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7 Defendant Kokoweef, Inc. and
8 Defendant Patrick C. Clary

DISTRICT COURT

CLARK COUNTY, NEVADA

10 TED R. BURKE; MICHAEL R. and)
11 LAURETTA L. KEHOE; JOHN BERTOLDO;)
12 PAUL BARNARD; EDDY KRAVETZ; JACKIE)
13 & FRED KRAVETZ; STEVE FRANKS;)
14 PAULA MARIA BARNARD; PETE T. and)
15 LISA A. FREEMAN; LEON GOLDEN;)
16 C.A. MURFF; GERDA FERN BILLBE;)
17 BOB and ROBYN TRESKA;)
18 MICHAEL RANDOLPH; and FREDERICK)
19 WILLIS,)

Plaintiffs,

vs.

17 LARRY L. HAHN, individually, and)
18 as President and Treasurer of)
19 Kokoweef, Inc., and former)
20 President and Treasurer of)
21 Explorations Incorporated of)
22 Nevada; HAHN'S WORLD OF SURPLUS,)
23 INC., a Nevada corporation;)
24 PATRICK C. CLARY, an individual;)
25 DOES 1 through 100, inclusive;)

Defendants,

and

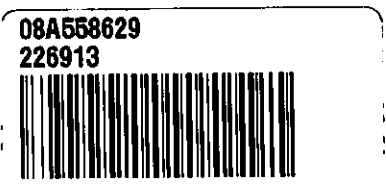
25 KOKOWEEF, INC., a Nevada)
26 corporation; EXPLORATIONS)
27 INCORPORATED OF NEVADA, a)
28 dissolved corporation,)

Nominal Defendants.

CASE NO. A558629
DEPT NO. XIII

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF DEFENDANT PATRICK C.
CLARY'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

DATE OF HEARING: 7/6/09
TIME OF HEARING: 9:00 a.m.



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1 I.

2 Much of the Declaration of Ted R. Burke should be disregarded by
3 the Court.

4 At the outset, while the "Plaintiffs' Opposition to Defendant
5 Patrick C. Clary's Motion for [Partial] Summary Judgment" ("the
6 Plaintiffs' Opposition") identifies, on page 4 thereof, "the Affidavit
7 of Plaintiff Ted Burke," the attachment is actually the unsworn
8 "Declaration of Ted R. Burke" ("the Burke Declaration").

9 Rule 56(e) of the Nevada Rules of Civil Procedure provides as
10 follows with respect to a motion for summary judgment:

11 Supporting and opposing affidavits shall be made on
12 personal knowledge, shall set forth such facts as would be
13 admissible in evidence, and shall show affirmatively that the
14 affiant is competent to testify to the matters stated therein.

15
16 The Burke Declaration states in paragraph 1 thereof as follows:

17 I make this Declaration in support of Plaintiff's
18 Opposition to Defendant Patrick C. Clary's ("Clary") Motion for
19 Partial Summary Judgment. I have personal knowledge of the facts
20 stated herein and if called upon to testify thereto I could and
21 would do so competently under oath.

22 An examination of the bulk of the remainder of the Burke
23 Declaration shows that it is replete with statements that do not meet
24 the foregoing criteria.

25 For example, paragraph 6 of the Burke Declaration states as
26 follows:

27 During the September 18, 2007 meeting, Clary also advised
28 me that the sales of securities in EIN and Kokoweef did not need
to be registered with the Sec, because they fell within an
exemption provided by Rule 504 of Regulation D. **However, while
I am not a securities expert, I now understand that the sale of
securities in EIN and Kokoweef were not eligible for the
exemption provided by Rule 504 of Regulation D of the SEC
(emphasis added).**

The emphasized language and other similar statements in the Burke

1 Declaration are obviously not based on the personal knowledge of the
2 declarant, are really legal conclusions, and are not admissible as
3 evidence so they should be disregarded by the Court.

4 By way of further example, Plaintiff Ted R. Burke's statement in
5 the last sentence of paragraph 10 of the Burke Declaration is blatant
6 inadmissible hearsay:

7 In fact, I spoke to my tax attorney who informed me that
8 Clary's statement regarding my tax liability for the 70,000
9 shares was a misrepresentation and that I would only have tax
10 liability upon my sale of the shares and only for the amount of
11 the equity gained while holding those shares.

12 However, in the last statement in the Burke Affidavit, being
13 paragraph 12 thereof, he negates all his other statements by stating
14 as follows:

15 I was not aware, nor could I have been aware of the
16 negligent representations Clary was making and have suffered
17 damage as a result thereof.

18 II.

19 **The Court's denial of Defendant Patrick C. Clary's Motion for**
20 **Sanctions for violation of Rule 11 of the Nevada Rules of Civil**
21 **Procedure does not support the Plaintiffs' Opposition.**

22 The above-entitled Court's Decision and Order filed herein on
23 January 29, 2008, which is attached as Exhibit 1 to the Plaintiffs'
24 Opposition, states as follows, on page 5 thereof, with respect to the
25 Motion for Sanctions:

26 The Court is not in a position to determine whether
27 sanctions are to be imposed until the underlying pleading
28 purporting to assert causes of action against Defendant Clary is
viable for purposes of further proceedings. In this regard,
although certain causes of action have been dismissed against
Defendant Clary, the Court considers a sanction motion to be
premature. However, in making this ruling, the Court in no way
intimates a view that there is a basis for Plaintiffs'
contentions or that sanctions will not be appropriate.

