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Alvin L. Johnson
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1 **MEX**
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11 Defendant Kokoweef, Inc. and
12 Defendant Patrick C. Clary

13 M NELSON SEGEL, CHARTERED
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21 Larry L. Hahn and Hahn's
22 World of Surplus, Inc.

08A558629
MOT
Motion
1218120


DISTRICT COURT
CLARK COUNTY, NEVADA

23 TED R. BURKE; MICHAEL R. and) CASE NO. A558629
24 LAURETTA L. KEHOE; JOHN BERTOLDO;) DEPT NO. XI
25 PAUL BARNARD; EDDY KRAVETZ; JACKIE)
26 & FRED KRAVETZ; STEVE FRANKS;)
27 PAULA MARIA BARNARD; PETE T. and)
28 LISA A. FREEMAN; LEON GOLDEN;) **DEFENDANTS' MOTION TO**
29 C.A. MURFF; GERDA FERN BILLBE;) **REOPEN DISCOVERY, EXTEND**
30 BOB and ROBYN TRESKA;) **CERTAIN DEADLINES, AND**
31 MICHAEL RANDOLPH; and FREDERICK) **CONTINUE THE TRIAL AND MOTION**
32 WILLIS,) **FOR EX PARTE ORDER SHORTENING**
33) **TIME FOR HEARING THEREON**

Plaintiffs,

vs.

34 LARRY L. HAHN, individually, and)
35 as President and Treasurer of)
36 Kokoweef, Inc., and former)
37 President and Treasurer of)
38 Explorations Incorporated of)
39 Nevada; HAHN'S WORLD OF SURPLUS,)
40 INC., a Nevada corporation;)
41 PATRICK C. CLARY, an individual;)
42 DOES 1 through 100, inclusive;)

Defendants,

DATE OF HEARING:
TIME OF HEARING:

FILE WITH
MASTER CALENDAR

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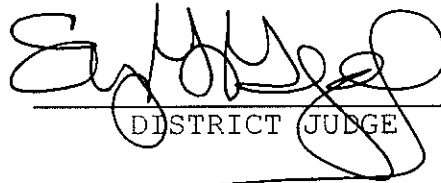
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1 ORDER SHORTENING TIME

2 Good cause appearing, it is hereby

3 ORDERED that the time for the hearing on the above and foregoing
4 Motion to Reopen Discovery and To Extend Certain Deadlines be, and it
5 hereby is, shortened to the 24th day of February, 2011, at the hour
6 of 9:00 A. M.

7 DATED this 8th day of February, 2011.

8 
9
10 DISTRICT JUDGE

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 The Subject Motion is made pursuant to and in accordance with
13 Rule 6(b) of the Nevada Rules of Civil Procedure and Rule 2.25 of the
14 Eighth Judicial District Court Rules.

15 The Declarations of M Nelson Segel and Patrick C. Clary attached
16 hereto as Exhibits A and B, respectively, and incorporated herein by
17 this reference, set forth facts which show good cause why the Subject
18 Motion should be granted. Those facts and the good cause shown thereby
19 arise out of the following events:

20 1. Following a hearing before the Court in this case on the
21 Plaintiff's Motion to Extend Expert Disclosure and Discovery Deadlines
22 September 14, 2010, after which no written order was entered prepared
23 and submitted to the court, and no such written order was, therefore,
24 entered, a status check had been scheduled and was held before the
25 Court on December 9, 2010. Thereafter, since counsel for the
26 Plaintiffs and the Defendants could not reach agreement on a single
27 order, competing orders were submitted, and the Court adopted one of
28 them with some changes, but, to the surprise of Defendants' counsel,

1 the order entered contained matters which were not even taken up at
2 the status conference.

