A handwritten signature in black ink, appearing to read "Anna D. Quinn". The signature is fluid and cursive, with a small mark above the "i" in "Quinn".

CLERK OF THE COURT

EXHIBIT 5

1 **AFFD**
ALEXANDER ROBERTSON, IV
2 State Bar No. 8642
JENNIFER L. TAYLOR
3 State Bar No. 5798
ROBERTSON & ASSOCIATES, LLP
4 401 N. Buffalo Dr., Suite 202
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5 Telephone: (702) 247-4661
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6 Attorneys for Plaintiffs

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 TED R. BURKE; MICHAEL R. and) CASE NO. A558629
LAURETTA L. KEHOE; JOHN BERTOLDO;) DEPT: XIII
11 PAUL BARNARD; EDDY KRAVETZ;)
JACKIE and FRED KRAVETZ; STEVE) [ELECTRONIC FILING CASE]
12 FRANKS; PAULA MARIA BARNARD;)
LEON GOLDEN; C.A. MURFF; GERDA)
13 FERN BILLBE; BOB and ROBYN TRESKA;)
MICHAEL RANDOLPH; and FREDERICK)
14 WILLIS,) AFFIDAVIT OF EDWIN J. APENBRINK
) IN SUPPORT OF PLAINTIFFS'
15 Plaintiffs,) SUPPLEMENTAL OPPOSITION TO
) DEFENDANT PATRICK C. CLARY'S
16 vs.) MOTION FOR SUMMARY JUDGMENT
) AND IN SUPPORT OF PLAINTIFFS'
) COUNTER MOTION FOR SUMMARY
17 LARRY H. HAHN, individually, and as) JUDGMENT
President and Treasurer of Kokoweef, Inc., and)
18 former President and Treasurer of Explorations)
Incorporated of Nevada; HAHN'S WORLD OF)
19 SURPLUS, INC., a Nevada corporation;)
PATRICK C. CLARY, an individual; DOES 1)
20 through 100, inclusive;)
21 Defendants,)
22 and)
23 KOKOWEEF, INC., a Nevada corporation;)
EXPLORATIONS INCORPORATED OF)
24 NEVADA, a dissolved corporation,)
25 Nominal Defendants.)

26
27
28

1 AFFIDAVIT OF EDWIN J. APENBRINK IN SUPPORT
2 OF PLAINTIFFS' OPPOSITION TO DEFENDANT PATRICK C. CLARY'S MOTION
3 SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFFS COUNTER MOTION
4 FOR SUMMARY JUDGMENT

5 STATE OF NEVADA)
6)) ss:
7 COUNTY OF CLARK)

8 EDWIN J. APENBRINK, being first duly sworn, deposes and states that I am a licensed
9 attorney in the states of Missouri, Illinois, New York, Georgia and Ohio who has been practicing
10 in the area of state securities law for more than three decades, that I was retained by Plaintiffs to
11 render opinions related to the Defendants' compliance with Nevada securities law and to render
12 opinions regarding the representations made to Plaintiffs by Defendants Patrick C. Clary and
13 Larry H. Hahn in regard to the effect of their attempts to comply with Nevada securities law. I
14 have personal knowledge of the facts stated herein, except for those stated and made upon
15 information and belief, wherein so indicated.

16 1. I make this Declaration on behalf of Plaintiffs and in support of their
17 Supplemental Opposition to Defendant Patrick C. Clary's Motion for Summary Judgment and
18 Plaintiffs' Counter-Motion for Summary Judgment.

19 2. I am a licensed attorney with thirty-five years experience in state securities law,
20 including knowledge of the permissible exemptions and the registration requirements for the
21 State of Nevada, and the intent of exemptions provided by the Nevada Securities Division.

22 3. My experience includes work from 1992 - 2008 at the State of Nevada Securities
23 Division as the Director of Securities Registration and Licensing. In my capacity as the Director
24 of Securities Registration & Licensing, I reviewed and approved, or denied, applications for the
25 registration, and the exemption from registration, of securities. In my capacity as Director of
26 Securities Registration & Licensing, I also participated in drafting amendments to Nevada
27 statutes, rules and regulations related to the registration, and exemption from registration, of
28 securities. More specifically, and in relation to this case, I reviewed exemption filings, such as
the one attached to Defendant Patrick C. Clary's Affidavit in Support of his Motion for Partial
Summary Judgment. The acceptance of an exemption filing by the Nevada Securities Division

1 does not mean that the asserted exemption is applicable to those securities, and does not
2 represent a ratification of that asserted exemption by the Nevada Securities Division. The review
3 and acceptance of exemption documents, however, requires the filing counsel or board members
4 to have conducted sufficient due diligence to advise their clients on the availability of
5 exemptions from registration and whether their stocks can be exempt.

