

CLERK OF THE COURT

1 **OPPM**
2 **M NELSON SEGEL, CHARTERED**
3 M NELSON SEGEL, ESQUIRE
4 Nevada Bar No. 0530
5 624 South 9th Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 385-5266
8 Facsimile: (702) 382-2967
9 Email: nelson@nelsonsegellaw.com
10 *Attorneys for Defendants Larry Hahn*
11 *and Hahn's World of Surplus, Inc.*

7 **DISTRICT COURT OF NEVADA**

8 **COUNTY OF CLARK**

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

14 Plaintiffs,

15 vs.

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

20 Defendants,

21 and

22 KOKOWEEF, INC., a Nevada corporation;
23 EXPLORATIONS INCORPORATED OF
24 NEVADA, a dissolved corporation,

24 Nominal Defendants.

CASE NO. 08A558629
DEPT NO. XI

**DEFENDANTS LARRY HAHN AND
HAHN'S WORLD OF SURPLUS, INC.'S
OPPOSITION TO MOTION
FOR SANCTIONS; AND EX PARTE
APPLICATION FOR ORDER
SHORTENING TIME
(REGARDING PRODUCTION OF
DOCUMENTS)**

DATE: 8/30/11
TIME: 9:00 a.m.

26 Defendants Larry Hahn ("HAHN") and Hahn's World of Surplus, Inc.
27 ("SURPLUS") ("HAHN and SURPLUS sometimes collectively referred to herein as "HAHN
28

1 DEFENDANTS”), as well as their attorney M NELSON SEGEL, ESQUIRE (“SEGEL”)¹ hereby
2 respond to and oppose the document entitled Motion for Sanctions; and Ex Parte Application for
3 Order Shortening Time (“Discovery Sanction Motion”)² on the basis that (1) there is no legal reason
4 to assess sanctions against SEGEL or SURPLUS for the purported wrongful actions of So-called
5 Nominal Defendant Kokoweef, Inc. (“KOKOWEEF”); and (2) HAHN should not be sanctioned for
6 the alleged wrongful conduct of KOKOWEEF. The Declaration of M Nelson Segel, Esquire, the
7 Declaration of Larry Hahn and the Declaration of Laurie Wright are attached hereto as **Exhibits “A”,**
8 **“B”** and **“C”**, respectively.

9 FACTUAL ISSUES

10 This case is replete with allegations by Plaintiffs that all of the defendants in this case have
11 acted in concert to prevent them from obtaining discovery in this matter. They open the Discovery
12 Sanction Motion with the statement, “[t]his motion is being brought following years of discovery
13 delays and abuses by both Defendants Kokoweef, Inc. (“Kokoweef”) and Larry C. [sic] Hahn
14 (“Hahn”).” However, Plaintiffs have **never** set forth any conduct of any defendant that delayed these
15 proceedings, other than the error regarding production of documents by KOKOWEEF.

16 SEGEL has submitted his declaration in support of this Opposition. The Declaration
17 discusses what has transpired in this case. Specifically, it shows the efforts of the HAHN
18 DEFENDANTS to satisfy their duties and obligations as defendants in this matter.

19 The declaration of HAHN has been submitted to show the efforts taken by him to satisfy his
20 duties and obligations as a defendant in this matter.

21
22 ¹ The Discovery Sanctions Motion seeks to hold SEGEL liable for the actions of KOKOWEEF, which is not
23 his client. Whether the sanctions are sought against SEGEL in an effort to create a conflict or as a potential “deep
24 pocket”, it appears inappropriate. However, SEGEL must join in this Opposition with the HAHN DEFENDANTS.
Therefore, reference to the HAHN DEFENDANTS in relation to the Opposition should be interpreted to include SEGEL.

25 ² The HAHN DEFENDANTS have added the words “regarding production of documents” to the title of the
26 Opposition due to Plaintiffs having filed a document with the same name as the Discovery Sanctions Motion entitled,
27 “Motion for Sanctions; and Ex Parte Application for Order Shortening Time” relating to the Supplemental Report of the
28 HAHN DEFENDANTS’ expert, Sharon McNair. This motion was apparently filed with the Court on August 15, 2011,
at 3:16 p.m., but no mention of it was made at the Pretrial or during discussions between counsel following the Pretrial
where coordination of timing for oppositions and replies to the pending motions was discussed. Defendants did not
become aware of the new motion until an email was sent by Plaintiffs’ counsel on Wednesday, August 16, 2011 at 8:50
a.m.

1 Plaintiffs' counsel, at every hearing, states that Defendants have interfered with the efforts
2 of Plaintiffs in this matter. However, no facts are presented, only conclusory statements about the
3 bad conduct of Defendants. The Court's record will show that this is not true.

4 Plaintiffs served a document entitled "Second Amended Notice of Early Case Conference
5 ("ECC Notice"), a copy of which is attached hereto as Exhibit "D", on "all interested parties" dated
6 March 31, 2009. The ECC Notice contained a long list of documents which Plaintiffs requested be
7 produced. The list appears to be a "standard" list that Plaintiffs' counsel utilizes in their construction
8 defect practice as it was clearly not tailored for this matter. It sought production of virtually every
9 document that existed for KOKOWEEF, Explorations Incorporated of Nevada ("EIN") and
10 SURPLUS "for up to the last five fiscal years." I caused a response to be sent to Plaintiffs on behalf
11 of the HAHN DEFENDANTS.

12 Neither the HAHN DEFENDANTS, nor SEGEL, can provide first hand knowledge to this
13 Court to explain what happened with the production of documents by KOKOWEEF pursuant to the
14 ECC Notice. Clearly, an error occurred. The Declaration of Laurie Wright, which is attached hereto
15 as Exhibit "C", sets forth the actions taken by her as well as the surprise that any documents were
16 missing.

17 The opposition filed by KOKOWEEF and Defendant Patrick C. Clary ("CLARY") ("CLARY
18 OPPOSITION") sets forth how the Defendants found out documents had not been provided to
19 Plaintiffs and the actions taken. The HAHN DEFENDANTS join in the CLARY OPPOSITION.

20 As usual with Plaintiffs' pleadings, they are imprecise and it is difficult to understand who
21 is being targeted for the sanctions. At points, it refers to entities and individuals. Other times it
22 refers to KOKOWEEF, HAHN and their attorneys. Still other times, it refers to defendants, which
23 would include SURPLUS.

24 The Verified Third Amended Complaint, which has not been verified by purported plaintiff
25 John Bertoldo,³ has changed the theory against SURPLUS from one of direct action to simply being
26

27 ³ Defendants were begging Plaintiffs to file their Verified Third Amended Complaint to enable the filing of
28 the Motions to Dismiss which are set for hearing on August 30, 2011. They also notified Plaintiffs that the motions
would be filed on Friday, August 5, 2011, whether the Verified Third Amended Complaint had been filed. On

1 the “alter-ego” of HAHN. On said basis, and the fact that there is **nothing** in the Discovery Sanction
2 Motion regarding the actions of SURPLUS, that it appears that Plaintiffs are not seeking sanctions
3 from SURPLUS, but only KOKOWEEF, HAHN, CLARY and SEGEL.

4 Page two of the Discovery Sanction Motion states that it is being brought pursuant to “NRCP
5 Rules 11 and 37” As set forth herein, there is no basis for sanctions under NRCP 11, and if
6 there were, Plaintiffs have failed to comply with the requirements of said rule precluding action
7 thereunder. Additionally, there has been no motion by Plaintiffs under NRCP 37. The initial, oral
8 order of the Court on February 24, 2011, which has not been reduced to writing, was issued when
9 KOKOWEEF requested the right to produce documents which it described as “newly discovered”
10 but were actually documents that had been scanned but inadvertently omitted from the disks
11 provided to Plaintiffs. The Court’s second pronouncement on the issue on April 26, 2011, taking
12 of the cap, also was not reduced to writing and no pronouncement of the basis for the order was set
13 forth either.

14 As set forth herein, the HAHN DEFENDANTS do not believe that sanctions are appropriate
15 under the circumstances of this matter. If the Court deems them appropriate, said sanctions should
16 be against KOKOWEEF only, and should not exceed the Two Thousand Five Hundred Dollars
17 (\$2,500) limit originally set by the Court on February 24, 2011.

