

**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>)	

**STIPULATION FOR ORDER OF DISMISSAL OF REMAINING
CLAIMS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(A)(2)**

Comes now the plaintiff Samuel K. Lipari appearing pro se and Stipulation for Order of Dismissal of remaining claims pursuant to Federal Rule of Civil Procedure 41(a)(2).

STATEMENT OF FACTS

1. Plaintiff brought claims in good faith in a sworn complaint and with evidence the defendants US Bank NA and US Bancorp, Inc. had disassembled his confidential business plan violating the written contract preventing unauthorized disclosure and dissemination of the proprietary data and algorithm in violation of the Missouri Trade Secrets Act.
2. The plaintiff had no way to know that his claims would be fraudulently removed to federal court then transferred to the District of Kansas for the corrupt purpose of depriving the plaintiff of discovery including the written report of US Bank employee Doug Lewis to the Saint Louis office documenting Lewis’s transmission of the plaintiff’s trade secrets and other Due Process provided for under the Federal Rules of Civil Procedure.
3. Consumers in the Missouri market for hospital supplies and in the nationwide market for hospital supplies were injured by the conduct of the defendants US Bank NA and US Bancorp, Inc.’s unauthorized disclosure and dissemination acting in conspiracy to restrain competition in the market for hospital supplies with hospital supply cartel members that included US Bancorp Piper Jaffray; Neoforma, Inc.; Novation LL;C and The General Electric Company.
4. The plaintiff voluntarily dismisses his 09/05/2008 Motion for Leave to Amend Complaint, (doc. 139) which has not yet been ruled upon.

5. The plaintiff stipulates a dismissal of Count III Trade Secret Misappropriation Under Section 417.450 RSMO of The Uniform Trade Secrets Act with prejudice under Rule 41(a)(2) while retaining his objection to the validity of this court's jurisdiction over concurrent state claims dismissed without prejudice from *Medical Supply Chain, Inc. v. Neoforma, Inc. et al* KS Dist. Ct. Case # 05-2299.

MEMORANDUM OF LAW

The defendants have not answered or otherwise sought a Rule 12 dismissal or a summary judgment of the plaintiff's proposed amendments. The plaintiff voluntarily dismisses by stipulation under Rule 41(a)(1)(ii) the proposed amendments to include claims against the defendants under the proposed Count VI cause of action for declaratory and injunctive relief that subtitle b, section 351 of the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA PATRIOT) Act of 2001 amendment of 31 U.S.C. §5318(g) violates the First and Fifth Amendments of the United States Constitution and monetary damages for fraud on the court by US Bank NA and US Bancorp, Inc. to obtain the sanctioning of the plaintiff by falsely accusing the plaintiff of failing to produce discoverable documents. Those two proposed amended claims are now dismissed without prejudice:

“A voluntary dismissal by stipulation under Rule 41(a)(1)(ii) is of right, cannot be conditioned by the court, and does not call for the exercise of any discretion on the part of the court. E.g., *In re Wolf*, 842 F.2d 464, 466 (D.C.Cir.1988) (per curiam); *Hinsdale v. Farmers Nat'l Bank & Trust Co.*, 823 F.2d 993, 995 & n. 1 (6th Cir.1987); *Gardiner v. A.H. Robins Co.*, 747 F.2d 1180, 1189-90 (8th Cir.1984). Once the stipulation is filed, the action on the merits is at an end. *In re Wolf*, 842 F.2d at 466; *McCall-Bey v. Franzen*, 777 F.2d 1178, 1185 (7th Cir.1985); *Gardiner*, 747 F.2d at 1189. We agree with the Seventh Circuit that “[a]n unconditional dismissal terminates federal jurisdiction except for the limited purpose of reopening and setting aside the judgment of dismissal within the scope allowed by [Fed.R.Civ.P.] 60(b).” *McCall-Bey*, 777 F.2d at 1190; see also *Hinsdale*, 823 F.2d at 995-96.”

Smith v. Phillips, 881 F.2d 902 (C.A.10, 1989).

To the extent this court was not divested of jurisdiction by the plaintiff's filing of a timely notice of appeal in *Medical Supply Chain, Inc. v. Neoforma, Inc. et al* KS Dist. Ct. Case # 05-2299 under *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 402, 74 L.Ed.2d 225 (1982). *Smith v. Phillips*, 881 F.2d 902, 904 n. 5 (10th Cir.1989); *Garcia v. Burlington Northern R.R. Co.*, 818 F.2d 713, 721 (10th Cir.1987) (“Filing a timely notice of appeal pursuant to Fed.R.App.P. 3 transfers the matter from the district court to the court of appeals) the plaintiff realizes that his claims for damages against the defendants under Count III Trade Secret Misappropriation Under Section 417.450 RSMO of The Uniform

Trade Secrets Act are now dismissed with prejudice under Rule 41(a)(2). However this court's Memorandum and Order of 10/10/08 which avoided resolving the protective order disputes in time for trial has made further work on prosecuting the 417.450 RSMO of The Uniform Trade Secrets Act claim futile for reasons beyond the control of the plaintiff and having nothing to do with the evidence of US Bank NA and US Bancorp, Inc.'s violation or the important public policy of the State of Missouri's legislature.

CONCLUSION

The court must now end its conduct toward the parties in relationship to resolving any claim brought by the plaintiff. Those claims have now been removed from this proceeding.

Respectfully submitted,

S/Samuel K. Lipari
Samuel K. Lipari
Plaintiff
Pro se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via email, on this 15th day of October, 2008 to:

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