

*Ann L. Quinn*

CLERK OF THE COURT

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

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

10 -000-

FILE #	<u>5081.01</u>
INDEX	YES <u>NO</u>
CALENDAR	
DATE 1:	<u>3-30-10 H</u>
DATE 2:	<u>Opp</u>
BY:	<u>Reply 3-23</u>
OTHER:	
ATTORNEY:	
ROUTE TO:	

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

17 Plaintiffs,

18 vs.

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

23 Defendants,

24 and

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

27 Nominal Defendants.  
28

CASE NO. 08A558629

DEPT. XI

**LARRY L. HAHN AND HAHN'S  
WORLD OF SURPLUS, INC.'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

DATE: 3/30, 2010

TIME: 9:00 a.m.

1 Defendants LARRY L. HAHN ("HAHN") and HAHN'S WORLD OF SURPLUS, INC.  
2 ("HAHN'S WORLD")(HAHN and HAHN'S WORLD sometimes referred to herein as "HAHN  
3 DEFENDANTS"), by and through their attorney, M NELSON SEGEL, ESQUIRE, hereby file their  
4 Motion for Partial Summary Judgment ("MPSJ") regarding the Fourth Cause of Action, the Eight  
5 Cause of Action and whether this is a derivative action. Additionally, they hereby join in Defendant  
6 PATRICK C. CLARY's Motion for Partial Summary Judgment ("CLARY MPSJ") that was filed  
7 in or about May 2009 and is being set for hearing at the same time this MPSJ is heard. If the court  
8 grants all of the relief requested in this MPSJ, and the CLARY MPSJ, HAHN will be the only  
9 remaining defendant and the Seventh, Eighth, Ninth and Tenth Causes of Action will be the only  
10 matters before the Court. This Motion is made and based upon all of the pleadings and papers on file,  
11 the points and authorities set forth herein and the declarations of M Nelson Segel, Larry Hahn and  
12 Chris Hahn attached hereto as Exhibit "A", "B" and "C" respectfully.

13 **NOTICE OF MOTION**

14 TO: The above-named Plaintiffs and their Attorneys:

15 NOTICE IS HEREBY GIVEN that the hearing on the above and foregoing Larry L. Hahn  
16 and Hahn's World of Surplus, Inc.'s Motion for Partial Summary Judgment will be held in Dept. XI  
17 of the above-entitled Court in the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada,  
18 on the <sup>30</sup> day of March, 2010, at the hour of 9:00 M., or as soon thereafter as counsel can be  
19 heard.

20 DATED this 24<sup>th</sup> day of February, 2010.

21 M NELSON SEGEL, CHARTERED

22  
23 By 

24 M NELSON SEGEL, ESQUIRE

25 Nevada Bar No. 0530

26 624 South 9<sup>th</sup> Street

27 Las Vegas, Nevada 89101

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

1           HAHN DEFENDANTS ARE ENTITLED TO PARTIAL SUMMARY JUDGMENT

2           This action was originally brought by Defendants under NRCP 23.1 as a derivative action  
3 pursuant to NRS §41.520(2). An evidentiary hearing was held by Judge Denton on or about the 30<sup>th</sup>  
4 day of July, 2008. As a result of said hearing, Judge Denton entered an order requiring Plaintiffs to  
5 post security for Defendants' costs and attorneys' fees in the sum of Seventy Five Thousand Dollars  
6 (\$75,000). To reach that decision, it was necessary for Judge Denton to find that there was no  
7 possibility that Plaintiffs could prove their claim. A copy of Judge Denton's Decision is attached  
8 as **Attachment "1"** to the Declaration of M Nelson Segel attached hereto as **Exhibit "A"**.

9           Normally, Plaintiffs who lose an evidentiary hearing of this nature would go away or attempt  
10 to resolve their disputes with the corporation and its management. In the present case, the Plaintiffs  
11 took a unique path. They fired their attorney and filed an amended complaint, the so-called First  
12 Amended Derivative Complaint ("Amended Complaint"). An interesting aspect of this Amended  
13 Complaint is that it took the case from a "derivative" action where relief was sought on behalf of the  
14 corporation for purported wrongful conduct by the defendants which would benefit the corporation  
15 and all of its shareholders, to a claim for damages for the benefit of the named Plaintiffs only!  
16 Additionally, in an apparent effort to cause harm and expense to the corporation, Kokoweef, Inc.  
17 ("KOKOWEEF"), as opposed to seeking to benefit KOKOWEEF, Plaintiffs named Patrick C. Clary,  
18 Esquire, ("CLARY"), KOKOWEEF's attorney, as a defendant herein.

19           The present motion has been brought to enable the Court to determine whether a viable action  
20 exists against HAHN in the Fourth Cause of Action and HAHN'S WORLD in the Eighth Cause of  
21 Action. Secondly, the question must be answered whether this is a derivative action or a simple  
22 shareholders' suit seeking damages for the benefit of the named Plaintiffs only, and to gain control  
23 of an entity that has no real present value but which all of the parties believe is on the brink of a  
24 major discovery.

25           Finally, the Defendants have no idea what is being sought by the Plaintiffs. The "prayer"  
26 states that they want rescission of their purchase of stock in KOKOWEEF. However, their attorney,  
27 Alexander Robertson, IV, Esquire, stated to Judge Denton during a hearing held in January 2009,  
28 that his clients did not want to give up their stock, they simply wanted their stock rescinded and to

1 have the stock "legally re-issued! If this is the relief sought by the Plaintiffs, they need to explain  
2 to the Court the legal remedy that exists to allow this to happen. However, the first thing they need  
3 to do is show the Court that their stock was illegally issued. This is a burden that cannot be carried  
4 by Plaintiffs.

5 As set forth herein, HAHN is entitled to summary judgment on the Fourth Cause of Action,  
6 HAHN'S WORLD is entitled to summary judgment on the Eighth Cause of Action and Defendants  
7 are entitled to summary judgment on the basis that the Amended Complaint does not set forth a  
8 claim for a derivative action under NRCP 23.1 or NRS 41.520.<sup>1</sup>

#### 9 PRIOR RULINGS

10 HAHN DEFENDANTS previously filed a Motion to Dismiss that was heard by Judge  
11 Denton on or about the 12<sup>th</sup> day of January 2009. Judge Denton granted portions of the Motion to  
12 Dismiss and denied others in a Decision and Order that was entered on the 29<sup>th</sup> day of January, 2009,  
13 a copy of which is attached hereto as **Attachment "2"** to the Declaration of M Nelson Segel.

14 Cause of Actions 1 through 5 were brought by Plaintiffs against CLARY and HAHN based  
15 upon purported allegations of fraud, misrepresentation and "securities fraud." Judge Denton granted  
16 the Motion to Dismiss as it related to Cause of Actions 1, 2, 3, 5 and 6. With the exception of the  
17 First Cause of Action that was dismissed on the basis that no remedy existed for Plaintiffs under  
18 NRS §90.640, the claims for relief were dismissed due to the failure of Plaintiffs to provide adequate  
19 facts to support said claims.