3 2. Then, one week before the hearing on the Defendants' Motions
4 for Partial Summary Judgment was scheduled, on January 27, 2011, the
5 Plaintiffs served and filed two documents, which were not permitted
6 under the Rules, namely (i) "PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO
7 DEFENDANT PATRICK C. CLARY'S MOTION FOR SUMMARY JUDGMENT AND COUNTER
8 MOTION FOR SUMMARY JUDGMENT" (emphasis supplied) and (ii) PLAINTIFFS'
9 SUPPLEMENTAL OPPOSITION TO DEFENDANT HAHN'S WORLD OF SURPLUS, INC.'S
10 MOTION FOR SUMMARY JUDGMENT.

11 3. Shortly thereafter, counsel for Defendants Kokoweef, Inc.
12 ("Kokoweef") and Patrick C. Clary ("Clary") sent an email to the
13 Plaintiffs' counsel that obviously there was insufficient time for
14 said counsel to respond to the aforesaid "Supplemental Opposition" and
15 "Counter Motion" [sic] and that the hearing would have to be
16 continued. Although agreeing that said Defendants' counsel should have
17 more time, the Plaintiff's counsel responded that she would not agree
18 to the continuance unless certain dates upon which she insisted were
19 agreed to, which were unacceptable to the said Defendants' counsel
20 because of insufficiency of time to prepare; however, at the last
21 minute, she relented and, as the Court knows, she agreed to the
22 continuance and that the hearing date would be used for a further
23 status conference, which it was. At the status conference on February
24 3, 2011, Clary's Motion for Partial Summary Judgment was taken off
25 calendar, and the Court directed that all counsel meet and confer
26 pursuant to EDCR 2.34 and, if agreement couldn't be reached, a motion
27 should be filed on order shortening time showing good cause for the
28 relief sought.

1 4. The required conference among all three counsel took place in
2 the hallway outside of the Courtroom on February 3, 2011, during which
3 it was revealed by Defendants' counsel that it just been discovered
4 on the previous day by Kokoweef that a box of receipts and related
5 documentation that had been scanned during the production of
6 Kokoweef's financial records during its production thereof for the
7 Plaintiffs had somehow not been saved and, therefore, by the same
8 error, had not been included in one of the computer discs supplied
9 previously to the Plaintiffs for certain periods which the Plaintiffs'
10 forensic accounting expert had stated in his written report were
11 missing, and Defendants' counsel offered to promptly provide those
12 missing records to the Plaintiffs and agreed to permit the Plaintiffs
13 to have their forensic accounting expert supplement his report. It was
14 also pointed out to Plaintiffs' counsel that the Plaintiffs' forensic
15 accounting expert's report purportedly covered Kokoweef's records for
16 2002 and 2003 even though the Notice served by Plaintiffs on
17 Defendants and received on August 14, 2009 covered only the years of
18 2004-2009, and there never was a request for records for 2002-2003!
19 Because of unexpected and extraordinary circumstances set forth above,
20 the Defendants' counsel also requested the other extensions which are
21 set forth in the Subject Motion. No agreement was reached, and
22 Defendants' counsel expected to hear further from the Plaintiffs'
23 counsel but did not.

24 5. Thereafter, on February 3, 2011, counsel for Defendants Larry
25 L. Hahn and Hahn's World of Surplus, Inc. sent two emails to the
26 Plaintiffs' counsel, containing specific dates for a new discovery
27 cut-off date and other deadlines set forth in the first email and
28 indicating in the second email that, under all the circumstances, that

1 the Defendants would not proceed with the Plaintiffs' experts'
2 depositions on February 7 and 8, 2011. Additionally, it would make no
3 sense for the Defendants' to take the Plaintiffs' forensic expert's
4 deposition until after his supplemental report is prepared and
5 submitted or to take the deposition to the Plaintiffs' securities
6 expert until the Defendants have sorted out the mixing of facts and
7 law contained in his report. Copies of the aforesaid two emails are
8 attached as Exhibits 1 and 2, respectively, to the Declaration of M
9 Nelson Segal (Exhibit A hereto). Since the preparation of the Subject
10 Motion, no response has been received from the Plaintiffs' counsel.