Therefore, the sanction Motion is DENIED without prejudice
to renewal after the viability of the remaining cause of action

1 pleaded against Defendant Clary (the Fourth Cause of Action) is
2 determined.

3 The Motion for Partial Summary Judgment, which is not premature, has
4 been prepared and submitted precisely for the purpose of permitting
5 the Court to make the determination that the Fourth Cause of Action
6 purporting to assert a claim for "negligent misrepresentation" is not
7 viable.

8 III.

9 **The Plaintiffs have presented no material facts sufficient to**
10 **sustain their purported claim for negligent misrepresentation because**
11 **none exist.**

12 In paragraph 12 of the Affidavit of Patrick C. Clary, which is
13 attached as Exhibit 1 to the Motion for Partial Summary Judgment,
14 Defendant Patrick C. Clary expressly denies that he ever committed any
15 "negligent misrepresentation" by setting forth specific and factual
16 statements that would be admissible into evidence.

17 In Barnettler v. Reno Air, Inc., 114 Nev. 441, 449, 956 P.2d
18 1382, 1387 (1998), the Supreme Court of Nevada held as follows:

19 This court defines the tort of negligent misrepresentation
20 as follows:

21 "One who, in the course of his business, profession or
22 employment, or in any other action in which he [or she] has a
23 pecuniary interest, supplies false information for the guidance
24 of others in their business transactions, is subject to
liability for pecuniary loss caused to them by their justifiable
reliance upon the information, if he [or she] fails to exercise
reasonable care or competence in obtaining or communicating the
information"

25 (quoting *Restatement (Second) of Torts* § 552(1) (1976)).

26 See also Goodrich & Pennington Mortgage Fund, Inc. v. J.R. Woolard,
27 Inc., 120 Nev. 777, 101 P.3d 792 (2004).

28 No material facts exist or can be alleged and proved by the

1 Plaintiffs to meet the requirements of the foregoing definition of
2 negligent misrepresentation, and, even if some evidence existed, the
3 Plaintiffs' own lead counsel admitted at the hearing held on January
4 26, 2009 in the above-captioned case that the Plaintiffs were not
5 seeking any damages but only the lawful reissuance of their stock in
6 Kokoweef, Inc. (although it was not explained how this would occur).
7 Without any pecuniary loss, the Plaintiffs' claim for "negligent
8 misrepresentation" must fail.

9 Rule 11 of the Nevada Rules of Civil Procedure provides that
10 counsel for the Plaintiffs, when signing their amended complaint
11 herein, were:

12 certifying that to the best of the person's knowledge,
13 information, and belief, formed after an inquiry reasonable
14 under the circumstances, --

15 . . . (2) the claims, defenses, and other legal contentions
16 therein are warranted by existing law or by a nonfrivolous
17 argument for the extension, modification, or reversal of
18 existing law or the establishment of new law;

19 (3) the allegations and other factual contentions have
20 evidentiary support or, if specifically so identified, are
21 likely to have evidentiary support after a reasonable
22 opportunity for further investigation or discovery

23 These things they did not have then and they do not have now. The
24 Plaintiffs have not and cannot come forward with any admissible facts
25 to prove their claim of "negligent misrepresentation" as that term has
26 been defined by the Supreme Court of Nevada.

27 IV.


28 **Conclusion**

Because there are no genuine issues as to any material facts with
respect to the Fourth Cause of Action of the amended complaint herein
for "negligent misrepresentation" and Defendant Patrick C. Clary is
entitled to judgment as a matter of law with respect to that remaining

1 claim against him, in compliance with Rule 56 of the Nevada Rules of
2 Civil Procedure Defendant Patrick C. Clary's Motion for Partial
3 Summary Judgment should be granted.

4 Respectfully submitted,

5 PATRICK C. CLARY, CHARTERED

6
7 By 
Patrick C. Clary

8
9 Attorneys for So-called Nominal
10 Defendant Kokoweef, Inc. and
Defendant Patrick C. Clary

11 CERTIFICATE OF SERVICE BY MAILING

12 The above and foregoing Reply Memorandum of Points and
13 Authorities in Support of Defendant Patrick C. Clary's Motion for
14 Partial Summary Judgment was served on the Plaintiffs by mailing a
15 copy thereof, first-class postage prepaid, to their attorneys,
16 Robertson & Vick, LLP, 401 North Buffalo Drive, Suite 202, Las Vegas,
17 Nevada 89145, and was served on Defendants Larry Hahn and Hahn's World
18 of Surplus, Inc. by mailing a copy thereof, first-class postage
19 prepaid, to their attorney, M Nelson Segel, Esq., M Nelson Segel,
20 Chartered, 624 South 9th Street, Las Vegas, Nevada 89101, on July 1,
21 2009.

22 PATRICK C. CLARY, CHARTERED

23
24 By 
Patrick C. Clary

25
26 Attorneys for So-called Nominal
27 Defendant Kokoweef, Inc. and
28 Defendant Patrick C. Clary