20 Judge Denton refused to grant the Motion to Dismiss the Fourth Cause of Action based upon  
21 "negligent misrepresentation" on the basis that the pleading requirement was not as stringent as  
22 required for fraud. Judge Denton stated, at page 2, line 23 of the D&O as follows:

23 The Court is not of the view that negligent misrepresentation requires the same  
24 particularity in pleadings as fraud. Therefore, the Court cannot say that the Fourth  
Cause of Action fails to state a claim on which relief can be granted. . .

25 As set forth herein, the HAHN DEFENDANTS do not believe that adequate facts have been set forth  
26

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27 <sup>1</sup> The Court should be aware that Defendant Larry Hahn does not believe that any portion of the Amended  
28 Complaint has merit. The present motion has been filed to eliminate the extraneous parties and to enable the Court to  
focus on the allegations against him. Defendant Larry Hahn will likely seek further relief from the Court at a later date.

1 to support a claim for negligent misrepresentation against them. Therefore, the Court should enter  
2 summary judgment in their favor.

3 The CLARY MPSJ seeks an order of this Court finding that there is no genuine issue of  
4 material fact regarding the Fourth Cause of Action ("CLAIM") and the Court should enter an order  
5 in favor of CLARY on the CLAIM. HAHN is also named in the CLAIM, however, the CLAIM is  
6 not asserted against HAHN'S WORLD. For the reasons set forth below, the HAHN DEFENDANTS  
7 request that this Court enter summary judgment in favor of HAHN pursuant to this MPSJ as well  
8 as CLARY pursuant to CLARY's MPSJ on the Fourth Cause of Action.

9 PLAINTIFFS HAVE FAILED TO ADEQUATELY PLEAD  
10 A CLAIM FOR NEGLIGENT MISREPRESENTATION

11 The HAHN DEFENDANTS acknowledge that Nevada does recognize a cause of action  
12 known as "negligent misrepresentation". This cause of action was recognized by the Supreme Court  
13 of Nevada in the case *Bill Stremmel Motors, Inc. V. First Nat'l Bank of Nevada*, 94 Nev. 131, 575  
14 P.2d 938 (1987). In reaching its decision, the Court stated,

15 The theory of liability is expressed in Restatement (Second) of Torts s 552, 1977 ed.,  
16 pp. 126-127. There it is stated:

17 (1) One who, in the course of his business, profession or employment, or in any other  
18 action in which he has a pecuniary interest, for the guidance of others in their  
19 business transactions, is subject to liability for **pecuniary loss** caused to them by  
their justifiable reliance upon the information, if he fails to exercise reasonable care  
or competence in obtaining or communicating the information. (Emphasis added).

20 . . .

21 The tort is negligent misrepresentation. Cf. *Eikelberger v. Rogers*, 92 Nev. 282, 549  
22 P.2d 748 (1976), where we rejected that theory of liability absent proof of reliance  
upon accounting statements by the party seeking damages.

23 *Stremmel* referred to *Eikelberger* where the Court upheld a JNOV in favor of the defendant. The  
24 Court stated at page 283,

25 The Eikelbergers commenced this action against Rogers, a certified public  
26 accountant, to recover damages for accounting errors in statements prepared by  
27 Rogers for John and Mary Tolotti for use in litigation between the Eikelbergers and  
28 the Tolottis. The Eikelbergers did not employ Rogers. The Eikelbergers did not rely  
upon the accounting statements prepared by Rogers. To the contrary, they challenged  
those statements in the litigation with the Tolottis. **Absent a professional  
relationship between the Eikelbergers and Rogers, or a reliance upon the**

1        **accounting statements prepared**, we perceive no legal basis for damages claimed  
2        to have been incurred by the Eikelbergers. (Emphasis added).

3        The *Eikelberger* decision seems particularly relevant in this matter where the Plaintiffs have failed  
4        to allege any specific misstatement, reliance upon said statement or damages.

5        The Supreme Court recently discussed the elements of a cause of action for negligent  
6        misrepresentation in *Nelson v. Heer*, 123 Nev. 26, 163 P.3d 420 (2007) and stated, commencing at  
7        page 426:

8        Intentional misrepresentation is established by three factors: **(1) a false**  
9        **representation that is made with either knowledge or belief that it is false or**  
10       **without a sufficient foundation, (2) an intent to induce another's reliance, and**  
11       **(3) damages that result from this reliance.** With respect to the false representation  
12       element, the suppression or omission “ ‘of a material fact which a party is bound in  
13       good faith to disclose is equivalent to a false representation, since it constitutes an  
14       indirect representation that such fact does not exist.’ ” And, with respect to the  
15       damage element, this court has concluded that the **damages alleged must be**  
16       **proximately caused by reliance on the original misrepresentation or omission.**  
17       Proximate cause limits liability to foreseeable consequences that are reasonably  
18       connected to both the defendant's misrepresentation or omission and the harm that  
19       the misrepresentation or omission created. (Emphasis added).

20       The first factor to consider is “a false representation that is made with either knowledge or  
21       belief that it is false or without a sufficient foundation.” The initial problem with this case, and the  
22       claim of Plaintiffs, is that they do not specify what misrepresentations were made, intentional or  
23       negligent! More importantly, there has been no allegation that a specific statement was made that  
24       was false. Without asserting specific allegations of a false statement, the claim must fail.

25       The second element of a cause of action for intentional misrepresentation is an intent to  
26       induce another's reliance. Again, there is no allegation of this nature in the Amended Complaint.

27       The third element is damages that result from this reliance. The Supreme Court of Nevada  
28       has defined “damages” and ruled in a negligent misrepresentation matter these were “out of pocket  
29       losses” only. The Supreme Court held, in *Goodrich & Pennington Mortgage Fund, Inc. V. J.R.*  
30       *Woolard, Inc.*, 120 Nev. 777, 101 P.3d 792 (2004), commencing at page 797, “The district court  
31       properly used an **out-of-pocket damage-recovery theory** to award Goodrich its damages sustained  
32       as a result of Woolard's negligence.” (Emphasis added). Prior to reaching its conclusion, the Court  
33       discussed the claimed damages at page 796 and stated:

1 Goodrich asks us to adopt a benefit-of-the-bargain formula for damages. This court  
2 has defined benefit-of-the-bargain damages in the fraud context as “the value of what  
3 [the plaintiff] would have received had the representations been true, less what he  
4 actually received.” This damage measure is akin to damages available in a contract  
5 action for breach of warranty. The benefit-of-the-bargain rule is a punitive measure  
6 which “compels [a] party guilty of fraud to make good his or her representations, and  
7 under its operation, the parties are placed in the same position as if the contract and  
8 representations had been fully performed.”

**We reject this damage formulation in favor of the out-of-pocket formula for  
cases of negligent misrepresentation.** (Citations omitted, emphasis added).

7 This concept takes the value paid, subtracts the actual value of the item obtained had the  
8 misrepresentation not occurred and that the result is the measure of damages.