6 4. Prior to my role with the State of Nevada, Securities Division, I was employed
7 with various law firms between 1979 and 1992 where I was tasked with coordinating with
8 regulators and government officials in all fifty-three jurisdictions in order to gain registration of
9 securities, or determine exemptions from the registration of securities, on behalf of national and
10 regional underwriters. I performed the kind of evaluation that should have been completed prior
11 to Defendants' Clary or Hahn in filing the registration and exemption with the Nevada Securities
12 Division or relying upon a self-executing exemption.

13 5. I have been retained by Plaintiffs' attorney, the firm of Robertson &
14 Associates,LLP, to act as an expert in the field of state securities regulation in the matter now in
15 litigation, Burke v. Hahn, Clark County Case No. A 558629. In that capacity, I have examined
16 the shareholder records of Kokoweef, Inc. ("Kokoweef") and its predecessor, Explorations
17 Incorporated of Nevada ("EIN") and the other materials as set forth below in order to determine a
18 proper count of shareholders and sales of shares of Kokoweef and EIN:

19 A. Shareholder records of EIN;

20 B. Shareholder records of Kokoweef;

21 C. List of purchasers of stock in both entities from May 29, 1973 to
22 present;

23 D. Nevada Uniform Securities Act (NRS 90.211 et. seq.)(the "Act") including NRS
24 90.460 et. seq., which requires the registration of securities distributed in this State, NRS 90.520
25 which deals with exempt securities and NRS 90.530 which deals with exempt transactions;

26 E. Rules and regulations promulgated under the Act (NAC 90.01 et. seq.) (the "Rules")
27 including NAC 90.395 et. seq. which deals with the registration of securities and NAC 90.495 et.
28 seq. which deals with exempt securities and exempt transactions;

1 F. Bank and business records of Kokoweef, EIN and Hahn's World of Surplus; and
2 G. Various pleadings and documents relative to the matter including specifically the
3 Motions for Summary Judgment filed by Defendants, the Verified Derivative First Amended
4 Complaint, dated September 22, 2008, the Agreement and Plan of Reorganization dated
5 November 10, 2005 (the "Plan") between EIN and Kokoweef, the Motion for Partial Summary
6 Judgment dated May 29, 2009, the Articles of Incorporation and By-laws of EIN the Stock
7 Certificate Log of Kokoweef and other pertinent corporate documents and records.

8 6. In part, I was asked to analyze whether state securities violations had occurred in the
9 registration, or attempted exemption from registration, of EIN and its successor corporation,
10 Kokoweef. It is my opinion, and I will so testify, that state securities violations did occur to the
11 detriment of shareholders of EIN and Kokoweef. Specifically, EIN sold unregistered securities,
12 which were not exempt from registration under either NRS § 90.520 or NRS §90.530.
13 Additionally, these violations by EIN were continued in Kokoweef, both in the transfer of
14 existing EIN shares and in the sale of new Kokoweef shares.

15 7. My review and analysis of the Nevada security violations committed by EIN and
16 Kokoweef follows. I believe that Mr. Clary knew or should have known about these violations
17 and that he failed in his obligations as corporate counsel to properly advise Kokoweef and its
18 shareholders regarding the legality of their shares.

19 8. EIN was incorporated in the State of Nevada on or about October 24, 1984. From its
20 inception, among other things, it has been involved in the sale of stock to members of the public
21 in various states, including Nevada. The scope of my retention encompassed a review of the
22 shareholder records of EIN and Kokoweef, as well as the bank and business records of EIN,
23 Kokoweef and Hahn's World of Surplus to identify any unlisted shareholders, to analyze the
24 distribution of securities over many years, together with a review of the aforementioned statutes
25 and regulations and to make a determination if such a distribution was conducted in accordance
26 with the Act.

27 9. I was also asked to examine the accuracy of statements which I understand were
28

1 made to Plaintiffs and which were affirmed in the writings I reviewed. I reviewed October 12,
2 2006 correspondence from Patrick Clary to all the shareholders of EIN. In that letter, Mr. Clary
3 represented to the shareholders that their EIN shares were legal and could be exchanged for legal
4 shares of Kokoweef. Mr. Clary made this representation, as I understand it, as counsel for EIN
5 and then subsequently Kokoweef, and on behalf of the Board, including Defendant Larry H.
6 Hahn.

