

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

HUNTER R. LEVI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09-00053-CV-W-DW
	)	
AEROTEK, INC. & ALLEGIS GROUP,	)	
	)	
Defendants.	)	

**ORDER**

Before the Court is Defendants Aerotek Inc. ("Aerotek") and Allegis Group's ("Allegis") Motion to Dismiss (Doc. 10). For the following reasons, Defendants' motion is granted.

I.

In order to survive a motion to dismiss under Rule 12(b)(6), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "Where the allegations show on the face of the complaint there is some insuperable bar to relief, dismissal under Rule 12(b)(6) is appropriate." Benton v. Merrill Lynch & Co., 524 F.3d 866, 870 (8th Cir. 2008). At the very least, the complaint must contain facts which state a claim as a matter of law and must not be conclusory. See, Frey v. City of Herculaneum, 44 F.3d 667, 671 (8<sup>th</sup> Cir. 1995). "In ruling on a motion to dismiss, courts may consider materials that are part of the public record or do not contradict the complaint, as well as materials necessarily embraced by the pleadings. Mischia v. St. John's Mercy Health, 2005 U.S. Dist. Lexis 43102 at \*4 (E.D. Mo. 2005)(citing Porous Media Corp. v. Pall Corp., 186 F.3d 1077, 1079 (8th Cir. 1999). In considering Defendants' motion, the Court has reviewed pleadings

and orders filed in Levi v. Anheuser- Busch Companies, Inc. et al, filed in the United States District Court for the Western District of Missouri on May 28, 2008. (Case No. 08-CV-00398-RED).

## II.

In their Motion to Dismiss, Defendants argue that Plaintiff's claims are barred by res judicata, in that Defendants Aerotek and Allegis are privies, and the Honorable Richard E. Dorr dismissed claims brought against Defendant Aerotek based on substantially identical factual allegations. Federal courts look to state law in determining "the effect of the judgment of another federal court in a case where state law supplied the rule of the decision." Hillary v. Trans World Airlines, Inc., 123 F.3d 1041, 1044 (8<sup>th</sup> Cir. 1997). Missouri law defining the prerequisites for res judicata (or claim preclusion) tracks Eighth Circuit res judicata law. Bannum, Inc. v. City of St. Louis, 195 S.W.3d 541, 544 (Mo. Ct. App. 2006). In Missouri, "a prior judgment bars a subsequent claim arising out of the same group of operative facts 'even though additional or different evidence or legal theories might be advanced to support' the subsequent claim. Mischia v. St. John's Mercy Health Sys., 457 F.3d 800, 804 (8<sup>th</sup> Cir. 2006)(quoting Chesterfield Village v. City of Chesterfield, 64 S.W.3d 315 (Mo. banc 2002)). "The doctrine of claim preclusion bars not only the claims asserted in the first action but also claims 'which the parties, exercising reasonable diligence, might have brought forward at the time.'" Id.

In Levi v. Anheuser- Busch Companies, Inc. et al., Case No. 08-CV-00398-RED, Plaintiff brought claims against Defendant Aerotek, Inc. based on allegations that Defendant Aerotek unlawfully terminated Plaintiff in 2005, denied Plaintiff unemployment benefits in 2005, lied in Missouri unemployment proceedings about Plaintiff's termination, and refused to answer

Sarbanes-Oxley Act interrogatories. The Honorable Richard E. Dorr issued an order granting Defendant Aerotek's motion to dismiss Plaintiff's claims. In the current action, Plaintiff alleges that Defendants Aerotek and Allegis conspired to wrongfully terminate his employment, defamed Plaintiff, lied in unemployment proceedings about Plaintiff's termination, and unlawfully interfered with an investigation under the Sarbanes-Oxley Act. The same factual allegations raised in the case before Judge Dorr underlie the claims against Defendant Aerotek brought by Plaintiff in the instant case. The claims Plaintiff brings in the instant action could have been brought in the previous case. As such, Plaintiff's claims against Defendant Aerotek are barred by res judicata, and must be dismissed. See United States Fid. & Guar. Co. v. Commercial Union Ins. Co., 943 S.W.2d 640, 642 (Mo. 1997) (holding that "[t]he granting of a motion to dismiss for failure to state a claim is a final judgment on the merits sufficient to raise the defense of res judicata in a later proceeding.").

Plaintiff's claims against Defendant Allegis must also be dismissed, as Defendant Allegis is in privity with Aerotek. For res judicata purposes, Courts determine privity by analyzing whether the interests of a party involved in later litigation are "adequately congruent to those of the defendants in the earlier suit." Mills v. Des Arc Convalescent Home, 872 F.2d 823, 827 (8th Cir. 1989). "Privity, as a basis for satisfying the 'same party' requirement of res judicata, is premised on the proposition that the interests of the party and non-party are so closely intertwined that the non-party can fairly be considered to have had his or her day in court." Stine v. Warford, 18 S.W.3d 601, 605 (Mo. Ct. App. 2000). In his complaint, Plaintiff alleges that Allegis Group owns Aerotek, Inc. In a separate letter to the Court (Doc. 5), Plaintiff reiterated his allegation that "Aerotek is 100% owned by Allegis". The premise of his claims against Allegis

Group is based on its alleged ownership of Aerotek, Inc. Based on Plaintiff's Complaint and the applicable law, the Court finds that Allegis Group and Aerotek are privies. Plaintiff's claims against Defendant Allegis Group are therefore barred under the doctrine of res judicata.

III.

As Plaintiffs' claims are barred by the doctrine of res judicata, the Court hereby ORDERS that Defendants' Motion to Dismiss (Doc. 10) is hereby GRANTED.

Date: September 21, 2009

/s/ Dean Whipple  
Dean Whipple  
United States District Judge