9 Assuming Plaintiffs had adequately plead the elements of a claim for negligent  
10 misrepresentation, which the HAHN DEFENDANTS do not believe occurred, there are no damages!  
11 While the allegations which purportedly support the underlying claim are not clear, it appears that  
12 there are two possible claims. The first claim would be that CLARY and HAHN made factual  
13 statements to **each** Plaintiff that induced **each** of them to purchase shares of stock of Explorations  
14 Incorporated of Nevada “EIN or KOKOWEEF for a value that was in excess of what they would  
15 have paid but for the purported misrepresentation. Each of the Plaintiffs paid Six Dollars (\$6) per  
16 share.<sup>2</sup> Any new stockholder, or existing stockholder who purchases new stock in Kokoweef, Inc.  
17 (“KOKOWEEF”) pays Six Dollars (\$6) per share. Therefore, there is no damage under the rule set  
18 forth in *Goodrich*.

19 If the alleged wrongful conduct is something that occurred in the reorganization between  
20 Explorations Incorporated of Nevada (“EIN”) or KOKOWEEF, there is still no damage. First, not  
21 all of the Plaintiffs were stockholders of EIN. Therefore, they could not have a claim regarding the  
22 reorganization. Secondly, the Six Dollars (\$6) per share issue precludes them from having damages.

23 While the representation of Mr. Robertson at the hearing in January 2009 was not made to  
24 Judge Gonzalez, it was made to Judge Denton and is contained in the record. At that time, Mr.

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25  
26 <sup>2</sup> This statement, as supported by the declaration of HAHN, shows that all stockholders who have purchased  
27 stock in Explorations Incorporated of Nevada, Inc. (“EIN”) or Kokoweef, Inc. (“KOKOWEEF”), paid Six Dollars (\$6)  
28 per share. In addition to the purchase of shares for Six Dollars (\$6) per share, shares of stock of EIN and KOKOWEEF  
have been issued for services rendered to EIN and KOKOWEEF. These shares were issued based upon a value of Six  
Dollars (\$6) per share. However, the Court should be advised that the HAHN DEFENDANTS do not believe all of the  
Plaintiffs are stockholders and will address that issue when the time arises.

1 Robertson represented to the Court that the Plaintiffs did not want rescission of their stock. They  
2 wanted their interest in KOKOWEEF. They “simply” want the shares rescinded and issued  
3 properly.”<sup>3</sup>

4 EACH PLAINTIFF MUST SHOW THAT THEY AFFIRMATIVELY RELIED UPON  
5 A NEGLIGENT MISREPRESENTATION AND WERE HARMED

6 It cannot be disputed that an action for “negligent misrepresentation” requires a plaintiff to  
7 prove that he relied upon said negligent misrepresentation. This requires the plaintiff to set forth  
8 what misrepresentation occurred, when it took place, the true facts, that he relied upon the  
9 statements, the basis for his reliance, the action taken by him and the damages proximately caused  
10 by the misrepresentation. Clearly, these elements are not contained in the Amended Complaint.  
11 Therefore, summary judgment on the Fourth Claim for Relief for Negligent Misrepresentation is not  
12 only appropriate, but required.

13 SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF HAHN’S WORLD  
14 ON THE EIGHTH CAUSE OF ACTION

15 The Eighth Cause of Action asserts a claim against HAHN and HAHN’S WORLD alleging  
16 unjust enrichment. This appears to be the only claim for relief in the Paragraph 99 appears to be  
17 the only “factual” claim in the Amended Complaint regarding unjust enrichment. It states:

18 Plaintiffs are informed and believe, and therein allege, that Defendants HAHN,  
19 HAHN’S WORLD, and DOES 1 through 100, inclusive, were unjustly enriched by  
20 the illegal transactions and activities of HAHN in the sale of unregistered securities  
and the diversion of corporate funds and assets for the personal use of HAHN and  
HAHN’S WORLD.

21 This is a conclusory statement that has no factual basis. It is incumbent upon Plaintiffs to allege  
22 facts that support a claim for relief. Since no facts are set forth to support a claim against HAHN’S  
23 WORLD, summary judgment appears to be appropriate.

24 A cause of action has been recognized in Nevada for “unjust enrichment.” The elements of  
25 said cause of action have been set forth in *Unionamerica Mortgage and Equity Trust v. McDonald*,

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26  
27 <sup>3</sup> The minutes of the Court from the hearing held on January 12, 2009, state, “Arguments by Mr. Segal [sic]  
28 that all of the shares should be rescinded and reissued to clear up the securities.” In reality, this was the comment of Mr.  
Robertson, not Mr. Segel, as set forth above in the text of this Motion. The minutes later state, “Pltfs do not want  
rescission.” The complete minutes are attached to the Declaration of M Nelson Segel, Esquire, as Attachment “3”.



1 97 Nev. 210, 626 P.2d 1272. The Court stated, at page 1274:

2 The terms "restitution" and "unjust enrichment" are the modern counterparts of the  
3 doctrine of quasi-contract. The purpose of quasi-contractual relief is to do justice to  
the parties regardless of their intention.

4 The essential elements of quasi contract are a benefit conferred on the defendant by  
5 the plaintiff, appreciation by the defendant of such benefit, and acceptance and  
6 retention by the defendant of such benefit under circumstances such that it would be  
inequitable for him to retain the benefit without payment of the value thereof.

7 Unjust enrichment occurs whenever a person has and retains a benefit which in  
8 equity and good conscience belongs to another. (Citations omitted).

9 It should be clear from the pleadings that the Amended Complaint sets forth no fact that would  
10 support a finding that HAHN'S WORLD received anything from Plaintiffs! It is necessary for  
11 Plaintiffs to set forth factual allegations that show HAHN'S WORLD received a "benefit which in  
12 equity and good conscience belongs to [them]". This has not been done and cannot be done.

13 Since Plaintiffs have failed to provide the Court with any facts that would support a finding  
14 that HAHN'S WORLD was unjustly enriched, summary judgment should be rendered in its favor  
15 and against Plaintiffs.

16 IS THE PENDING ACTION ONE PROPERLY BROUGHT UNDER NRS §41.520 OR  
17 IS IT SIMPLY AN ACTION BY PURPORTED SHAREHOLDERS FOR DAMAGES  
WHICH IS NOT COVERED BY NRS §41.520?

18 It is the belief of the HAHN DEFENDANTS that the Amended Complaint is simply an  
19 action by disgruntled individuals who are seeking damages for their benefit, not a derivative action  
20 for the benefit of KOKOWEEF. This lawsuit was instigated by Ted Burke ("BURKE"), who was  
21 an officer and director of KOKOWEEF and its predecessor, Explorations Incorporated of Nevada  
22 ("EIN") at all times relevant herein! While the HAHN DEFENDANTS do not believe any harm has  
23 occurred to Plaintiffs based upon the allegations set forth in the Amended Complaint, the laws of  
24 the United States of America and the State of Nevada allow people to file lawsuits without regard  
25 to whether a valid cause of action exists. The law provides remedies for frivolous lawsuits that  
26 are brought with improper motives. While the HAHN DEFENDANTS believe the present actions  
27 has been brought solely to remove HAHN as President of KOKOWEEF and to obtain control of  
28 KOKOWEEF by the Plaintiffs, or to cause the demise of KOKOWEEF to enable the Plaintiffs, and

1 their cohorts to take control of the mining claims of KOKOWEEF, this is not the time to argue the  
2 impropriety of this action.