7 10. Mr. Clary's Motion for Summary Judgment asserts that he "did not concoct a
8 scheme to conceal from the stockholders the sale of unregistered and non-exempt securities in
9 violation of NRS 90.460, and the offer and sale of securities by Kokoweef fully complied with
10 applicable exemptions from registration under federal and state securities law." Mot. 3:21-25. In
11 fact, while the exchange of EIN shares for Kokoweef shares may have fallen within the
12 exemption contemplated in NRS 90.530(17)(b), any EIN shares which were not legally issued
13 were not exempt, despite the merger and the continued sale of Kokoweef shares did not comply
14 with applicable exemptions under Nevada State Securities law, as set out more fully in this
15 affidavit and in my report dated January 19, 2011.

16 11. Further, Mr. Clary asserts in his Motion that he "did not supply false guidance to
17 the Plaintiffs in the sale of the securities of Explorations Incorporate [sic] of Nevada or so-called
18 Nominal Defendant Kokoweef Inc. ("Kokoweef")", and any guidance that Mr. Clary gave to
19 anyone regarding the offer and sale of Kokoweef's securities "involved strict compliance with
20 the applicable statutory exemptions from registration." Mot. 3:27-28 - 4:1-5. However, Mr.
21 Clary's Affidavit in support of his Motion for Summary Judgment admits that he suggested the
22 formation of the new company, Kokoweef, to provide a "clean start", including the exchange of
23 EIN shares for Kokoweef shares. Mot. Clary Aff. ¶ 5. In fact, this plan suggested by Mr. Clary
24 did not and could not clean prior violations of the securities issued by Kokoweef. Such a plan to
25 cure securities violations solely through reorganization, and representations that a reorganization
26 could cure such illegalities, would have misrepresented the state of exemptions under Nevada
27 law.

28 12. In order to determine the availability of any exemptions for the existing EIN

1 shares and the shares of the new company, Kokoweef, I reviewed November 21, 2005
2 correspondence from Mr. Clary to myself in my capacity as Chief of Registration and Licensing
3 for the Securities Division of the Nevada Secretary of State. In that correspondence, Mr. Clary
4 alleged to provide notice under Subsection 17(b) of Section 90.530 of the Nevada Revised
5 Statutes that the shares of Kokoweef, Inc. were eligible for exemption under NRS 90.530(17)(b).
6 13. I next reviewed the Nevada Securities Act to determine if there was an exemption
7 from registration which would permit the continued distribution of the securities. The exemption
8 provided by NRS 90.530(11) was the only one which presented itself as a possible exemption.
9 EIN and Kokoweef stated, in documents connected with the Agreement and Plan of
10 Reorganization as described below, that reliance had been placed on the limited offering
11 exemption provided by NRS 90.530(11). Said exemption provides an exemption from
12 registration for a distribution to no more than twenty-five (25) purchasers in this state during any
13 twelve consecutive months, if there is no general solicitation or general advertising, no
14 commission or other compensation is paid except to a broker-dealer licensed or not required to
15 be licensed under the Act and either the seller reasonably believes all of the purchasers are
16 purchasing for investment or the issuer has less than fifty (50) security holders and the offering
17 does not exceed \$500,000 during any twelve consecutive months.
18 14. As noted above, while exempt shares, in general, may remain eligible for an
19 exemption under a merger, those underlying shares still had to qualify for an exemption before
20 the merger. Therefore, in order to determine compliance with NRS 90.530(17)(b), I examined
21 the shareholder records of EIN and Kokoweef, as well as the bank and business records of
22 Kokoweef, EIN and HWS to confirm the identities of those purchasing shares. After my review
23 of the shareholder and banking records, it is evident that the exemption under NRS 90.530(17)(b)
24 was not available because if EIN stock had been illegally sold, which it had been, the fact that a
25 new corporation was formed and EIN stocks exchanged for Kokoweef stocks did not render
26 those new Kokoweef stocks eligible for exemption. Mr. Clary's statement to that extent on his
27 filing with the Nevada State Securities Division misrepresents the state of the EIN shares
28 exemptions, because my analysis revealed that EIN shares had been illegally sold. Further, if

1 EIN stock had been illegally sold, the fact that it was later exchanged for Kokoweef stock did not
2 cure the defects in the issuance of the EIN shares. Mr. Clary's statements in October 12, 2006
3 correspondence to shareholders that represented EIN stock to be legal and that the Kokoweef
4 stock received in exchange for that EIN stock would also be legal would misrepresents the state
5 of these share exemptions.