11 It is also obvious that the interests of justice will best be
12 served in this case by reopening discovery, granting the extensions
13 of time sought, and continuing the trial herein.

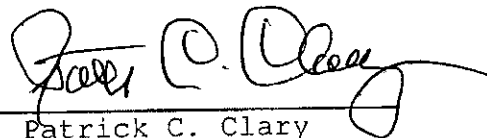
14 For the foregoing reasons, the Subject Motion should be granted
15 by the Court.

16 Respectfully submitted,

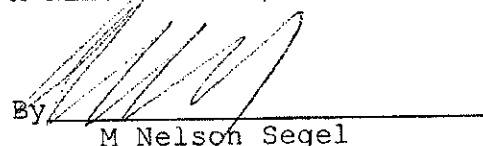
17 PATRICK C. CLARY, CHARTERED

M NELSON SEGEL, CHARTERED

18
19 By


Patrick C. Clary

By


M Nelson Segel

20 Attorneys for So-called Nominal
21 Defendant Kokoweef, Inc. and
22 Defendant Patrick C. Clary

Attorneys for Defendants
Larry L. Hahn and Hahn's
World of Surplus, Inc.

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Alison L. Johnson
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EXHIBIT A

1 other Defendants' counsel and me to discuss the discovery and
2 other deadline issues.

3 7. Plaintiffs' counsel, the other Defendants' counsel and
4 I addressed various issues. One issue was the fact that the
5 Plaintiff's forensic accounting expert witness's report covered a
6 time frame that went back to 2002. The document requests, and
7 production, did not go prior to 2004. I informed Plaintiffs'
8 counsel that I had been advised that Nominal Defendant Kokoweef,
9 Inc. ("Kokoweef") had documentation to support transactions in
10 2002 and 2003.

11 8. I further informed Plaintiffs' counsel that I had been
12 advised after business hours the night prior to the hearing that
13 documents relating to 2007 regarding transactions of Kokoweef that
14 had been scanned as part of the prior discovery responses had not,
15 however, been provided and produced. I also informed her that I
16 did not have an exact understanding of what transpired but
17 understood that somehow certain documents had been scanned but not
18 saved.

19 9. We discussed possible extension dates, but the other
20 Defendants' counsel and I could not agree to what was being
21 proposed. I agreed to provide Plaintiffs' counsel with our
22 proposed dates as soon as possible. An email, a copy of which is
23 attached hereto as Exhibit 1 was sent to Plaintiffs' counsel at
24 approximately 1:01 p.m.

25 10. I sent a second email to Plaintiffs' counsel on
26 Thursday, February 3, 2011, to memorialize that Defendants would
27 not be proceeding with the deposition of Plaintiff's forensic
28 accounting expert witness on February 7, 2011, nor with

1 Plaintiffs' securities expert witness on February 8, 2011. A copy
2 of said email is attached hereto as Exhibit 2. As of the
3 preparation of this Declaration this afternoon, February 7, 2011,
4 I have not heard from Plaintiffs' counsel.

5 11. I believe that Plaintiffs are amenable to a continuance
6 of the trial date of this matter. However, it was their desire to
7 have the date extended one month and Defendants believe a multiple
8 month extension is necessary to enable the parties to complete
9 discovery.

10 12. No agreement was reached on the dates regarding an
11 extension of the discovery deadline, service of the designation of
12 experts and service of reports and the dates to take depositions.

13 13. The need for further discovery is based upon the desire
14 of Defendants to propound discovery requests upon Plaintiffs and
15 the need to allow Defendants' experts sufficient time to review
16 the reports of Plaintiffs' experts and the records of Defendants
17 and to prepare rebuttal reports.