3 However, the existing pleading raises an issue that needs to be decided. This Amended  
4 Complaint purports to be a derivative action pursuant to NRS §41.520 and brought under NRCP  
5 23.1. The HAHN DEFENDANTS do not believe the Amended Complaint is a derivative action.

6 This issue was raised in the Motion to Dismiss that was filed by the HAHN DEFENDANTS  
7 in November 2008. The HAHN DEFENDANTS do not believe that Judge Denton addressed the  
8 issue. The right to commence a derivative action is set forth in NRCP 23.1 which provides:

9 In a derivative action brought by one or more shareholders or members to enforce a  
10 right of a corporation or of an unincorporated association, the corporation or  
11 association having failed to enforce a right which may properly be asserted by it, the  
12 complaint shall be verified and shall allege that the plaintiff was a shareholder or  
13 member at the time of the transaction of which the plaintiff complains or that the  
14 plaintiff's share or membership thereafter devolved on the plaintiff by operation of  
15 law. The complaint shall also allege with particularity the efforts, if any, made by the  
16 plaintiff to obtain the action the plaintiff desires from the directors or comparable  
17 authority and, if necessary, from the shareholders or members, and the reasons for the  
18 plaintiff's failure to obtain the action or for not making the effort. **The derivative  
19 action may not be maintained if it appears that the plaintiff does not fairly and  
20 adequately represent the interests of the shareholders or members similarly  
21 situated in enforcing the right of the corporation or association.** The action shall  
22 not be dismissed or compromised without the approval of the court, and notice of the  
23 proposed dismissal or compromise shall be given to shareholders or members in such  
24 manner as the court directs. (Emphasis added).

25 This rule contains requirements that must be satisfied by the dissident shareholders prior to  
26 commencing an action. As set forth below, PLAINTIFFS have not satisfied their obligations under  
27 NRCP 23.1 and the case may not proceed as a derivative action.

28 NRCP 23.1, sets forth a requirement that the Plaintiffs represent the interests of the  
shareholders and provides:

The derivative action may not be maintained if it appears that the plaintiff  
does not fairly and adequately represent the interests of the shareholders or members  
similarly situated in enforcing the right of the corporation or association.

Based upon the allegations of the Amended Complaint, KOKOWEEF has at least Eight  
Hundred and Eighty (880) shareholders, with at least One Million Fifty Seven Thousand Five  
Hundred Sixty Five (1,057,565) shares of common stock outstanding. Based upon the allegations  
set forth in paragraphs 19 through 32 of the Amended Complaint, PLAINTIFFS hold Eighty Seven

1 Thousand Five Hundred Sixty Eight (87,568) shares of the issued and outstanding shares of common  
2 stock of KOKOWEEF.<sup>4</sup> PLAINTIFFS represent a small number of shareholders of KOKOWEEF.  
3 It should be noted that the original solicitation of each of the PLAINTIFFS, with the exception of  
4 BURKE, was made by BURKE and they were brought into KOKOWEEF by BURKE.

5 Utilizing the numbers set forth in the Amended Complaint, the PLAINTIFFS hold  
6 approximately Eight and Two Tenths percent (8.2%) of the outstanding shares of common stock of  
7 KOKOWEEF. The declaration of HAHN that is submitted herewith shows that BURKE is not a  
8 shareholder of KOKOWEEF. It is HAHN's understanding that BURKE is the principal of BFT  
9 Enterprises, LLC, a Nevada limited liability company, which holds Five Thousand (5,000) shares  
10 of the common stock of KOKOWEEF, not the Seventy Five Thousand (75,000) shares that he  
11 alleges are owned by him. In actuality, the PLAINTIFFS only hold Twelve Thousand Five Hundred  
12 Sixty Eight (12,568) shares of the common stock of KOKOWEEF, or One and One Tenth (1.1%)  
13 percent of the issued and outstanding shares of the common stock of KOKOWEEF!

14 PLAINTIFFS have failed to include **any** allegations in their Complaint which would show  
15 that they fairly and adequately represent the interests of the shareholders as required by NRCP 23.1.  
16 This aspect of NRCP 23.1 has not been addressed by the Supreme Court of Nevada. However, the  
17 9<sup>th</sup> Circuit Court of Appeals addressed the similar federal rule in the case *Larson v. Dumke*, 900 F.2d  
18 1363 (9<sup>th</sup> Cir. 1990), where it stated, at page 1367:

19 An adequate representative must have the capacity to vigorously and conscientiously  
20 prosecute a derivative suit and be free from economic interests that are antagonistic  
21 to the interests of the class. *See e.g., Lewis v. Curtis*, 671 F.2d 779, 788-89 (3d  
22 Cir.), *cert. denied*, 459 U.S. 880, 103 S.Ct. 176, 74 L.Ed.2d 144 (1982); *Owen v.*  
23 *Modern Diversified Industries, Inc.*, 643 F.2d 441, 443-44 (6th Cir.1981) (no  
24 antagonistic interests); *GA Enterprises, Inc. v. Leisure Living Communities, Inc.*,  
25 66 F.R.D. 123, 125-27 (D.Mass.1974), *aff'd*, 517 F.2d 24, 26-27 (1st Cir.1975).  
26 Other courts have stated certain factors to determine adequacy of representation: "(1)  
27 indications that the plaintiff is not the true party in interest; (2) the plaintiff's  
28 unfamiliarity with the litigation and unwillingness to learn about the suit; (3) the  
degree of control exercised by the attorneys over the litigation; (4) the degree of  
support received by the plaintiff from other shareholders; ... (5) the lack of any  
personal commitment to the action on the part of the representative plaintiff";  
*Rothenberg v. Security Management Co.*, 667 F.2d 958, 961 (11th Cir.1982)

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<sup>4</sup> It is the opinion of HAHN that some of the Plaintiffs are not shareholders of KOKOWEEF and others were not shareholders prior to the reorganization of KOKOWEEF with EIN. He also questions the total number of shares held by the Plaintiffs.

1 (citations omitted), (6) the remedy sought by plaintiff in the derivative action; (7) the  
2 relative magnitude of plaintiff's personal interests as compared to his interest in the  
3 derivative action itself; and (8) plaintiff's vindictiveness toward the defendants.  
4 *Davis v. Comed, Inc.*, 619 F.2d 588, 593-94 (6th Cir.1980). These factors are  
5 "intertwined or interrelated, and it is frequently a combination of factors which leads  
6 a court to conclude that the plaintiff does not fulfill the requirements of 23.1." *Id.*  
7 at 593. We are satisfied that an evaluation of these factors is important in  
8 determining the adequacy of representation by a derivative plaintiff under Rule 23.

9 A review of the Amended Complaint makes it clear that PLAINTIFFS' interests are different than  
10 the majority of the shareholders of KOKOWEEF. PLAINTIFFS spent most of their Amended  
11 Complaint, eight of ten original "causes of action", attempting to set forth a claim for relief that  
12 entitles them to rescission and damages. While the Court has dismissed five (5) of these causes of  
13 action, the remaining causes of action seek damages for themselves, not KOKOWEEF. A review  
14 of the prayer of the Amended Complaint shows that PLAINTIFFS are not representative of the  
15 shareholders of KOKOWEEF.