18 LEGAL AUTHORITY

19 NRCP 37(b)(2) discusses sanctions for the failure to comply with an order and provides, in
20 pertinent part:

21 (b) Failure to Comply With Order.

22 . . .

23 (2) Sanctions--Party. If a party or an officer, director, or managing agent of a party
24 or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party
25 fails to obey an order to provide or permit discovery, including an order made under
26 subdivision (a) of this rule or Rule 35, or **if a party fails to obey an order entered
under Rules 16, 16.1, and 16.2** the court in which the action is pending may make

27 Wednesday, August 3, 2011, counsel for Plaintiffs contacted Segel and stated an inability to obtain the verification of
28 Bertoldo because he was out of town until Monday, August 8, 2011. Plaintiffs’ counsel was notified that she could file
the Verified Third Amended Complaint without the verification and provide it to Defendants’ counsel by Tuesday,
August 9, 2011. No such verification has been filed with the Court or received by Defendants’ counsel.

1 such orders in regard to the failure as are just, and among others the following:

2 (A) An order that the matters regarding which the order was made or
3 any other designated facts shall be taken to be established for the
4 purposes of the action in accordance with the claim of the party
obtaining the order;

5 (B) An order refusing to allow the disobedient party to support or
6 oppose designated claims or defenses, or prohibiting that party from
introducing designated matters in evidence;

7 (C) An order striking out pleadings or parts thereof, or staying further
8 proceedings until the order is obeyed, or dismissing the action or
proceeding or any part thereof, or rendering a judgment by default
against the disobedient party;

9 . . .

10 In lieu of any of the foregoing orders or in addition thereto, the court **shall require the party failing**
11 **to obey the order or the attorney advising that party or both** to pay the reasonable expenses,
including attorney's fees, caused by the failure, **unless the court finds that the failure was**
12 **substantially justified or that other circumstances make an award of expenses unjust.**
[Emphasis added].

13 The Supreme Court has addressed the issue of sanctions in the case *Fire Ins. Exchange v.*
14 *Zenith Radio Corp.*, 103 Nev. 648, 747 P.2d 911 (1987) at page 913 and stated:

15 Generally, sanctions may only be imposed where there has been willful
16 noncompliance with the court's order, *Finkelman v. Clover Jewelers Blvd., Inc.*, 91
Nev. 146, 147, 532 P.2d 608, 609 (1975), or where the adversary process has been
17 halted by the actions of the unresponsive party, *Skeen v. Valley Bank of Nevada*, 89
Nev. 301, 303, 511 P.2d 1053, 1054 (1973). *See also Temora Trading Co. v. Perry*,
18 98 Nev. 229, 645 P.2d 436 (1982); *Kelly Broadcasting v. Sovereign Broadcast*, 96
Nev. 188, 606 P.2d 1089 (1980).

19 As set forth herein, and in the CLARY OPPOSITION, the failure to provide Plaintiffs with the
20 documents during the original production in 2009 was inadvertent and not willful. One has to also
21 question whether "the adversary process has been halted by the actions of" KOKOWEEF or the
22 HAHN DEFENDANTS.

23 HAHN DEFENDANTS HAVE NOT FAILED TO OBEY AN ORDER OF THE COURT

24 While Plaintiffs argue that all of the defendants in this matter, and their attorneys, have
25 engaged in nefarious conduct, no competent evidence has been presented to support those
26 allegations. The HAHN DEFENDANTS are not suggesting that an error did not occur relating to
27 the production of documents by KOKOWEEF. However, the error was inadvertent and brought to
28 the attention of the Court by KOKOWEEF. The allegations, unsupported by affidavit or reference

1 to specific conduct, cannot justify the request for sanctions that is being made by Plaintiffs herein.

2 Defendants' Motion to Reopen Discovery, Extend Certain Deadlines, and Continue the Trial
3 and Motion for *Ex Parte* Order Shortening Time for Hearing Thereon that was heard by the Court
4 on February 24, 2011. Sanctions are appropriate when a party fails to obey an order of the Court.
5 This Court entered an oral order at the hearing on February 24, 2011 and stated, at page 27 of the
6 transcript:

7 THE COURT: Okay. I am going to ward sanctions in an unusual fashion. They will
8 be an amount not to exceed \$2500 to be awarded following the supplementation by
9 the plaintiffs' expert of the report on or about April 29th upon a properly noticed
10 motion for those that will then be briefed, and all parties will have an opportunity to
weight in as to both the allocation of the expert's work and the allocation of the
expenses, if any, among the defendants. Got it?

11 No written order has been entered regarding this hearing. The error that occurred by KOKOWEEF
12 was not done to benefit any defendant in this matter or to prevent Plaintiffs from proving their case.
13 In fact, the error did the opposite. It reduced the amount of "supported" transactions resulting in
14 Plaintiffs' expert finding a larger amount of purported damages.

15 There is no question that the Court entered an oral order regarding production of the
16 documents that had been inadvertently omitted. However, there had not been a prior order regarding
17 the production of the documents in question.

18 KOKOWEEF attempted to comply with the Court's directive from the April 24, 2011
19 hearing, notwithstanding no written order having been entered. The CLARY OPPOSITION explains
20 why KOKOWEEF was unable to complete the task in the time frame allotted. It also explains the
21 detail that was taken to provide Plaintiffs with a "road map" for analysis of the transactions in issue.

22 There was no conspiracy to withhold documents to prove that HAHN did not act improperly.
23 No evidence has been presented to the Court of any nefarious conduct by any of the Defendants. If,
24 after hearing the Discovery Sanctions Motion, the Court believes that sanctions are appropriate, the
25 sum of Two Thousand Five Hundred Dollars (\$2,500) that the Court mentioned as a cap at the
26 February 24, 2011 hearing, should be the cap and it should be assessed against KOKOWEEF only.

27 HAHN DEFENDANTS DID NOT CAUSE THE LATE PRODUCTION

28 At the February 24, 2011 hearing, the Court directed KOKOWEEF to supply the missing

1 documents within three weeks. The Declaration of Jeremy Rosenstengel (“JEREMY”), which is
2 attached to the CLARY OPPOSITION, explains why the production did not take place timely.

3 The So-called Nominal Defendant Kokoweef, Inc. filed its Motion for Approval of Late-
4 Produced Newly Discovered Evidence and *Ex Parte* Motion for Order Shortening Time fo Hearing
5 which was heard by the Court on April 26, 2011. At that time, counsel for Plaintiffs told the Court
6 that bates numbers were “stripped off”, that the documents are “a completely different set of
7 records”. See page 7, commencing on line 2 of Transcript of April 26, 2011 hearing attached hereto
8 as Exhibit “D”. The CLARY OPPOSITION contains the Declaration of JEREMY which explains
9 exactly how the production was done on March 29, 2011. No bates stamps were removed. Rather
10 than produce supporting documentation and require Plaintiffs’ expert to search through the records
11 to match them to checks, the March 29, 2011 production consisted of a check with the backup
12 “attached” for an easy review by Plaintiffs’ expert. The nefarious conduct alleged by counsel for
13 Plaintiffs not only did not occur but is the opposite of what transpired. It should be noted that there
14 is no affidavit from Plaintiffs’ expert, or counsel, setting forth these representations of nefarious
15 conduct.

16 Plaintiffs’ counsel further stated, “I’ve asked them for the originals. They’ve refused to give
17 me the originals. You know, I’ve asked them over the course of a couple years to give me the
18 originals.” See page 8, commencing on line 2 of Transcript of April 26, 2011 hearing. The HAHN
19 DEFENDANTS believe this is a fabrication and no such request was ever made regarding the
20 KOKOWEEF documents.

21 The HAHN DEFENDANTS believe that the Court was convinced by the unsupported
22 arguments of Plaintiffs’ counsel that actions were taken to make the review of the records more
23 difficult and stated, “the cap is off.” After reviewing what actually transpired, the HAHN
24 DEFENDANTS believe the Court will realize that these representations by Plaintiffs’ counsel are
25 not correct.

26 NEITHER SURPLUS NOR SEGEL HAVE RESPONSIBILITY FOR KOKOWEEF ACTIONS

27 The Discovery Sanction Motion states, at page 5, line 20, “Hahn, and his counsel, have
28 overwhelmingly directed the course of the defense and have spoken jointly with, if not on behalf of,

1 Kokoweef.” Since these are conclusory statements, without any specific fact to support it, the Court
2 should ignore the statements. With the exception of the hearing where the Court ordered SEGEL
3 to argue a motion brought by KOKOWEEF, CLARY has represented and argued KOKOWEEF’s
4 positions.