18 14. Although Plaintiffs were allowed to remove substantially
19 all of the business records of Defendant Hahn's World of Surplus,
20 Inc. ("SURPLUS") on or about October 26, 2010, **no** document was
21 returned until 10:00 a.m. on Wednesday, February 2, 2011. This
22 prevented Defendants' experts from having the source documents for
23 their review. While I have been advised that all documents had
24 been copied and put on disks and each disk had been provided to
25 me, I believe it was reasonable to allow my experts to have access
26 to the source documents, not something created by Plaintiffs.

27 15. More importantly, the report prepared by Plaintiff's
28 forensic accounting expert is a compilation of the multiple

1 reports he has prepared since early 2008. This included the review
2 of approximately 50,000 pages of exhibits. Conducting such a
3 review in a three-week period is an insurmountable task.

4 16. I will acknowledge when the Court ruled that discovery
5 was closed and Plaintiffs' forensic accounting expert would have
6 a month to complete his report and our expert would have three
7 weeks for a rebuttal report, I should have said something.
8 However, I did not think about the burden and amount of work that
9 needed to be completed.

10 17. More importantly, when the Court ruled that discovery
11 was closed, I thought that meant that discovery was closed. I was
12 prepared to proceed with the defense of this matter with no
13 further discovery.

14 18. Although the Court ruled that discovery was closed, it
15 then allowed Plaintiffs' forensic accounting expert to prepare a
16 report and submit it. The Court did not address Plaintiff's
17 securities expert. His name was not mentioned at the hearing, and
18 the Court was quite specific about its ruling. Based upon what
19 transpired at the hearing, it was my belief that no securities
20 expert would be allowed.

21 19. At the hearing, the Court granted Plaintiffs to and
22 including January 7, 2011, to take the deposition of the COR of
23 SURPLUS. Plaintiffs' counsel stated an inability to conduct the
24 deposition in that period of time and I agreed, with the consent
25 of the other Defendants' counsel, to extend the time frame an
26 additional week to, and including, January 14, 2011. Plaintiffs
27 never took any efforts to notice or take the COR deposition of
28 SURPLUS. While the extended deadline was included in each of the

1 proposed orders presented by the parties, the Court removed the
2 deadline. This has left an issue of when the deposition must be
3 taken.

4 20. It was not until the Court adopted the proposed order of
5 Plaintiffs and extended the terms of the December 9, 2010, oral
6 order regarding the extent of further discovery that Defendants
7 learned that they needed a rebuttal securities expert. They
8 operated on the basis that the Court's oral pronouncements were
9 the limit of discovery.

10 21. In light of the report of Plaintiff's securities expert,
11 Defendants took their MPSJs off calendar to enable them to
12 complete the deposition Plaintiff's securities expert and to have
13 their securities expert prepare a rebuttal report. Unfortunately,
14 Defendants' securities expert was not advised of the need for her
15 report until the Court entered the order adding Plaintiff's
16 securities expert to the exceptions to the discovery deadline.

17 22. I was prepared to send out discovery when I realized
18 that the discovery deadline, not the deadline to send discovery,
19 was November 19, 2010. If the Court reopens discovery, it will
20 allow me to send out the discovery requests and obtain answers
21 from the Plaintiffs. It is my belief that these responses will
22 either support the re-noticing of the pending MPSJs, enable new
23 motions for summary judgment to be filed or at minimum, or narrow
24 the issues for trial.

25 23. It is clear that all of the parties to this matter were
26 confused by the Court's ruling in September 2010. There was no
27 clear order stating a deadline for the expert reports, there was
28 no ruling on any request by Plaintiffs to extend the discovery

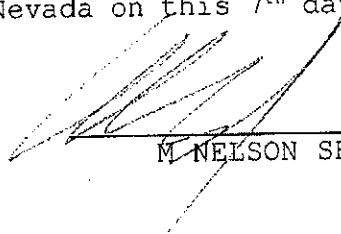
1 deadline, and all of the parties failed to realize that the
2 discovery deadline of November 19, 2010 had not been extended.

3 24. I believe that the request being made herein is
4 reasonable and, accordingly, the Court should extend the deadlines
5 to date that are not earlier than those set forth in my email
6 which is attached hereto as Exhibit 1.