16 The prayer starts with, "Plaintiffs pray for judgment and relief against Defendants as follows:  
17 . . ." This shows that the relief is being requested for the benefit of the PLAINTIFFS, not  
18 KOKOWEEF. More importantly, there is NO prayer for the benefit of KOKOWEEF, which is the  
19 *sine qua none* basis of a derivative action!

20 Further review of the prayer shows that a request in paragraph 8 seeks rescission and  
21 restitution for PLAINTIFFS. Nothing set forth in the prayer seeks to benefit any shareholder other  
22 than the PLAINTIFFS.

23 HAHN DEFENDANTS believe paragraphs 4 and 5 of the prayer show the true basis of the  
24 present action. They provide:

25 4. For the removal of HAHN as a director of KOKOWEEF; and

26 5. For the reinstatement of BURKE as a director and corporate secretary.

27 It is the belief of HAHN DEFENDANTS that the true purpose of this litigation is to enable BURKE  
28 to take control of KOKOWEEF for his benefit and to the detriment of the shareholders of  
KOKOWEEF who are not plaintiffs herein.

A review of the factors set forth in *Larson* make it clear that PLAINTIFFS do not represent  
the interests of the majority of the shareholders of KOKOWEEF and actually have interests that are

1 contrary to the interests of the other shareholders. PLAINTIFFS may not maintain a derivative  
2 action against HAHN DEFENDANTS and KOKOWEEF and seek damages for their own benefit  
3 at the same time.

4 While this issue, and the issue of seeking board approval to proceed were raised in the  
5 Motion to Dismiss, the HAHN DEFENDANTS do not believe that the Court addressed this issue.  
6 The Court did place language in footnote 2 on Page 3 of the D&O that the Plaintiffs had satisfied the  
7 futility issue. However, Judge Denton stated therein:

8 **The Eighth and Tenth Causes of Action are the only ones that appear to be**  
9 **derivative.** In this regard, all the other causes of action seek monetary recovery by  
10 the Plaintiffs themselves for their own benefit; and, although the alternative remedy  
of rescission is sought in the Third, Fourth, Fifth and Sixth Causes of Action, the  
subject corporations re named only as "Nominal Defendants." (Emphasis added).

11 Judge Denton's D&O acknowledges that the Plaintiffs are seeking a monetary benefit for themselves  
12 for their own benefit. He also finds that since KOKOWEEF was only named in a "nominal"  
13 capacity, no relief could be granted against it; therefore, no rescission could take place.

14 Since Judge Denton has found that only the Eighth and Tenth Causes of Action "appear to  
15 be derivative", this means that the other remaining causes of action are personal in nature to the  
16 Plaintiffs. If they are seeking damages for their benefit, they cannot represent all of the shareholders  
17 in a derivative action.

18 Based upon the language of the Amended Complaint and the findings of Judge Denton as set  
19 forth in his D&O, Plaintiffs cannot adequately represent the interests of the shareholders and the  
20 Court should grant summary judgment to the HAHN DEFENDANTS that the PLAINTIFFS are not  
21 representative parties and the Amended Complaint does not set forth a derivative action.

#### 22 CONCLUSION

23 Based upon the foregoing, it is clear that (1) summary judgment should be granted in favor  
24 of HAHN on the Fourth Cause of Action; (2) summary judgment should be granted in favor of  
25 HAHN'S WORLD on the Eighth Cause of Action for Unjust Enrichment; and (3) the Court should  
26 enter a summary judgment that PLAINTIFFS do not adequately represent the entire pool of

27 ...

28 ...

1 shareholders and the Amended Complaint does not set forth a cause of action under NRCP 23.1 or  
2 NRS §41.520.

3 DATED this 24<sup>th</sup> day of February, 2010.

4 M NELSON SEGEL, CHARTERED

5  
6 By 

7 M NELSON SEGEL, ESQUIRE

8 Nevada Bar No. 0530

9 624 South 9<sup>th</sup> Street

10 Las Vegas, Nevada 89101

11 *Attorneys for Defendants Larry L. Hahn and*  
12 *Hahn's World of Surplus, Inc.*  
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Exhibit “A”

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STATE OF NEVADA                    )  
COUNTY OF CLARK                ) ss:

I, M NELSON SEGEL, being first duly sworn, state as follows:

1. I am an attorney at law duly licensed to practice in this Court; make this declaration in support of the Motion for Partial Summary Judgment (“MPSJ”) filed by Larry Hahn (“LARRY”) and Hahn’s World of Surplus, Inc. (“HAHN’S WORLD”)(LARRY and HAHN’S WORLD sometimes collectively referred to herein as “HAHN DEFENDANTS”); this declaration is made from my own knowledge; and I am competent to testify to the matters set forth herein.

2. I was retained by the HAHN DEFENDANTS 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 29<sup>th</sup> day of July, 2009.

3. Numerous motions have been filed and hearings held in this matter. Judge Denton heard each of the motions and rendered decisions on the request for security, which is attached hereto as **Attachment "1"** and his decision on Defendants' Motion to Dismiss and the Motion for Appointment of Receiver which is attached hereto as **Attachment "2"**.

4. During a hearing before Judge Denton on January 12, 2009, Alexander Robertson, IV, Esquire, (ROBERTSON”), Plaintiffs lead counsel, informed Judge Denton that Plaintiffs did not want to rescind their purchase of stock in Kokoweef, Inc. (“KOKOWEEF”), or its predecessor Explorations Incorporated of Nevada (“EIN”). He stated that the Plaintiffs simply wanted their illegally issued stock to be rescinded and legally issued stock to be delivered to them. A copy of the minutes as set forth in Odyssey are attached hereto as **Attachment “3”**.

5. I have a background in securities; however, I have never represented KOKOWEEF or EIN in any manner. I also am not in a position to opine whether improper sales of securities occurred in this matter. However, the remedy available to a disgruntled shareholder is set forth in NRS §90.660 and provides for rescission of their stock purchase, payment of the purchase price, interest, and, in appropriate circumstances, attorneys' fees.

6. While the prayer for relief requests rescission, all claims under the securities laws



1 have been dismissed and Plaintiffs have not taken any action to seek to amend the complaint a  
2 second time to cure their pleading inadequacies. Therefore, the claim for relief that seeks rescission  
3 is of no value in this case and is meaningless.

4 7. Judge Denton has made partial rulings on various aspects of this case. An example  
5 was the Motion to Dismiss. Judge Denton did not grant dismissal of the Fourth Cause of Action,  
6 Negligent Misrepresentation, on the basis that the standard was less than those of fraud in the other  
7 dismissed causes of action. However, his order left the door open to revisit this issue.

8 8. Judge Denton did not deal with the issue of the propriety of Plaintiffs being purported  
9 representative parties for all shareholders when they are seeking damages for their benefit. The  
10 motion seek summary judgment from the Court that Amended Complaint is not a derivative action  
11 under NRCP 23.1 or NRS 41.520(2). If the Court rules that it is adequate as a derivative complaint,  
12 it should rule that Plaintiffs are not representative parties.