5 KOKOWEEF is represented by CLARY. SEGEL has no authority, or ability, to direct the
6 actions of KOKOWEEF. HAHN is the President of KOKOWEEF and is responsible for assuring
7 that KOKOWEEF complies with the orders of this Court.

8 HAHN has been advised through these proceedings of the need to assure that all
9 documentation has been provided to Plaintiffs. This has been done for two reasons. First, to prevent
10 being put in a position of defending his actions before the Court related to the litigation, not the
11 underlying case. Additionally, production of documents to show the use of EIN and KOKOWEEF’s
12 funds is in his best interest. While it was not possible to supply receipts for **every** transaction that
13 occurred, the “unsupported” transactions are not in a substantial amount. More importantly, the
14 report of Plaintiffs’ expert, Talon Stringham (“STRINGHAM”), has failed to find any evidence that
15 HAHN has misappropriated any funds. The only thing STRINGHAM could say is set forth in the
16 conclusion of both of his reports and states, “[u]sing the assumption that amounts that have been
17 unsupported by the accounting records represents a diversion of corporate funds, it is my opinion that
18 the shareholders of EIN and KOKOWEEF have been damaged by the following amounts” then lists
19 a chart of the transactions.

20 Plaintiffs have failed to provide this Court with any basis for asserting sanctions against
21 HAHN, SURPLUS or SEGEL and the Discovery Sanction Motion should be denied.

22 THE REQUESTED SANCTIONS ARE NOT REASONABLE

23 NRCP 37(b)(2) provides, in pertinent part:

24 In lieu of any of the foregoing orders or in addition thereto, the court shall require the
25 party failing to obey the order or the attorney advising that party or both to pay the
26 reasonable expenses, including attorney’s fees, caused by the failure, unless the court
finds that the failure was substantially justified or that other circumstances make an
award of expenses unjust.

27 On February 24, 2011, this Court entered an order that proposed sanctions up to Two Thousand Five
28 Hundred Dollars (\$2,500). While the Court did not express the basis for the proposed sanctions, it

1 appears that it was due to the need of STRINGHAM to review the inadvertently omitted documents
2 and to make necessary changes to his report. Such an order would appear to conform with the
3 provisions of NRCP 37(B)(2) which allows a Court to enter an order requiring a party “to pay the
4 reasonable expenses, including attorneys’ fees, caused by the failure” The language also
5 provides that such sanctions would not be appropriate if the “court finds that the failure was
6 substantially justified.”

7 Plaintiffs are seeking fees for their expert, Talon Stringham, in the sum of Twenty Four
8 Thousand Two Hundred Seventy Seven Dollars and Fifty Cents (\$24,277.50) and have attached a
9 schedule as Exhibit 5 to the Discovery Sanctions Motion. A review of that exhibit shows that they
10 are attempting to recover for all of STRINGHAM’s work since February 22, 2011, two days prior
11 to the Court’s order. Additionally, there are charges for STRINGHAM’s review of the original files
12 of KOKOWEEF. According to Plaintiffs’ counsel, they had been seeking access to these documents
13 and been denied. Allowing access to the original documents is not reasonable expenses . . . caused
14 by the failure. It should also be noted that the entries are very basic, “review files; update analysis;
15 flag support” and fail to advise what work was performed. There is no analysis to show what was
16 necessary due to the newly produced documents.

17 If the Court is inclined to grant the sanctions, it is impossible to determine the appropriate
18 amount to grant based upon the schedule provided and a sum no greater than Two Thousand Five
19 Hundred Dollars (\$2,500) would be appropriate.

20 Plaintiffs are also seeking Fifty Six Thousand Four Hundred Nine Dollars and Fifty Cents
21 (\$56,409.50) for attorneys’ fees and Nine Thousand Four Hundred Seventy Eight Dollars and Four
22 Cents (\$9,478.04) for out of pocket costs incurred in this matter since February 3, 2011, three weeks
23 prior to the Court’s order.

24 There is a summary of totals, but no explanation of any of the work performed, what was
25 done, what purpose and no time frames. An example is “deposition transcript \$1,595.45, witness
26 fee \$78.00, filing fees 60.50, x-photocopy expenses \$6,027.50 and Court reporter’s “tra” \$525.44.
27 None of these costs appear to be appropriate or related to actions due to the late produced documents.
28 Additionally, the Court did not express an intent to award attorneys’ fees.

1 Based upon the foregoing, there is nothing before the Court to enable it to determine what
2 an appropriate sanction, if any, would be in this matter. The demand by Plaintiffs is outside the
3 scope of what NRCP 37 provides and shows the efforts to defeat defendants, notwithstanding their
4 inability to prove wrongdoing.

5 NRS 90.605 IS INAPPLICABLE

6 The HAHN DEFENDANTS believe the claim by Plaintiffs that NRS §90.605 provides some
7 basis in this case is incredulous. The first quote by Plaintiffs of NRS §90.600 states”

8 It is unlawful for a person to make or cause to be made **in a record filed with the**
9 **Administrator or a proceeding under this chapter . . .”**

10 What is difficult for the HAHN DEFENDANTS in this matter is to see the Plaintiffs **again** arguing
11 the right to enforce provisions of Chapter 90 that are for the Administrator of the Securities Division
12 of the Secretary of State for the State of Nevada! Judge Denton made findings of this nature in his
13 Decision dated January 29, 2009. Notwithstanding this explicit ruling, Plaintiffs are back arguing
14 their right to enforce a provision that has no private right of action.

15 While the conduct appears to be a violation of NRCP 11, the Discovery Sanction Motion was
16 filed on an order shortening time which did not provide the HAHN DEFENDANTS with the ability
17 to send a demand as required in said rule.

18 NO RULE 11 SANCTION IS SET FORTH IN THE DOCUMENT

19 Plaintiffs have asserted that they are seeking sanctions under Rule 11. However, Plaintiffs
20 have not made any argument under NRCP 11 and have failed to comply with the requirements for
21 an action under NRCP 11.⁴

22 CONCLUSION

23 The HAHN DEFENDANTS acknowledge that documents were inadvertently not produced
24 by KOKOWEEF. However, neither SURPLUS nor SEGEL had any involvement or responsibility
25 for the production of said documents. If sanctions are appropriate, they should not be levied against
26 SURPLUS or SEGEL.

27
28 ⁴ The CLARY OPPOSITION has set forth NRCP 11 and a cogent argument regarding said rule which the
HAHN DEFENDANTS join. There is no reason to burden the Court with additional pleading on that issue.

If the Court determines that sanctions are appropriate, the responsible party must be KOKOWEEF. It erred and did not produce the documents. The question whether HAHN should be sanctioned, along with KOKOWEEF, is an issue. The Court must look at the **real** facts, not arguments, and determine whether HAHN had culpability for the failure to produce the documents. The HAHN DEFENDANTS do not believe the supported facts that are before the Court support a finding of sanctions against HAHN.

If the Court believes that sanctions are appropriate, whether against HAHN or KOKOWEEF, there is no competent evidence to support the basis for “the reasonable expenses . . . caused by the failure.” Therefore, the Court must either pull a number out of the sky or deny the request.

DATED this 19th day of August, 2011.

M NELSON SEGEL, CHARTERED

By /s/ M NELSON SEGEL
M NELSON SEGEL, ESQUIRE
Nevada Bar No. 0530
624 South 9th Street
Las Vegas, Nevada 89101
*Attorneys for Defendants Larry Hahn and
Hahn's World of Surplus, Inc.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of August, 2011, I caused true and correct copies of the foregoing OPPOSITION to be served via direct email to the following counsel of record:

Jennifer Taylor, Esquire ROBERTSON & VICK, LLP 401 North Buffalo Drive, Suite 202 Las Vegas, Nevada 89145 Email: jtaylor@RVCDLAW.COM	Patrick Clary, Esquire 8670 West Cheyenne Avenue, Suite 120 Las Vegas, Nevada 89129 Email: patclary@patclarylawn.com
--	--

I further certify that on this date, I caused the counsel listed herein to receive courtesy copies of the OPPOSITION to be served through the Court’s Electronic Filing System.