7 I declare under the penalty of perjury that the foregoing is
8 true and correct.

9 DATED at Las Vegas, Nevada on this 7th day of February, 2011.

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M NELSON SEGEL

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Alan S. Johnson
CLERK OF COURT

EXHIBIT 1

Patrick C. Clary

From: M Nelson Segel [nelson@nelsonsegellaw.com]
Sent: Thursday, February 03, 2011 1:01 PM
To: 'Jennifer L. Taylor'
Cc: patclary@patclarylaw.com
Subject: Extensions of time

Ms. Taylor:

This email is being sent as a follow up to our discussions, along with Mr. Clary, after the hearing today which constituted our EDCR 2.34 meet and confer. Mr. Clary, Mr. Hahn and I have just completed a meeting and this email has been sent as promised.

As we mentioned, we have two issues regarding Mr. Stringham's report. First, the report covers periods prior to 2004. It is my recollection that the discovery request only went to 2004. I have been informed that Kokoweef has documents to support its expenses in 2002 and 2003. I have not taken the review the files to assure that my recollection is correct.

In addition, our client has located documents from 2007 which were scanned, but somehow did not make it onto the disks that were provided to you. I do not have a specific explanation today, but Laurie did inform me that she scanned the documents for the initial disclosure.

Finally, during our EDCR 2.34 conference, you mentioned your desire to have further records from 2009, to we are agreeable.

These three issues, along with our inability to obtain a report from Ms. McNair in the short time frame available, have led to our need to obtain a continuance of the discovery period, as well as an extension of the deadline for our expert reports. Needless to say, this would mean that we would need a continuance of the existing trial date.

All Defendants, those represented by me, as well as those represented by Mr. Clary, would propose the following schedule:

Discovery deadline	April 4, 2011;
Supplemental experts' reports:	May 4, 2011;
Rebuttal experts' reports:	June 6, 2011; and
Dispositive motions	June 30, 2011.

One last issue: Yyou had requested a Rule 16 conference when the case was reassigned to Judge Gonzalez. Unfortunately, she denied your request.

We believe that a settlement conference would be in the best interest of all parties at the earliest opportunity.

Please let me know at your earliest convenience whether you can agree to these terms.

M Nelson Segel
624 South 9th Street
Las Vegas, Nevada 89101
(702)385-5266

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Alma Williams
CLERK OF COURT

EXHIBIT 2

Patrick C. Clary

From: M Nelson Segel [nelson@nelsonsegellaw.com]
Sent: Thursday, February 03, 2011 4:17 PM
To: 'Jennifer L. Taylor'
Cc: patclary@patclarylaw.com
Subject: Expert Depositions

Ms. Taylor:

We have discussed taking the deposition of Mr. Stringham on Monday, February 7, 2011, and Mr. Appenbrink on Tuesday, February 8, 2011.

Mr. Clary informed you that he would not be able to take Mr. Appenbrink's deposition on Tuesday. I advised you that it would not make sense to take Mr. Stringham's deposition on Monday due to the 2002-2004 issue and the 2007 documents which Kokoweef learned yesterday had not been provided to you.

Therefore, this email shall serve as a specific notification that Defendants would not be proceeding with the depositions of your experts on February 7 and February 8, 2011.

Separately, we have discussed the possibility of stipulating to the extension of various deadlines, including the taking of the depositions of your experts. We look forward to your response on this issue. If you are not able to agree to the deadlines requested, and we cannot agree on other deadlines, I will have to file a motion to be heard by Judge Gonzalez. It would be my intent to have said matter heard on or before Monday, February 14, 2011, the date our experts' reports are due.

I look forward to hearing from you.

