/ Samuel K. Lipari

Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064
816-365-1306
saml@medicalsupplychain.com
Pro se

CERTIFICATE OF SERVICE

I certify I have sent a copy to the undersigned opposing counsel via electronic filing on 8/22/08.

Mark A. Olthoff, Esq.,
Jay E. Heidrick, Esq.
Shughart Thomson & Kilroy, P.C.
Twelve Wyandotte Plaza
120 W. 12th Street
Kansas City, MO 64105

via email
jheidrick@stklaw.com
molthoff@stklaw.com
ademarea@stklaw.com

S/ Samuel K. Lipari

Samuel K. Lipari