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

14 DATED this 24<sup>th</sup> day of February, 2010.

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18 M. NELSON SEGEL  
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Attachment “1”

ORIGINAL

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA

AUG 11 3 39 PM '08

TED R BURKE; MICHAEL R. and  
LAURETTA L. KEHOE; JOHN BERTOLDO;  
PAUL BARNARD; EDDY KRAVETZ; JACKIE  
and FRED KRAVETZ; STEVEN FRANKS;  
PAULA MARIA BARNARD; PETER T. and  
LISA A. FREEMEN; LEON GOLDEN; C. A.  
MURFF; GERDA FERN BILLBE; BOB and  
ROBYN TRESKA; MICHAEL RANDOLPH, and  
FREDERICK WILLIS,

Plaintiffs,

vs.

LARRY L. HAHN; HAHN'S WORLD OF  
SURPLUS, INC.,

Defendant(s).

and

KOKOWEEF, INC.; EXPLORATIONS  
INCORPORATION OF NEVADA,

Nominal Defendants.

CASE NO. A558629  
DEPT. NO. XIII

Date: July 30, 2008  
Time: 9:00 a.m.

DECISION

THIS MATTER having come before the Court on July 30,  
2008 for evidentiary hearing regarding Nominal Defendant's  
[KOKOWEEFE, INC.] Renewed Motion to Require Security from  
Plaintiffs, and the Court having taken the matter under advisement  
after presentation of evidence and having now fully considered the  
evidence adduced and the post-hearing briefs submitted by counsel  
and being fully advised in the premises;

NOW, THEREFORE, the Court decides the submitted issues as

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AUG 11 2008

CLERK OF THE COURT

MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

1 follows:

2 Under the relevant statute, NRS 41.520(3)(a), it is clear  
3 that the burden is upon the moving Defendant to show that there is  
4 "...no reasonable possibility that the prosecution of the cause of  
5 action ... will benefit the corporation or its security holders."  
6 Of course, this is a more stringent burden than would, by analogy,  
7 be applicable on a preliminary injunction motion, which would  
8 implicate "probability," not "possibility."  
9

10 Even so, the Court is persuaded that Defendant has made  
11 a *prima facie* showing on the point and that the same has not been  
12 rebutted. Therefore, the Court will require a modicum of security  
13 given what appears to be the likely consequences of the  
14 continuation of this litigation on the well-being of the  
15 corporation.

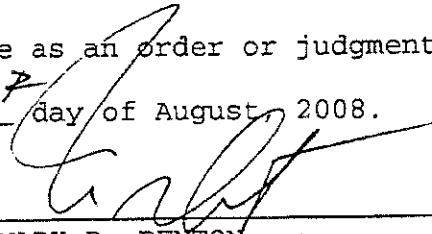
16 However, the Court is not persuaded that the security  
17 required should be of the magnitude sought at this point by  
18 Defendant. Instead, the Court will order security in the sum of  
19 \$75,000.00. In this regard, the Court takes some comfort in the  
20 language of subsection 4(b) of the statute which provides that the  
21 Court can revisit its determination one way or the other as the  
22 case progresses.  
23

24 Counsel for Defendant is directed to promptly submit  
25 proposed preliminary Findings of Fact and Conclusions of Law and a  
26 proposed order consistent with the foregoing. Such proposed order  
27

1 should provide for the posting of security within 15 days from and  
2 after notice of entry of the order.

3 This Decision sets forth the Court's intended disposition  
4 on the subject but anticipates further order of the Court to make  
5 such disposition effective as an order or judgment.

6 DATED this 11<sup>th</sup> day of August, 2008.

7  
8   
9 MARK R. DENTON  
DISTRICT JUDGE

10  
11 CERTIFICATE


12 I hereby certify that on the date filed, I placed a copy  
13 of the foregoing in the attorney's folder in the Clerk's Office or  
14 mailed a copy to:

15 NEIL J. BELLER, ESQ.

16 M. NELSON SEGEL, ESQ.

17 CLARY CANNON

18 Attn: PATRICK C. CLARY, ESQ.

19   
20 LORRAINE TASHIRO  
21 Judicial Executive Assistant  
22 Dept. No. XIII  
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MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

Attachment “2”

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED  
JAN 29 1 17 PM '09

*E. J. [Signature]*  
CLERK OF THE COURT

TED R. BURKE; MICHAEL R. and )  
LAURETTA L. KEHOE; JOHN BERTOLDO; )  
PAUL BARNARD; EDDY KRAVETZ; JACKIE )  
& FRED KRAVETZ; STEVE FRANKS; PAULA )  
MARIA BARNARD; PETE T. and LISA A. )  
FREEMAN; LEON GOLDEN; C.A. MURFF; )  
GERDA FERN BELLBE; BOB and ROBYN )  
TRESKA; MICHAEL RANDOLPH; and )  
FREDERICK WILLIS, )

CASE NO. A558629-B  
DEPT. NO. XIII

Date: January 12 and  
January 26, 2009  
Time: 9:00 a.m.

Plaintiff(s),

vs.

LARRY H. HAHN, individually, and as )  
President and Treasurer of )  
Kokoweef, Inc., and former )  
President and Treasurer of )  
Explorations Incorporated of )  
Nevada; HAHN'S WORLD OF SURPLUS, )  
INC., a Nevada corporation; PATRICK )  
C. CLARY, an individual; )

Defendant(s).

AND ALL RELATED CLAIMS.

DECISION AND ORDER

THIS MATTER having come before the Court on January 12,  
2009 and January 26, 2009 on the motions referenced hereinbelow,  
and the Court, having considered the papers submitted in  
connection with such item(s) and heard the arguments made on  
behalf of the parties and then taken the matter under advisement  
for further consideration;

NOW, THEREFORE, the Court decides the submitted issues

MARK R. DENTON  
DISTRICT JUDGE

DEPARTMENT THIRTEEN  
LAS VEGAS, NV 89155

1 as follows:

2 A. Defendant Hahn's Motion to Dismiss Amended  
3 Complaint, with Joinder by Defendants Kokoweef,  
4 Inc. And Clary (1/12/09).

5 The Countermotion to strike the Joinder is DENIED. The  
6 Motion is GRANTED as to the First Cause of Action. According to  
7 Plaintiffs' allegations preceding the First Cause of Action,  
8 Defendants Hahn and Clary did not "issue" securities. The issuer  
9 would be the corporation. In addition, NRS 90.640 does not  
10 provide a civil remedy to anyone other than the "administrator."  
11 Thus, the First Cause of Action is DISMISSED with prejudice.

12 In that the Second Cause of Action does not provide  
13 particularized statements of fraud (NRCP 9(b)) regarding the  
14 respective Plaintiffs, and in that the alleged misrepresentations  
15 to Plaintiff Burke occurred after the stock purchases outlined in  
16 paragraphs 19-32 of the First Amended Complaint, the Motion is  
17 GRANTED, and the Second Cause of Action is DISMISSED.<sup>1</sup>

18 The Motion is GRANTED as to the Third Cause of Action,  
19 as it is also devoid of particularity regarding the  
20 representations made to each Plaintiff. The Third Cause of  
21 Action is thus DISMISSED.