/s/ M NELSON SEGEL
An employee of M NELSON SEGEL, CHARTERED

EXHIBIT “A”

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100

STATE OF NEVADA)
COUNTY OF CLARK) ss:

I, M NELSON SEGEL, declare, under the penalty of perjury as follows:

1. I am an attorney at law duly licensed to practice in this Court; I make this declaration in support of Defendant Larry Hahn and Hahn's World of Surplus, Inc.'s Opposition to Plaintiffs' Motion for Sanctions; and Ex Parte Application for Order Shortening Time ("Discovery Sanction Motion") filed by Plaintiffs ("Opposition") to which I join personally; and I am competent to testify to the matters set forth herein.

2. I was retained by Larry Hahn ("HAHN") and Hahn's World of Surplus, Inc. ("SURPLUS") to represent them in this manner. I participated in all hearings that have been held, as well as the evidentiary hearing held on or about the 29th day of July, 2008.

3. Patrick C. Clary, Esquire ("Mr. Clary"), an attorney whom I have known for more than Thirty (30) years, contacted me when this case was first filed to determine whether I would represent HAHN and SURPLUS. He informed me that he was representing so-called Nominal Defendant Kokoweef, Inc. ("KOKOWEEF") and did not believe it was appropriate to represent HAHN, or SURPLUS, due to the allegations of the Verified Derivative Complaint that had been filed.

4. After participating in the evidentiary hearing where Judge Denton found that Plaintiffs did not have a possibility of success, Plaintiffs posted the Seventy Five Thousand Dollars (\$75,000) bond that was required, terminated their attorney, Neil Beller, retained their present counsel and filed their Verified First Amended Derivative Complaint, naming Mr. Clary as a defendant in his individual capacity.

5. Page 5 of the Discovery Sanction Motion contains a litany of statements regarding the failure of KOKOWEEF, HAHN and their counsel to “comply with **numerous** court orders to complete document productions” (emphasis added). While there have been disputes regarding production of documents related to KOKOWEEF, not HAHN or SURPLUS, the scope of production and the method of producing the documents, they were “normal” discovery disputes and I do not

1 believe it has been excessive. I do believe the fact that Plaintiffs' counsel has stated more than once
2 that "I do not trust a word you say" has increased the animosity in this case and has cost all parties
3 additional attorneys' fees to accomplish tasks that should have been agreed to by counsel. The only
4 discovery order regarding SURPLUS was the dispute as to the breadth of the improperly issued
5 subpoenas which Plaintiffs caused to be issued prior to the holding of the NRCP 16.1 meeting
6 without notice to Defendants and were quashed by the Discovery Commissioner. The Court
7 sustained the objection to production as to HAHN, but ordered delivery of documents from
8 SURPLUS. SURPLUS completed the production and no other disputes have been asserted against
9 it by Plaintiffs.

10 6. The Discovery Sanction Motion also states, at page 5, line 20, "Hahn, and his counsel,
11 have overwhelmingly directed the course of the defense and have spoken jointly with, if not on
12 behalf of, Kokoweef." Since these are conclusory statements, without any specific fact to support
13 it, the Court should ignore the statements. Mr. Clary has acted on behalf of KOKOWEEF, has
14 represented its interests and has made the decisions regarding KOKOWEEF's defense of this matter.
15 Additionally, the Court has periodically instructed me to discuss issues in this case with Plaintiffs'
16 counsel and specifically excluding Mr. Clary due to the overt animosity between Plaintiffs' counsel
17 and him.

18 7. There was one hearing relating to a motion filed by KOKOWEEF, possibly the May
19 10, 2010 hearing, where the Court directed me to argue the motion. When I stated that it was
20 KOKOWEEF's motion, the Court directed me to proceed and I did so. I have normally argued the
21 positions of the HAHN DEFENDANTS and Mr. Clary has argued the positions of himself and
22 KOKOWEEF.

23 8. Prior to December 9, 2010, counsel for Plaintiffs and I had some direct, oral
24 communication. Since that date, Plaintiffs' counsel has refused to speak to me and has demanded
25 that all communication be by written form, letters or email. The main exception has been when the
26 Court ordered us to speak. Ms. Taylor, Mr. Clary and I did have a short discussion after the Pretrial
27 on August 16, 2011, to discuss an agreed briefing schedule for the Discovery Sanction Motion and
28 Defendants' motions to dismiss or partial summary judgment. Although Plaintiffs had filed and

1 obtained an order shortening time for the hearing of their Motion for Sanctions regarding the
2 Supplemental Report of Sharon McNair, Plaintiffs' counsel did not mention that fact during our
3 discussion of pending motions and deadlines.

4 9. As counsel for HAHN, I have an obligation to protect HAHN's interests that may,
5 or may not, be aligned with KOKOWEEF. On that basis, I have been involved in various aspects
6 of KOKOWEEF's portion of the case. My involvement has been limited to advising HAHN
7 regarding his duties and responsibilities as the President of KOKOWEEF. I have not provided any
8 advice to HAHN regarding the actions of KOKOWEEF. That is outside of my authority.

9 10. Plaintiffs have suggested that Mr. Clary and I mix our positions at will. This is not
10 correct, and there is no fact that can be found to support this baseless allegation.

11 11. Plaintiffs have submitted quotes taken from the deposition of the Custodian of
12 Records produced by KOKOWEEF, Laurie Wright ("WRIGHT"). During that deposition,
13 notwithstanding the fact that documents more than a foot thick were produced, counsel for Plaintiff
14 was unhappy with the responses she was receiving. Mr. Clary and Ms. Taylor were engaged in an
15 argument which I attempted to resolve.

16 12. On page 10 of the Discovery Sanction Motion, a quote from Mr. Clary is set forth
17 from page 86 of the WRIGHT deposition. Plaintiffs, using the term, "then" suggesting that my
18 comment occurred immediately after Mr. Clary's comment, when it was pages later and was my
19 clarification that my involvement in the document production was on behalf of HAHN, as President
20 of KOKOWEEF.

21 13. The Discovery Sanction Motion, on page 5, correctly points out that I have no
22 obligation, involvement or reason to be sanctioned in this case. While I believe the facts of what
23 transpired will show that HAHN is not culpable either, this is within the discretion of the Court and
24 will be determined upon a showing of real evidence of his wrongful conduct, not conjecture.

25 14. When Plaintiffs originally made their request for the documents as part of their
26 Second Amended Notice of Early Case Conference, a copy of which is attached to the Opposition
27 as Exhibit "D", Mr. Clary and I spoke to HAHN, WRIGHT and others regarding the need to have
28 all of the requested documents scanned and provided to us on discs. The requested documents

1 constituted nearly every piece of paper that was generated by Explorations Incorporated of Nevada
2 (“EIN”) and KOKOWEEF during the previous five years. I did not review what was being produced
3 and did not participate in the scanning and preparation of the documents and other than stating the
4 need to produce everything that existed. Said Second Amended Notice of Early Case Conference
5 was addressed to “All Interested Parties” and sought documents from SURPLUS. A response was
6 sent to Plaintiffs by me on behalf of SURPLUS, a copy of which is attached to the OPPOSITION
7 as Exhibit “E”.

8 15. An issue has been raised regarding “missing” documents. The Discovery Sanction
9 Motion suggests that documents which were originally available have been lost. This is not my
10 understanding. I have been informed that prior to the filing of this case, Plaintiff Ted Burke
11 (“BURKE”), through his former attorney, Neil Beller, Esquire, demanded documentation for an audit
12 of the records of KOKOWEEF. Although documents were provided pursuant to the demand, no
13 such audit was conducted and turned out to be a facade for initiating this litigation. It is my further
14 understanding that during the organization of the records for BURKE’s audit, which again never
15 occurred although KOKOWEEF fully cooperated, various receipts on thermal paper were discovered
16 to be unreadable. These were placed in a box at the offices of KOKOWEEF. It is this box, not other
17 receipts that were produced in response to the document production pursuant to a NRCP 16.1
18 request, that was lost. I don’t have personal knowledge of any of these facts, but this is my
19 understanding and what I have told this to Plaintiffs’ counsel on more than one occasion.

