## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

SAMUEL K. LIPARI,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION
v.	)	
	)	No. 07-2146-CM
	)	
US BANCORP NA and	)	
US BANK NA,	)	
	)	
Defendants.	)	
	)	

## MEMORANDUM AND ORDER

Plaintiff Samuel K. Lipari brings this action against defendants US Bancorp NA and US Bank NA. This matter is before the court on plaintiff's Motion to Strike Defendants' Motion to Dismiss (Doc. 25).

Plaintiff filed the instant action in Jackson County Circuit Court on November 28, 2006 (Jackson County Case No. 0616-CV-32307). On December 13, 2006, defendants removed the action to the United States District Court for the Western District of Missouri, Western Division, on the basis of diversity. Defendants filed a motion to dismiss the case or alternatively to transfer the case to this court. On April 11, 2007, the United States District Court for the Western District of Missouri granted defendants' motion and transferred the case to this court. On April 25, 2007, defendants filed Defendants' Motion to Dismiss Plaintiff's Complaint (Doc. 22). Instead of responding to defendants' motion to dismiss, plaintiff filed a motion to strike the motion to dismiss.

Plaintiff requests that the court to strike defendants' motion to dismiss because (1) similar motions were denied in other cases and (2) the Tenth Circuit Court of Appeals has exclusive jurisdiction over these claims. Plaintiff's arguments are without merit. In plaintiff's motion, he

refers to motions and rulings in previous cases. Motions to dismiss filed in prior lawsuits do not

prevent defendants from filing a motion to dismiss in this action. Additionally, judgment has not

been entered in this case and no appeal has been filed; jurisdiction remains with this court, not the

Tenth Circuit.

Plaintiff appears to argue that this case is the "same case or controversy" as previous actions

"variously styled Medical Supply Chain v. US Bancorp N A, et al, Medical Supply Chain v.

Novation, et al KS Case No. 02-cv-02539-CM, W. Dist. Mo. Case No 05-0210-CV-W-ODS and

*Medical Supply Chain v. Novation, et al* 05-cv-02299-KHV-GLR . . . " (Pl.'s Mot. to Strike at p.1).

If plaintiff's claims are identical to claims that have been adjudicated in a prior action, he should

consider whether his claims in this case are appropriate under res judicata and collateral estoppel

and address the issue in his response to defendants' motion to dismiss. After reviewing the record in

this case, the court finds that defendants are not prohibited from filing their motion to dismiss.

IT IS THEREFORE ORDERED that plaintiff's Motion to Strike Defendants' Motion to

Dismiss (Doc. 25) is denied. Plaintiff has twenty-three days from the date of this order to file his

response to defendants' Motion to Dismiss. Defendants have twenty-three days from the date

plaintiff files his response to file their reply.

Dated this 20th day of August 2007, at Kansas City, Kansas.

s/ Carlos Murguia

CARLOS MURGUIA

**United States District Judge** 

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