22 The Court is not of the view that negligent  
23  
24

---

25 <sup>1</sup>Paragraph 49 alleges that the fraud is found in the "making  
26 of false representations," but nothing is alleged regarding what  
27 was represented to each Plaintiff and by whom at the time each  
purchased securities.



1 misrepresentation requires the same particularity in pleading as  
2 fraud. Therefore, the Court cannot say that the Fourth Cause of  
3 Action fails to state a claim on which relief can be granted, and  
4 the Motion is thus DENIED as to such cause of action.  
5

6 The Motion is GRANTED AS TO THE Fifth Cause of Action  
7 for the reasons discussed relative to the other fraud-based  
8 causes of action, and such cause of action is DISMISSED.

9 The Sixth Cause of Action suffers from the same lack of  
10 particularity as the other fraud-based causes of action, and the  
11 Motion is thus GRANTED as to such cause of action, and the same  
12 is DISMISSED.

13 The Motion is DENIED as to the Seventh, Eighth, Ninth,  
14 and Tenth Causes of Action, as they do not fail to state claims  
15 upon which relief can be granted.<sup>2</sup>

16 B. Plaintiff's Application for TRO/Preliminary  
17 Injunction and Motion for Appointment of a  
18 Receiver. (1/12/09).

19 The Court has dismissed the First and Second Causes of  
20 Action which contain the predicate for Plaintiffs' effort to  
21 obtain injunctive relief and appointment of a receiver.

22 <sup>2</sup>The Eighth and Tenth Causes of Action are the only ones  
23 that appear to be derivative. In this regard, all of the other  
24 causes of action seek monetary recovery by the Plaintiffs  
25 themselves for their own benefit; and, although the alternative  
26 remedy of rescission is sought in the Third, Fourth, Fifth, and  
27 Sixth Causes of Action, the subject corporations are named only  
as "Nominal Defendants."

28 The Court agrees with Plaintiffs that they have adequately  
pleaded futility of demand on the directors to sue on behalf of  
the corporation.

1 In any event, the Court is not persuaded that the  
2 Motion, insofar as it seeks injunctive relief, has merit relative  
3 to the stock and asset issues. Shares of stock and assets have a  
4 determinable value and all of Plaintiff's causes of action  
5 regarding the stock and assets are amenable to monetary relief.  
6 Therefore, the Motion is DENIED IN PART relative to those issues.  
7

8 Defendants maintain that they are not utilizing  
9 corporate funds for payment of costs of defense. The Court will  
10 accept counsel's representation to that effect and will also DENY  
11 the Motion IN PART regarding that issue, without prejudice to  
12 renewal if discovery demonstrates that corporate funds are being  
13 so used.

14 Even though injunctive relief is not specifically  
15 sought in connection with any of the causes of action besides the  
16 Second, the Court will proceed to entertain the Motion for  
17 injunctive relief relative to destruction or alteration of  
18 corporate records, and the same is GRANTED to that extent; and,  
19 since the Court is only enjoining something that should not be  
20 done anyway, it considers that security in the sum of \$250.00  
21 should suffice.  
22

23 Again, beyond the fact that the Court has dismissed the  
24 First and Second Causes of Action, the Court does not agree that  
25 NRS 90.640 provides for appointment of a receiver at the behest  
26 of a private litigant. Instead, subsection 1 of the statute  
27

1 specifically states as a premise a "...showing by the  
2 administrator..."

3  
4 Furthermore, with respect to seeking appointment of a  
5 receiver under NRS 32.010, the Court is not inclined at this  
6 juncture to appoint a general receiver that would take over  
7 operation of the business, and it is not persuaded that what  
8 Plaintiff seeks to inform himself about concerning corporate  
9 financial matters could not be obtained through discovery.

10 Therefore, the Motion is DENIED IN PART insofar as it seeks  
11 appointment of a receiver, limited or otherwise.

12 C. Defendant Clary's Motion for Sanctions.

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

22  
23 Therefore, the sanction Motion is DENIED without  
24 prejudice to renewal after the viability of the remaining cause  
25 of action pleaded against Defendant Clary (the Fourth Cause of  
26 Action) is determined.

1 NOW, THEREFORE, IT IS HEREBY SO ORDERED, ADJUDGED, AND  
2 DECREEED.

3 COUNSEL FOR PLAINTIFFS IS DIRECTED TO PROVIDE PROMPT  
4 WRITTEN NOTICE OF ENTRY HEREOF.

5 DATED this 29<sup>th</sup> day of January, 2009

6  
7  
8 MARK R. DENTON  
9 DISTRICT JUDGE

10 CERTIFICATE

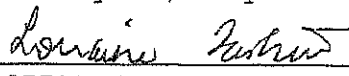
11 I hereby certify that on the date filed, I placed a  
12 copy of the foregoing in the attorney's folder in the Clerk's  
13 Office or mailed a copy to:

14 PATRICK CLARY, ESQ.

15 M. NELSON SEGAL, ESQ.

16 ROBERTSON & VICK

17 Attn: Jennifer L. Taylor, Esq.

18   
19 LORRAINE TASHIRO  
20 Judicial Executive Assistant  
21 Dept. No. XIII

Attachment “3”

ALL PENDING MOTIONS (01-12-09) Court Clerk: Sue Burdette Reporter/Recorder: Cheryl Campbell Heard By: Mark Denton

# **Minutes**

01/12/2009 9:00 AM

- DEFTS L HAHN & HAHN'S WORLD OF SURPLUS' MOTION TO DISMISS AMENDED VERIFIED COMPLAINT ... PLTFS' MOTION FOR TRO AND TEMPORARY APPOINTMENT OF RECEIVER/MOTION FOR PRELIMINARY INJUNCTION ... DEFT PATRICK C CLARY'S MOTION FOR SANCTIONS Court stated that this was scheduled to come before the Court last year, there was a Stipulation to Continue it but it was not calendared and this is a surprise to the Court; counsel to make their arguments and the Court will take the matter Under Advisement. Mr. Clary stated for the record that he did not consent to this being heard today. Mr. Robertson stated all counsel signed the stipulation. Colloquy regarding the Stipulation, and this being heard January 26. Statements by Mr. Clary as to his new counsel. Mr. Robertson stated he has not seen a Substitution of Attorney, and noted this has been fully briefed, many of the clients are here and some of them flew in from out-of-town. Further statements by Ms. Taylor. As to DEFTS L HAHN & HAHN'S WORLD OF SURPLUS' MOTION TO DISMISS AMENDED VERIFIED COMPLAINT: Mr. Segal referred to the neutral director, noting the Court was not adequately addressed as to that one director and as to fairly representing the class. Arguments by counsel as to neutral directors; fair representation of the class; damages; removal of Hahn and reinstatement of Burke being improper under the civil penalty, which is an action that only the SEC Commission has the right to do; and rescission. Court noted the case has been briefed very well by both sides. Mr. Robertson submitted it on the pleadings, referring to the SEC and federal laws as to selling the shares of stock. Arguments by Mr. Segal that all of the shares should be rescinded and reissued to clear up the securities. Mr. Clary stated this is not in the pleadings. Further arguments. COURT ORDERED, motion taken UNDER ADVISEMENT. As to PLTFS' MOTION FOR TRO AND TEMPORARY APPOINTMENT OF RECEIVER/MOTION FOR PRELIMINARY INJUNCTION: Mr. Robertson requested to preserve the status quo and referred to the Affidavit of Mr. Springer. Arguments by counsel as to the corporate receiver, the status quo, and that when the stipulation was entered, they agreed to do certain things and they have not been done, Kokoweef is not a money-making corporation; Pltfs do not want rescission; and NRS 33.010. Mr. Robertson requested a Receiver be appointed and that status quo be preserved. COURT ORDERED, matter taken UNDER ADVISEMENT. As to DEFT PATRICK C CLARY'S MOTION FOR SANCTIONS: Mr. Clary stated he stands on the motion and the Reply to the Opposition; there is no evidence that he committed any security fraud. COURT ORDERED, matter CONTINUED. Mr. Clary stated his counsel is available on the 26th. Upon Court's inquiry, Mr. Robertson stated someone from his office will be able to come. Ms. Taylor stated there was a Stipulation which set forth a portion of action that would be constrained, and requested that Stipulation be in place until the Court rules on the Motion for Preliminary Injunction. Mr. Segal concurred, and stated Mr. Hahn will abide by the terms of that Stipulation. Mr. Clary restated that Kokoweef has done none of the things accused of doing. 01-26-09 9:00 AM DEFT PATRICK C CLARY'S MOTION FOR SANCTIONS