20 16. I am chagrined but had no participation in the scanning and production of the
21 KOKOWEEF documents and the fact that there was a problem producing documents by
22 KOKOWEEF. Plaintiffs argue that my client, HAHN, has participated in wrongful conduct and
23 intentionally hidden the documents from the Plaintiffs, which I believe is false. It also puts him in
24 bad light with the Court. Failing to produce receipts to show how funds were spent is contrary to
25 his interest as the inadvertently missing documents are beneficial to his defense of this matter.

26 17. Plaintiffs’ counsel stated to the Court at the hearing on April 24, 2011, that she had
27 been demanding review of the original documents produced by KOKOWEEF to no avail. Mr. Clary
28 has informed me that he does not recall and such demand. I do not have any recollection of a request

1 to review original documents of KOKOWEEF directed to me.

2 18. When the documents were produced by KOKOWEEF, Plaintiffs were informed that
3 the shareholder records were voluminous and not subject to production. Plaintiffs were invited to
4 come to the KOKOWEEF's offices and review the original files. Plaintiffs brought in scanners and
5 were granted access to all of the source shareholder records and allowed to scan everything. This
6 is when Plaintiffs' counsel "inventoried" every box, folder and book in the KOKOWEEF offices as
7 referred to in the Discovery Sanction Motion.

8 19. Plaintiffs made demand for virtually every document relating to SURPLUS from 2004
9 through 2009. Counsel for Plaintiffs and I worked out an agreement regarding the documents that
10 would be produced. All of the original documents were made available for inspection by Plaintiffs'
11 expert at SURPLUS. Upon seeing all of the documentation that had been produced, Plaintiffs
12 demanded that they be able to copy everything with the exception of the cash register tapes. I
13 allowed Plaintiffs to take the original files to Litigation Services with the understanding that they
14 would be returned in a couple of weeks. It was months before the files were returned.

15 20. The suggestion that the HAHN DEFENDANTS failed to allow the inspection of the
16 original KOKOWEEF records is ludicrous. I demand that Plaintiffs' counsel provide evidence that
17 such a request was made and denied. Since Plaintiffs' counsel has required that all communications
18 with her be through written means, she must have the documents to support her representations to
19 the Court, if any such demand was made by her.

20 21. Plaintiffs' counsel has hurled accusations of wrongful, and unethical, conduct by Mr.
21 Clary and me. However, she has never provided the Court with any facts to support her statements.
22 These arguments by Plaintiffs' counsel usually come in a court document that is filed at the last
23 minute or as part of a hearing where the information is not relevant but meant to put me in bad light
24 with the Court.

25 22. It is my feeling that the Court believes that HAHN and I have intentionally engaged
26 in wrongful conduct which is not true. While I will continue to vigorously defend my clients, I do
27 so within the bounds of the rules of procedure and the Code of Professional Responsibility.

28 23. The Discovery Sanction Motion purports to be brought pursuant to NRCP 11 and 37.

1 I have never been provided with a demand under NRCP 11 nor put on notice of a claim under NRCP
2 11. More importantly, the Discovery Sanction Motion fails to assert any right to sanctions under
3 NRCP 11.

4 24. I have had an opportunity to review the request for sanctions for the legal fees and
5 costs purportedly incurred by Plaintiffs' counsel. It is interesting that they are seeking **all** fees and
6 costs since February 3, 2011. There is no basis for such an award.

7 25. I have had an opportunity to review the request for sanctions for the expert fees and
8 costs purportedly incurred by Plaintiffs. Like the attorneys' fees request, the demand appears to be
9 for all fees and costs incurred since February 22, 2011, and it does not set forth the "extra" work that
10 was required due to the delivery of the new disc. It does include the cost of the inspection of the
11 original records of KOKOWEEF which does not appear to be a cost that was related to the
12 production in issue. Additionally, it appears to include the review of the 2009 records, which were
13 not previously requested and would not be part of a recoverable sanction either.

14 The foregoing is true and correct to the best of my knowledge.

15 DATED this 19th day of August, 2011.

16
17 
18 M NELSON SEGEL
19
20
21
22
23
24
25
26
27
28

EXHIBIT “B”

DECLARATION OF LARRY L. HAHN

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, LARRY L. HAHN, declare under the penalty of perjury as follows:

1. I am the President of nominal defendant Kokoweef, Inc. ("KOKOWEEF") and a defendant in this matter; I make this declaration in support of the Opposition to the Motion for Sanctions; and Ex Parte Application for Order Shortening Time ("Discovery Sanction Motion") filed by Plaintiffs; this declaration is made on personal knowledge, and I am competent to testify to the matters stated herein.

2. The Discovery Sanction Motion appears to seek to hold KOKOWEEF, its attorney, Patrick C. Clary ("CLARY"), Hahn's World of Surplus, Inc. ("SURPLUS"), me and my attorney, MNELSON SEGEL ("SEGEL") liable for expert fees purportedly incurred by Plaintiffs in the sum of Twenty Four Thousand Two Hundred Seventy Seven Dollars and Fifty Cents (\$24,277.50) and Fifty Six Thousand Four Hundred Nine Dollars and Fifty Cents (\$56,409.50) for attorneys' fees and Nine Thousand Four Hundred Seventy Eight Dollars and Four Cents (\$9,478.04) for out of pocket costs incurred in this matter since February 3, 2011.

3. Plaintiffs argue that all of the Defendants, and their attorneys, have acted in concert with the intent of withholding KOKOWEEF documents from them. This is not true.

4. KOKOWEEF does not have a regular paid staff. Most of the people who work in the KOKOWEEF office are volunteers, although some have been paid for certain work.

5. Prior to the litigation, all receipts for KOKOWEEF were thrown into a "banker's box." I kept boxes for each calendar year and placed the boxes in a storage area. When Plaintiffs first made their request for documents in early 2009, I located the boxes for the five years requested and removed them from storage.

6. I requested that Laurie Wright ("WRIGHT") and my wife, Christina Hahn ("CHRISTINA"), scan all of the documents in the boxes and place them on discs for delivery to Plaintiffs, CLARY and SEGEL.

7. WRIGHT did all of the computer work, scanning and placing documents on discs.

1 I have been advised that WRIGHT and CHRISTINA pulled the records from the boxes to enable
2 WRIGHT to scan them. It was my understanding, and belief that WRIGHT completed the work and
3 all files were delivered to Plaintiffs.

4 8. Plaintiffs noticed the deposition of the custodian of records of KOKOWEEF which
5 was held on October 5, 2009. WRIGHT was designated as the custodian of records of KOKOWEEF
6 since she was the person who had handled the scanning and production of documents and had the
7 most knowledge regarding the documents produced. Plaintiffs were not satisfied with the deposition
8 of WRIGHT but concluded it with a reservation of rights to take the deposition of someone else
9 regarding the KOKOWEEF records. No further deposition was taken.

10 9. Plaintiffs' expert, Talon Stringham ("STRINGHAM") prepared his report dated
11 January 19, 2011 and provided it to the attorneys representing the Defendants. A copy of the report
12 was provided to me.

13 10. Upon receipt of STRINGHAM's report, I gave it to Jeremy Rosenstengel
14 ("JEREMY") to review. JEREMY and I were shocked that the report showed that Nine Hundred
15 Eighty Five Thousand Thirty Two Dollars and Ninety Cents (\$985,032.90) was unsupported.

16 11. JEREMY compared STRINGHAM's report with the documents that were contained
17 in the boxes that were scanned. He learned that many documents contained in the boxes were not
18 on the discs that had been provided to Plaintiffs. The Declaration of JEREMY has been submitted
19 with the opposition to the Discovery Sanction Motion filed by CLARY and KOKOWEEF and
20 discusses what he did, what he found and otherwise addresses the unsupported allegations set forth
21 in the Discovery Sanction Motion regarding KOKOWEEF including my purported intentional
22 interference with Plaintiffs receiving the documents.

23 12. When JEREMY told me of the problem, I immediately notified CLARY,
24 KOKOWEEF's attorney. It is my understanding that CLARY notified Plaintiffs' attorney and
25 caused a motion to be filed to notify the Court of the problem.

26 13. STRINGHAM's second report, dated May 20, 2011, concluded that Six Hundred
27 Thirty Seven Thousand Seven Hundred Three Dollars and Nineteen Cents (\$637,703.19) were
28 unsupported. The documents which were inadvertently not provided were sufficient for

1 STRINGHAM to reduce his unsupported transactions by approximately one third (1/3). Contrary
2 to the unsupported representation in the Discovery Sanction Motion, that new information was not
3 provided, the change in STRINGHAM's report suggests otherwise.