6 15. Additionally, Kokoweef continued to sell new shares illegally after both the
7 Agreement and Plan of Reorganization and the filing of the November 21, 2005 Nevada Form
8 -9. The sale of these unregistered and non-exempt securities did not comply with applicable
9 exemptions under the state securities laws.

10 16. In order to determine the applicability of any exemption under NRS 90.530, my
11 review specifically focused on the dates of purchase of Nevada residents. When I found a
12 Nevada purchaser, I would then calculate the number of Nevada purchasers in the ensuing twelve
13 months to determine if the number of sales to Nevada residents exceeded the twenty-five
14 permitted by NRS 90.530(11). For instance, on May 9, 2006¹, Nevada residents Stanley and
15 Virginia K. purchased stock. In the ensuing twelve months, until May 8, 2007, a total of forty
16 (40) other Nevada residents purchased stock. Hence, there were forty (40) separate violations of
17 the Act due to the sale of these shares. Once the maximum number of sales permitted by NRS
18 90.530(11), twenty-five in a twelve-month period, has been exceeded, the Division considers all
19 sales in that period to be in violation of the registration requirements. As another example, an
20 examination of the attached Exhibit 1, Shareholder Transaction Record, shows that all thirty (30)
21 sales to Nevada residents from the sale on June 25, 2005 to Nevada resident WJK through and
22 including the sale on June 13, 2006 to Nevada residents Kenneth E. and Debra A. V. would be
23 violations of the Act. In summary, of the three twelve month periods, which commenced in 2005
24 and in which shares were sold to Nevada residents, two of those periods contained violations of
25

26 ¹ A spreadsheet of all stock purchases by Nevada residents can be presented to this Court upon request.
27 However, I understand that I am subject to a confidentiality order in regard to the disclosure of shareholder names
28 and addresses, and therefore, have not produced the complete record. Therefore, I have selected exemplar periods of
violations, with as little identifying information as possible to make a record of those violations, and am prepared to
provide a list and testimony regarding the numerous violations both before and after the merger.

1 the act, totaling sixty-nine (69) separate violations. In summary, of the forty-six twelve month
2 periods, which commenced in 2006 and in which shares were sold to Nevada residents, twenty-
3 three (23) of those periods contained violations of the act, totaling eight-hundred, fifty (850)
4 separate violations.

5 17. Based upon my review of the shares records and the banking and business records
6 of EIN, Kokoweef and HWS, and Mr. Clary's admission in his Affidavit in Support of his
7 Motion for Partial Summary Judgment that EIN was not following proper procedure in the sale
8 of its stock, I believe Mr. Clary knew or should have known that the sales of shares in EIN,
9 including those sales between March 2003 and October 2006 were issued in violation of
10 Nevada's securities laws. Mr. Clary admitted in his Affidavit to his Motion for Summary
11 Judgment that he recommended a reorganization and re-issuance of new shares for a "clean
12 start". If Mr. Clary devised this plan to cure the illegally sold shares, this plan would not correct
13 the deficiencies. Further, if Mr. Clary represented to the Boards of EIN and Kokoweef that
14 illegally issued shares could ever be or were cured by such a scheme, that would be incorrect and
15 a misrepresentation on the part of Mr. Clary.

16 18. NRS 90.660 provides, in part, that a person who offers or sells a security in
17 violation of the Act is liable to the purchaser for the consideration paid plus interest and
18 attorney's fees less and income received on the security. NRS 90.680 provides that relief under
19 NRS 90.660 may not be obtained if the purchaser receives a rescission offer stating that a
20 violation has occurred and offering to repurchase the security. The examination of the foregoing
21 records and documents which I conducted shows that on many occasions during the distribution
22 the limitation on the number of investors allowed during a twelve month period was exceeded.
23 However, my review and analysis of these documents indicates that Mr. Clary either did not
24 disclose these violations to Board and shareholders or did not conduct sufficient due diligence to
25 determine the extent of underlying violations. In addition, once the issuer exceeded fifty
26 shareholders, that portion of the exemption was no longer available. Based upon my review and
27 analysis of the foregoing material, it is my opinion that there were indeed numerous violations of
28 the Act committed in the course of the distribution of securities by EIN and Kokoweef, and

1 therefore, the impacted shareholders could bring a claim for violation of NRS 90.660, the sale of
2 unregistered securities, against Defendants EIN and KOKOWEEF.