Parties Present

Return to Register of Actions

# EXHIBIT “B”

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**AFFIDAVIT OF LARRY HAHN**

STATE OF NEVADA            )  
  ) ss:  
COUNTY OF CLARK         )

I, LARRY HAHN, being duly sworn, depose and state:

1. I am the President of nominal defendant Kokoweef, Inc. ("KOKOWEEF") and a defendant in this matter; make this affidavit in support of the Motion for Partial Summary Judgment ("MPSJ") filed by Hahn's World of Surplus, Inc. ("HAHN'S WORLD") and me; this affidavit is made on personal knowledge and I am competent to testify to the matters stated herein.
2. The Fourth Claim for Relief in the so-called First Amended Derivative Complaint ("Amended Complaint") alleges that I made negligent misrepresentations to the Plaintiffs and they have been damaged. However, they have not set forth any facts setting forth what was said to them.
3. KOKOWEEF is an exploratory company that is searching for the "Kokoweef river of gold." It has never had any business income and it, or its predecessor Explorations Incorporated of Nevada ("EIN"), has operated through raising capital from existing and new investors. Since inception, KOKOWEEF, or EIN, charged Six Dollars and No Cents (\$6.00) per share.
4. If an existing shareholder wanted to purchase more shares of KOKOWEEF, they would pay Six Dollars and No Cents (\$6.00) per share. If a new proposed shareholder wanted to purchase stock in KOKOWEEF, they would pay Six Dollars and No Cents (\$6.00) per share.
5. All funds received by HAHN'S WORLD from KOKOWEEF and EIN were provided for the payment of goods and materials delivered to KOKOWEEF and EIN. If any funds were received by me from KOKOWEEF or EIN, they were for reimbursement of advances made by me for KOKOWEEF. Neither I nor HAHN'S WORLD have received payment of any funds or transfer of any property, that was not given for payment for advances made, goods supplied or reimbursement.
6. Plaintiff Ted Burke ("BURKE") is not a shareholder of KOKOWEEF. All shares for which BURKE claims an interest in KOKOWEEF are owned by BFT Enterprises, LLC, a Nevada limited liability company ("BFT"). It is my understanding that BURKE is the manager and a member of BFT. I do not know if any other persons are members of BFT.



7. BURKE, while a member of the board of directors of EIN, insisted that it issue shares of stock to various people for services rendered. He demanded Seventy Five Thousand (75,000) shares be issued to him. Due to his insistence, and the fact that he had brought a number of new shareholders to EIN, which provided it with the necessary capital to enable the company to continue its explorations work, the board of directors agreed to issue the stock. The board of directors later rescinded the issuance of shares to all parties.

8. The records of KOKOWEEF presently show that BTF holds Five Thousand (5,000) shares of the common stock of KOKOWEEF. The records also show that BURKE holds **zero** (0) shares of KOKOWEEF!

DATED this 23<sup>rd</sup> day of February, 2010.

2010.

  
LARRY HAIN

SUBSCRIBED and SWORN to before me  
this 23<sup>rd</sup> day of February, 2010.

Patricia D. Wolf  
NOTARY PUBLIC in and for said County and State



# EXHIBIT “C”

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STATE OF NEVADA                 )  
COUNTY OF CLARK              ) ss:

I, CHRISTINA HAHN, being duly sworn, depose and state:

1. I am the President of Hahn's World of Surplus, Inc. ("HAHN'S WORLD"); make affidavit in support of the Motion for Partial Summary Judgment ("MPSJ") filed by Larry Hahn (Hahn) and HAHN'S WORLD; this affidavit is made on personal knowledge and I am competent to testify to the matters stated herein.

2. The Eighth Claim for Relief in the so-called First Amended Derivative Complaint (the “Eighth Claim”) alleges that HAHN’S WORLD was unjustly enriched through its dealings with KOKOWEEF, Inc. (“KOKOWEEF”) and its predecessor, Explorations Incorporated of Nevada (“Explorations”).

3. KOKOWEEF is an exploratory company that is searching for the “Kokoweef river.” It has never had any business income and it, or its predecessor EIN, has operated through capital from existing and new investors. Since inception, KOKOWEEF, or EIN, charged Six and No Cents (\$6.00) per share.

4. KOKOWEEF does not have paid employees. Substantially all of the work performed KOWEEF is done by investors for NO PAY! People who have invested their money and the "Legend of Kokoweef" is real, devote their time in an effort to find the lost river. It be noted that not one of the Plaintiffs participates in the exploration operations of WEEF. It should also be noted that none of the Plaintiffs want to rescind their purchase of a KOKOWEEF or EIN!

5. Plaintiffs' attorney, Alexander Robertson, IV, Esquire, stated before Judge Denton clients did not want to rescind their purchase of stock in KOKOWEEF or EIN, they simply illegally issued stock to be cancelled and reissued legally.

6. The sole factual allegation of the Amended Complaint is paragraph 99 which states HAHN'S WORLD was unjustly enriched through "the diversion of corporate funds and assets for personal use of HAHN and HAHN'S WORLD."

7. All funds received by HAHN'S WORLD from KOKOWEEF and EIN were provided for the payment of goods and materials delivered to KOKOWEEF and EIN. If any funds were received by LARRY from KOKOWEEF or EIN, they were for reimbursement of advances made by LARRY for KOKOWEEF. Neither LARRY nor HAHN'S WORLD have received payment of any funds or transfer of any property, that was not given for payment for advances made, goods supplied or reimbursement.

DATED this 23<sup>rd</sup> day of February, 2010.

*Christina Hahn*  
CHRISTINA HAHN

SUBSCRIBED and SWORN to before me  
this 23<sup>rd</sup> day of February, 2010.

Rache D. Wolf  
NOTARY PUBLIC in and for said County and State