4 14. It should be interesting to note that STRINGHAM does not conclude that I stole or
5 misappropriated **any** funds. He concludes, "[u]sing the assumption that amounts that have been
6 unsupported by the accounting records represents a diversion of corporate funds, it is my opinion that
7 the shareholders of EIN and KOKOWEEF have been damaged by the following amounts" and then
8 shows a chart. STRINGHAM has not been able to locate **any** evidence that I misappropriated any
9 funds from EIN or KOKOWEEF.

10 15. I am not certain what else I could have done to assure that all of the documents were
11 produced in 2009 when they were requested. While I did not review the discs after they were
12 prepared, even if I had reviewed them before they were sent to counsel, I would not have known if
13 they were complete.

14 16. I do not believe it is unreasonable for me to have delegated the production of
15 documents to other people. Failing to produce documents was not beneficial to me, and I had no
16 reason to withhold documentation.

17 17. Plaintiffs' counsel stated that she attempted to obtain access to the original records
18 of KOKOWEEF and was denied. I have no knowledge of any such request. Had I been aware of
19 such a request, I would have allowed her to do so. Once this issue was raised at the February 24,
20 2011 hearing, which is the first time I had heard it, arrangements were made to allow STRINGHAM
21 access to the original documents. JEREMY and Wanda Bryan ("WANDA") organized all of the
22 documents that STRINGHAM requested for review and he took two full days to complete his
23 review.

24 18. Also at that hearing, Plaintiffs' attorney raised an issue regarding documents for 2009.
25 Although no request had been made, and no motion was filed, KOKOWEEF agreed to produce the
26 records for 2009, which was done.

27 19. In late 2010, Plaintiffs requested the right to review virtually all of the documents
28 utilized in the business operations of SURPLUS. These documents were produced and

1 STRINGHAM requested that most of them be copied. Plaintiffs were allowed to remove the boxes
2 of documents and have them copied. They were not returned in the time frame promised.

3 20. The first review of source documents occurred when Plaintiffs wanted stockholder
4 records. KOKOWEEF made all of the files, consisting of in excess of a full file cabinet, available
5 for review, and scanning, by Plaintiffs.

6 21. Contrary to the representations of Plaintiffs, I have cooperated and provided Plaintiffs
7 with access to whatever documents they reasonably requested.

8 22. At the hearing on February 24, 2011, the Court orally stated an intent to award
9 sanctions up to Two Thousand Five Hundred Dollars (\$2,500) due to the need of Plaintiffs to review
10 the omitted documents and allow STRINGHAM to prepare an amended report. The Court also later
11 ruled that the cap would be taken off.

12 23. I believe that sanctions, if any, should be limited to Two Thousand Five Hundred
13 Dollars (\$2,500). I also believe that if sanctions are issued, they should be against KOKOWEEF
14 only. I understand that it was my duty and responsibility to assure that KOKOWEEF produced all
15 of the requested documents. As set forth herein, I believe I acted reasonably, I did not intentionally
16 withhold any documents and I do not believe I should be sanctioned in this matter.

17 The foregoing is true and correct to the best of my knowledge.

18 DATED this 19th day of August, 2011.

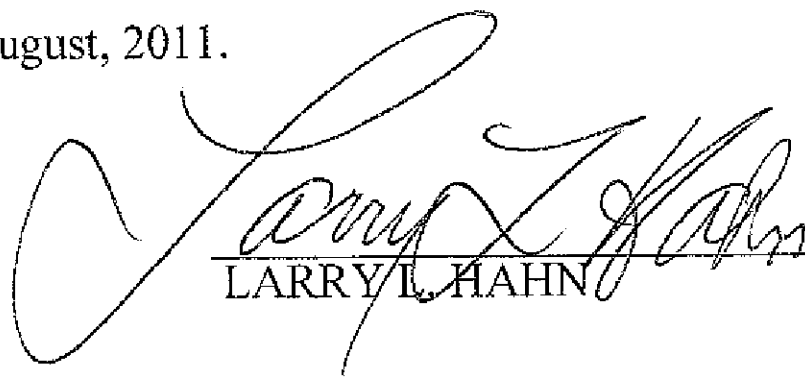
19
20 
21 LARRY L. HAHN
22
23
24
25
26
27
28

EXHIBIT “C”

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100
- 101
- 102
- 103
- 104
- 105
- 106
- 107
- 108
- 109
- 110
- 111
- 112
- 113
- 114
- 115
- 116
- 117
- 118
- 119
- 120
- 121
- 122
- 123
- 124
- 125
- 126
- 127
- 128
- 129
- 130
- 131
- 132
- 133
- 134
- 135
- 136
- 137
- 138
- 139
- 140
- 141
- 142
- 143
- 144
- 145
- 146
- 147
- 148
- 149
- 150
- 151
- 152
- 153
- 154
- 155
- 156
- 157
- 158
- 159
- 160
- 161
- 162
- 163
- 164
- 165
- 166
- 167
- 168
- 169
- 170
- 171
- 172
- 173
- 174
- 175
- 176
- 177
- 178
- 179
- 180
- 181
- 182
- 183
- 184
- 185
- 186
- 187
- 188
- 189
- 190
- 191
- 192
- 193
- 194
- 195
- 196
- 197
- 198
- 199
- 200
- 201
- 202
- 203
- 204
- 205
- 206
- 207
- 208
- 209
- 210
- 211
- 212
- 213
- 214
- 215
- 216
- 217
- 218
- 219
- 220
- 221
- 222
- 223
- 224
- 225
- 226
- 227
- 228
- 229
- 230
- 231
- 232
- 233
- 234
- 235
- 236
- 237
- 238
- 239
- 240
- 241
- 242
- 243
- 244
- 245
- 246
- 247
- 248
- 249
- 250
- 251
- 252
- 253
- 254
- 255
- 256
- 257
- 258
- 259
- 260
- 261
- 262
- 263
- 264
- 265
- 266
- 267
- 268
- 269
- 270
- 271
- 272
- 273
- 274
- 275
- 276
- 277
- 278
- 279
- 280
- 281
- 282
- 283
- 284
- 285
- 286
- 287
- 288
- 289
- 290
- 291
- 292
- 293
- 294
- 295
- 296
- 297
- 298
- 299
- 300
- 301
- 302
- 303
- 304
- 305
- 306
- 307
- 308
- 309
- 310
- 311
- 312
- 313
- 314
- 315
- 316
- 317
- 318
- 319
- 320
- 321
- 322
- 323
- 324
- 325
- 326
- 327
- 328
- 329
- 330
- 331
- 332
- 333
- 334
- 335
- 336
- 337
- 338
- 339
- 340
- 341
- 342
- 343
- 344
- 345
- 346
- 347
- 348
- 349
- 350
- 351
- 352
- 353
- 354
- 355
- 356
- 357
- 358
- 359
- 360
- 361
- 362
- 363
- 364
- 365
- 366
- 367
- 368
- 369
- 370
- 371
- 372
- 373
- 374
- 375
- 376
- 377
- 378
- 379
- 380
- 381
- 382
- 383
- 384
- 385
- 386
- 387
- 388
- 389
- 390
- 391
- 392
- 393
- 394
- 395
- 396
- 397
- 398
- 399
- 400
- 401
- 402
- 403
- 404
- 405
- 406
- 407
- 408
- 409
- 410
- 411
- 412
- 413
- 414
- 415
- 416
- 417
- 418
- 419
- 420
- 421
- 422
- 423
- 424
- 425
- 426
- 427
- 428
- 429
- 430
- 431
- 432
- 433
- 434
- 435
- 436
- 437
- 438
- 439
- 440
- 441
- 442
- 443
- 444
- 445
- 446
- 447
- 448
- 449
- 450
- 451
- 452
- 453
- 454
- 455
- 456
- 457
- 458
- 459
- 460
- 461
- 462
- 463
- 464
- 465
- 466
- 467
- 468
- 469
- 470
- 471
- 472
- 473
- 474
- 475
- 476
- 477
- 478
- 479
- 480
- 481
- 482
- 483
- 484
- 485
- 486
- 487
- 488
- 489
- 490
- 491
- 492
- 493
- 494
- 495
- 496
- 497
- 498
- 499
- 500
- 501
- 502
- 503
- 504
- 505
- 506
- 507
- 508
- 509
- 510
- 511
- 512
- 513
- 514
- 515
- 516
- 517
- 518
- 519
- 520
- 521
- 522
- 523
- 524
-