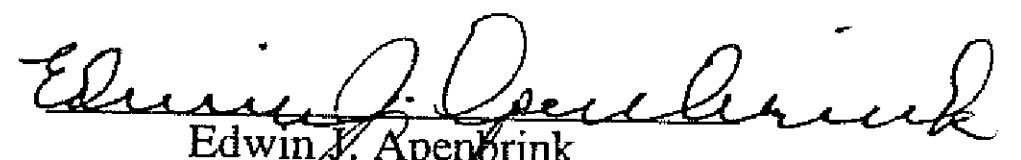
3 19. My retention also included instructions to review the Agreement and Plan of
4 Reorganization dated November 10, 2005 between EIN and Kokoweef, to determine if it was
5 conducted in accordance with the Act and to express an opinion as to whether such a transaction
6 could, in any way, correct or ameliorate any prior or subsequent violations of the Act committed
7 in the distribution of the securities in question. In connection with this analysis, I reviewed a
8 filing in connection with the reorganization of EIN into Kokoweef, which was made with the
9 Office of the Secretary of State, Securities Division (the "Division") on or about November 23,
10 2005 (the "Filing"). The purpose of this filing was stated to claim the exemption provided by
11 NRS 90.530(17)(b). The Division conducts a perfunctory review of such filings to determine
12 that the filing is timely, the fee is enclosed and that recipients of the offer receive some
13 disclosure. Within those parameters this filing was perfected. However, confirming the
14 underlying securities were exempt is the responsibility of the filer and not the Division, and
15 administrative approval of the Claim of Exemption is not tantamount to a ratification of the
16 claim for exemption in the filing. This exemption requested in the Filing would allow only the
17 distribution of the securities of Kokoweef to the shareholders of EIN pursuant to the Agreement
18 and Plan of Reorganization. It is my opinion, however, that it would not have any impact on the
19 ongoing sales of securities of EIN and Kokoweef and would not, in any way, cleanse any past, or
20 future, violations of the Act in connection with the distribution. Accordingly, Kokoweef, and
21 Defendant Hahn would be liable, pursuant to NRS 90.660, to eligible shareholders for the
22 purchase price plus interest and attorney's fees less and income received on the security.

23 20. Additionally, Defendant Clary asserts in his Affidavit in support of his Motion for
24 Summary Judgment that he explained the proper procedures that were required to comply with
25 both the federal and state securities laws, and that he established procedures for the offer and sale
26 of other authorized but unissued stock of Kokoweef to new investors, which would be in
27 compliance with the requirements of both federal and state securities laws. Clary Aff., ¶ 5-6.
28 Mr. Clary also asserts that any guidance he gave to anyone regarding the offer and sale of

1 Kokoweef's securities involved strict compliance with applicable exemptions. Clary Aff. ¶ 10.
2 However, Kokoweef shares continued to be sold in violation of the exemptions Mr. Clary claims
3 existed, and no records exist in the corporate records of Kokoweef or EIN demonstrating that Mr.
4 Clary did indeed establish such procedures or provided guidance on strict compliance with
5 applicable exemptions to avoid future violations.

6 Further your affiant sayeth not.

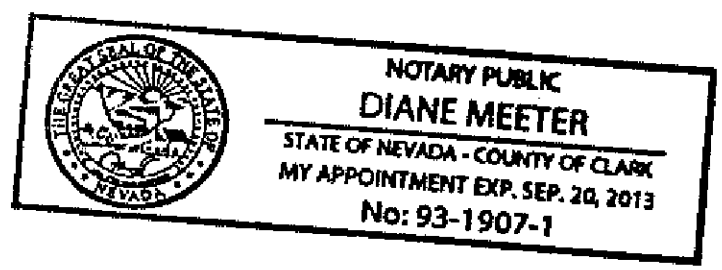
7 Executed this 19th day of January 2011, at Las Vegas, Nevada.

8 
9 Edwin J. Apenbrink

10
11 STATE OF NEVADA)
12 COUNTY OF CLARK) ss

13 On January 19, 2011 before me, Edwin J. Apenbrink a Notary Public in and for said
14 County and State, personally appeared Edwin J. Apenbrink personally known to me (or proved to
15 me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within
16 instrument, and acknowledged to me that he executed the same in his authorized capacity, and
17 that by his signature on the instrument the person, or the entity upon behalf of which the person
18 acted, executed the instrument.

19 WITNESS my hand and official seal.



20 
21 Notary Public

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