M Nelson Segel
624 South 9th Street
Las Vegas, Nevada 89101
(702)385-5266

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Alison L. Johnson
CLERK OF COURT

EXHIBIT B

DECLARATION OF PATRICK C. CLARY

I, PATRICK C. CLARY, hereby declare and state as follows:

1. I am the sole officer, director and stockholder of Patrick C. Clary, Chartered, a Nevada professional corporation, which is counsel for so-called Nominal Defendant Kokoweef, Inc., a Nevada corporation ("Kokoweef") and for Defendant Patrick C. Clary ("Clary").

2. I make this Declaration in support of Defendants' Motion to Reopen Discovery, Extend Certain Deadlines, and Continue the Trial and Motion for *Ex Parte* Order Shortening Time for Hearing Thereon ("the Subject Motion"), to which this Declaration is attached as Exhibit B.

3. Following the hearing on Plaintiffs' Motion to Extend Expert Disclosure and Discovery Deadlines held on September 14, 2010, no Order of the Court was ever entered. Because nothing was brought up at the subsequent status check held before the Court on December 9, 2010, regarding an extension for the Plaintiffs' securities expert's report and discovery had closed and remained closed, I concluded that the Plaintiffs securities expert would not be permitted in this case as it then stood. I was surprised when an extension for the expert's report to be served and submitted appeared in the Plaintiffs' counsel's proposed Order and then in the Order finally signed on January 24, 2011 and received by me on January 25, 2011, the day that it was thereafter filed. I have not received a formal notice of entry of the said Order.

4. While a copy of the Plaintiffs' securities expert's report was received by me in a huge package of documents entitled "PLAINTIFFS'

NINTH SUPPLEMENTAL LIST OF WITNESSES AND DOCUMENTS PURSUANT TO NRCP 16.1," I did not see the Plaintiff's securities expert's Affidavit until January 27, 2011 when there was served on me "PLAINTIFFS' SUPPLEMENTAL OPPOSITION TO DEFENDANT PATRICK C. CLARY'S MOTION FOR SUMMARY JUDGMENT AND COUNTER MOTION FOR SUMMARY JUDGMENT," to which the said Affidavit was Exhibit 5.

5. Both the Plaintiffs' securities expert's report and Affidavit are disorganized mix ups of both facts and the law (as he erroneously sees them), and it will take me sometime to do the necessary factual and legal research to sort them out, which I still have not been able to do. I need to complete this work before I can prepare myself to take the deposition of the Plaintiffs' securities expert or to participate in the deposition of the Plaintiffs' forensic accounting expert, both of which depositions were tentatively set for today and tomorrow, but last week Defendants' counsel informed the Plaintiffs' counsel that we would seek to take them later.

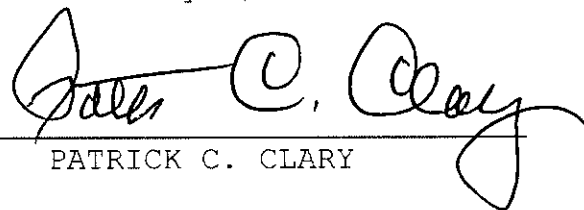
6. Moreover, considering the further discovery that Defendants' counsel require, even the shortened proposed schedule submitted to the Plaintiffs' counsel (see Exhibits 1 and 2 of the Affidavit of M Nelson Segel, which is Exhibit B to the Subject Motion), the parties and their counsel will not be ready to go to trial on March 14, 2011, the date presently set, and it will have to be continued. There is no one who would like to see this case over with at the earliest possible time that me, but justice requires that both sides be fully prepared as each step goes forward, and, unfortunately, there does not appear

to be a short cut available even, as I had hoped, to get me out as a Defendant in this case.

7. Accordingly, I urge the Court, in the interests of justice, to grant the Subject Motion.

I declare under penalty of perjury that the foregoing is true and correct.

DATED at Las Vegas, Nevada, on February 7, 2011.



A handwritten signature in cursive script, appearing to read "Patrick C. Clary", is written over a horizontal line. The signature is fluid and somewhat stylized, with a large loop at the end of the last name.

PATRICK C. CLARY