I, LAURIE WRIGHT, declare under the penalty of perjury as follows:

1. I was the designated custodian of records for nominal defendant Kokoweef, Inc. ("KOKOWEEF") in this matter and make this declaration in support of the Opposition to the Motion for Sanctions; and Ex Parte Application for Order Shortening Time ("Discovery Sanction Motion") filed by Plaintiffs. This declaration is made on personal knowledge and I am competent to testify to the matters stated herein.
2. I was contacted to assist Kokoweef, Inc. ("KOKOWEEF") in organizing, scanning and placing documentation on computer discs pursuant to a request by Plaintiffs. Christina Hahn ("CHRISTINA") brought numerous 'bankers boxes' to my house to enable me to scan the documents contained in the boxes.
3. Each box contained a separate year of receipts. CHRISTINA or I pulled the receipts from the boxes, and I scanned them into the computer. Once I had all of the documents scanned, I copied them onto disks for delivery to Patrick C. Clary, Esquire, the attorney for KOKOWEEF, M Nelson Segel, Esquire, the attorney for Larry Hahn and Hahn's World of Surplus, Inc. and Plaintiffs' counsel.
4. It was my instruction that **all** documents be scanned and copied. It was my belief that all documents were scanned and copied.
5. I was advised in late January 2011, or early February 2011, that various documents contained in the boxes had not been copied onto the disc. I was adamant that this did not happen. However, I was shown the discs, and documents that were in the boxes, and it appears that some of the files I scanned did not get copied onto the discs.
6. I can hypothesize what happened, but do not have any specific knowledge of how the error occurred. The intent was to provide all of the documentation, and I did not intentionally leave

1 anything off of the disks.

2 The foregoing is true and correct to the best of my knowledge

3 DATED this 19 day of August, 2011.

4 
5 LAURIE WRIGHT

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT “D”

1 **NOTC**
2 **ALEXANDER ROBERTSON, IV**
3 State Bar No. 8642
4 **JENNIFER L. TAYLOR**
5 State Bar No. 5798
6 **ROBERTSON & VICK, LLP**
7 401 N. Buffalo Drive, Suite 202
8 Las Vegas, Nevada 89145
9 Telephone: (702) 247-4661
10 Facsimile: (702) 247-6227

11 Attorneys for Plaintiffs

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **TED R. BURKE, MICHAEL R. and**
15 **LAURETTA L. KEHOE; JOHN BERTOLDO;**
16 **PAUL BARNARD; EDDY KRAVETZ;**
17 **STEVE FRANKS; PAULA MARIA**
18 **BARNARD; PETER T. and LISA A.**
19 **FREEMAN; LEON GOLDEN; C.A. MURFF;**
20 **GERDA FERN BILLBE; BOB and ROBYN**
21 **TRESKA; MICHAEL RANDOLPH, and**
22 **FREDERICK WILLIS,**

23 Plaintiffs,

24 vs.

25 **LARRY H. HAHN, individually, and as**
26 **President and Treasurer of Kokoweef, Inc., and**
27 **former President and Treasurer of Explorations**
28 **Incorporated of Nevada; HAHN'S WORLD OF**
29 **SURPLUS, INC., a Nevada corporation; DOES**
30 **I-X, inclusive; DOE OFFICERS, DIRECTORS**
31 **and PARTICIPANTS I-XX,**

32 Defendants,.

33 and

34 **KOKOWEEF, INC, a Nevada corporation;**
35 **EXPLORATIONS INCORPORATED OF**
36 **NEVADA, a dissolved corporation;**

37 Nominal Defendants.

38 CASE NO. A558629
39 Dept. XIII

40 **SECOND AMENDED NOTICE**
41 **OF EARLY CASE CONFERENCE**

42 *Date: April 9, 2009*
43 *Time: 9:00 a.m.*

1 **SECOND AMENDED NOTICE OF EARLY CASE CONFERENCE**

2 TO: ALL INTERESTED PARTIES

3 PLEASE TAKE NOTICE that pursuant to NRCP 16.1(a) and (b) an Early Case
4 Conference has been rescheduled to **April 9, 2009 at 9:00 a.m.**, at the offices of Robertson &
5 Vick, 401 N. Buffalo Dr., Suite 202, Las Vegas, Nevada 89145.

6 Please be prepared to produce the following:

- 7 1. All documents reasonably available which are contemplated to be used in support
8 of the allegations or denials which are contained in your Answer including, but
9 not limited to Affirmative Defenses, rebuttal and impeachment documents;
- 10 2. All tangible things that constitute or contain discoverable matter;
- 11 3. Copies of any and all documents or discoverable matter related to the financial
12 transactions and/or operations of Larry Hahn, Hahn's World of Surplus,
13 Kokoweef and/or EIN which are in your possession, custody or control, including
14 but not limited to:
 - 15 (a) Balance sheets, income statements, statements of changes in financial
16 position or statement of cash flows, and statements of stockholders' equity
17 or partners' capital accounts for up to the last five fiscal years, if available;
 - 18 (b) A complete release for income tax returns for the same years;
 - 19 (c) Latest interim statements if valuation date is three months or more beyond
20 end of last fiscal year and interim statement for the comparable period the
21 year before;
 - 22 (d) List of subsidiaries and/or financial interests in other companies, with
23 relevant financial statements;
 - 24 (e) Detailed general ledgers for up to the last five fiscal years;
 - 25 (f) Copy of the data file from any accounting program that is used in the
26 operation of the business (e.g. QuickBooks, PeachTree, etc.);
 - 27 (g) Equipment list and depreciation schedule;
 - 28 (h) Aged accounts receivable list;

ROBERTSON
& VICK, LLP

- 1 (i) Aged accounts payable list;
- 2 (j) List of prepaid expenses;
- 3 (k) Inventory list, with any necessary information on inventory accounting
- 4 policies (including work in process, if applicable);
- 5 (l) Lease or leases (if lease does not exist or is not transferable, determine
- 6 what new lease or rental terms will be);
- 7 (m) Any other existing contracts (employment agreements, covenants not to
- 8 compete, supplier and franchise agreements, customer agreements, royalty
- 9 agreements, equipment lease or rental contracts, loan agreements, labor
- 10 contracts, employee benefit plans, and so on);
- 11 (n) List of stockholders or partners, with numbers of shares owned by each or
- 12 percentage of each partner's interest in earnings and capital;
- 13 (o) Compensation schedule for owners, including all benefits and personal
- 14 expenses;
- 15 (p) Copies or descriptions of employee benefit plans;
- 16 (q) Schedule of insurance in force (Key-man life, property and casualty,
- 17 liability);
- 18 (r) Budgets or projections, if available;
- 19 (s) All bank statements, personal and/or corporate, from the last five (5) years;
- 20 (t) All credit card statements, personal and/or corporate, from the last five (5)
- 21 years.
- 22 4. Any and all documents related to the business organization of Kokoweef
- 23 including, but not limited to:
- 24 (a) Articles of incorporation, by-laws, any amendments to either, and
- 25 corporate minutes;
- 26 (b) All meeting minutes related to the transition of shares between EIN and
- 27 Kokoweef;
- 28

- 1 (c) Any existing buy/sell agreements, options to purchase stock or partnership
2 interest, rights of first refusal, trust agreements, or other documents
3 affecting the ownership rights of the interest being valued;
- 4 (d) Brief history, including how long in business and details of any changes in
5 ownership and/or bona-fide offers received;
- 6 (e) Brief description of business, including position relative to competition
7 and any factors that make the business unique;
- 8 (f) Organization chart, if one exists;
- 9 (g) Information on related-party transactions;
- 10 (h) Marketing literature (catalogs, brochures, advertisements, and so on);
- 11 (i) List of locations where company operates, with size, and whether owned
12 or leased;
- 13 (j) List of states in which Kokoweef, EIN and/or any subsidiaries are licensed
14 to do business;
- 15 (k) Resumes of, or list of, key personnel, with age, position, compensation,
16 length of service, education, and prior experience;
- 17 (l) Trace associations to which company belongs or would be eligible for
18 membership;
- 19 (m) Relevant trade or government publications;
- 20 (n) Any existing indicators of asset values, including latest property tax
21 assessments and any appraisals that have been done;
- 22 (o) List of patents, copyrights, trademarks, and other intangible assets;
- 23 (p) Any contingent or off-balance-sheet assets or liabilities (pending lawsuits,
24 compliance requirements, warranty or other product liability, and so on);
- 25 (q) Any filings or correspondence with regulatory agencies;
- 26 (r) Information on prior transactions;
- 27 (s) A list of any companies that management considers comparable to the
28 company.

- 1 5. Provide a written list of persons including expert witnesses and consultants known
2 or reasonably believed to have knowledge or any facts relevant to the allegations
3 in the Complaint, Answer, and/or Affirmative Defenses including persons having
4 knowledge or rebuttal or impeachment evidence. We respectfully request that
5 each person be identified by name and location along with a general description of
6 the subject matter of the person's testimony.
- 7 6. All policies of insurance, whether primary, excess or umbrella, issued to you, your
8 parent, subsidiary or affiliate, which may potentially provide insurance coverage
9 for the damages sought by the Plaintiffs in this lawsuit, including any denial or
10 reservation of rights letters received from any such insurer.

11 You are invited to bring your files, attend and participate.

12
13 DATED: March 31, 2009

ROBERTSON & VICK, LLP

14
15 By: 

ALEXANDER ROBERTSON, IV
Nevada Bar No. 8642
JENNIFER L. TAYLOR
Nevada Bar No. 5798
ROBERTSON & VICK, LLP
401 N. Buffalo Dr., Suite 202
Las Vegas, Nevada 89145
Attorneys for Plaintiffs

16
17
18
19
20
21
22
23
24
25
26
27
28 ROBERTSON
& VICK, LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIPT OF COPY

The undersigned acknowledges receipt of copy of the following document:

1. **SECOND AMENDED NOTICE OF EARLY CASE CONFERENCE**

Dated: March 31, 2009

M. NELSON SEGEL, CHARTERED

By MLM / 108100 325 pm
M.. Nelson Segel
624 South 9th Street
Las Vegas, Nevada 89101
Attorneys for Larry Hahn and

ROBERTSON
& VICK, LLP 28

EXHIBIT “E”

1 **RSPN**
2 **M NELSON SEGEL, CHARTERED**
3 M NELSON SEGEL, ESQUIRE
4 Nevada Bar No. 0530
5 624 South 9th Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 385-5266
8 Attorneys for Defendants Larry Hahn
9 and Hahn's World of Surplus, Inc.

7 **DISTRICT COURT OF NEVADA**
8 **COUNTY OF CLARK**

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

14 Plaintiffs,

15 vs.

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

20 Defendants,

21 and

22 KOKOWEEF, INC., a Nevada corporation;
23 EXPLORATIONS INCORPORATED OF
24 NEVADA, a dissolved corporation,

24 Nominal Defendants.

CASE NO. A558629
DEPT NO. XIII

DATE: 4/9/09
TIME: 9:00 a.m.

26 **RESPONSE TO DOCUMENT REQUEST CONTAINED IN THE**
27 **SECOND AMENDED NOTICE OF EARLY CASE CONFERENCE**

28 Defendants Larry Hahn ("HAHN") and Hahn's World of Surplus, Inc. ("SURPLUS")

1 ("HAHN and SURPLUS sometimes collectively referred to herein as ("RESPONDING
2 DEFENDANTS") hereby respond to the Document Request ("REQUEST") set forth in the Second
3 Amended Notice of Early Case Conference ("NOTICE"). RESPONDING DEFENDANTS object
4 to the REQUEST on the basis that it is beyond the scope of NRCP 16.1, it is irrelevant, intrusive,
5 is overbroad, burdensome and appears to be a general laundry list that has not been tailored for the
6 present matter and not likely to lead to the discovery of admissible evidence. Notwithstanding said
7 objection, and without waiver of said objection, RESPONDING DEFENDANTS have set forth
8 responses to each items set forth in the REQUEST.

9 **REQUEST NO. 1:** RESPONDING DEFENDANTS are not aware of any documents that
10 are responsive to Request No. 1, other than those documents that were presented to Plaintiff Ted
11 Burke prior to the commencement of this litigation and those items presented to the Court during the
12 evidentiary hearing held in or about July 2008. Discovery is continuing and RESPONDING
13 DEFENDANTS shall supplement this response when, and if, further responsive documentation is
14 located.

15 **REQUEST NO. 2:** RESPONDING DEFENDANTS object to Request No. 2 on the basis
16 that it is unintelligible. RESPONDING DEFENDANTS are not aware of what is being requested
17 and will supplement this response if, and when, Plaintiffs present a request that enables
18 RESPONDING DEFENDANTS to know what is being requested.

19 **REQUEST NO. 3:** RESPONDING DEFENDANTS object to the production of any and
20 all documents requested under Request No. 3 as it relates to them. Notwithstanding said objection,
21 RESPONDING DEFENDANTS have answered some of the responses. SURPLUS does not have
22 access to the records and information regarding Kokoweef, Inc. ("KOKOWEEF") or Explorations
23 Incorporated of Nevada, a dissolved Nevada corporation ("EIN") and; therefore, respond that they
24 have no such documentation. While HAHN is the President and a Director of KOKOWEEF, and
25 held the same positions in EIN when it was in existence, he is not responding to the REQUESTS on
26 behalf of KOKOWEEF or EIN; therefore, he has no documents to present for these entities. It is the
27 understanding of HAHN that KOKOWEEF and EIN will respond through their counsel. Without
28 waiving the objections set forth above, the following are the responses as they relate to

1 RESPONDING DEFENDANTS:

- 2 (a). None will be produced.
3 (b). None will be produced.
4 (c). None will be produced.
5 (d). None exists.
6 (e). HAHN has no general ledger. SURPLUS will not be produced.
7 (f). None exists.
8 (g). HAHN has no equipment list or depreciation schedule. SURPLUS will not be
9 produced.
10 (h). None exists.
11 (i). None exists.
12 (j). None exists.
13 (k). HAHN has no inventory list. SURPLUS will not be produced.
14 (m). HAHN has no documents. SURPLUS will not be produced.
15 (n). HAHN has no stockholders. SURPLUS will not be produced.
16 (o). HAHN has no documents. SURPLUS will not be produced.
17 (p). None exists.
18 (q). None will be produced.
19 (r). None exists.
20 (s). None will be produced.
21 (t). None will be produced.

22 **REQUEST NO. 4:** All documents requested relate to KOKOWEEF which will be
23 produced, if at all, by KOKOWEEF. RESPONDING DEFENDANTS will not produce any
24 documents relating to KOKOWEEF.


25 **REQUEST NO 5:** RESPONDING DEFENDANTS have not retained an expert at the
26 present time. It is anticipated that Reta L. Van Da Walker will testify whom RESPONDING
27 DEFENDANTS may qualify as an expert for the purposes of the trial of this matter. RESPONDING
28 DEFENDANTS will supplement this response, as required, when further experts have been retained

1 by them to testify in this matter.

2 **REQUEST NO. 6:** RESPONDING DEFENDANTS are not aware of any insurance that
3 would be applicable to the present matter.

4 DATED this 8th day of April, 2009.

5 M NELSON SEGEL, CHARTERED

6
7 By 
8 M NELSON SEGEL, ESQUIRE
9 Nevada Bar No. 0530
624 South 9th Street
Las Vegas, Nevada 89101
Attorneys for Defendants Larry Hahn
and Hahn's World of Surplus, Inc.

11
12
13 **RECEIPT OF COPY**

14 RECEIPT OF A COPY of the foregoing RESPONSE TO DOCUMENT REQUEST
15 CONTAINED IN THE SECOND AMENDED NOTICE OF EARLY CASE CONFERENCE is
16 hereby acknowledged this _____ day of April, 2009.

17 ROBERTSON & VICK, LLP

LAW OFFICES OF PATRICK C. CLARY

18
19 By _____
20 JENNIFER TAYLOR, ESQUIRE
401 North Buffalo Drive, Suite 202
Las Vegas, Nevada 89145

By _____
PATRICK C. CLARY, ESQUIRE
7201 West Lake Mead Drive, Suite 410
Las Vegas, Nevada 89128