

ORIGINAL

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1 MEMO  
2 PATRICK C. CLARY, CHARTERED  
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FILED

DEC 4 10 43 AM '08

*E. J. ...*  
CLERK OF THE COURT

6 Attorneys for so-called Nominal  
7 Defendant Kokoweef, Inc. and  
8 Defendant Patrick C. Clary

DISTRICT COURT

CLARK COUNTY, NEVADA

-o0o-

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

CASE NO. A558629  
DEPT NO. XIII

Plaintiffs,

vs.

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

Defendants,

and

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

DATE OF HEARING: 12/8/08  
TIME OF HEARING: 9:00 a.m.

30 Nominal Defendants. )

RECEIVED

DEC 4 2008

CLERK OF THE COURT

Law Offices of  
PATRICK C. CLARY, CHARTERED  
7201 West Lake Mead Boulevard, Suite 410  
Las Vegas, Nevada 89128  
Tel: 702.382.0813 - Fax: 702.382-7277

1 MEMORANDUM OF POINTS AND AUTHORITIES OF NOMINAL DEFENDANT  
2 KOKOWEEF, INC. AND DEFENDANT PATRICK C. CLARY IN SUPPORT OF  
3 DEFENDANTS LARRY HAHN AND HAHN'S WORLD OF SURPLUS, INC.'S  
4 MOTION TO DISMISS AMENDED VERIFIED DERIVATIVE COMPLAINT  
5 ("THE SUBJECT MOTION") AND IN OPPOSITION TO PLAINTIFFS' COUNTER-  
6 MOTION TO STRIKE KOKOWEEF, INC.'S JOINDER IN THE SUBJECT MOTION

7 This Memorandum is submitted in response to Plaintiffs'  
8 Opposition ("the Opposition") to Defendants Larry Hahn and Hahn's  
9 World of Surplus, Inc., 's Motion to Dismiss Amended Verified Complaint  
10 ("the Subject Motion"), in which so-called Nominal Defendant Kokoweef,  
11 Inc. ("Kokoweef") and Defendant Patrick C. Clary ("Mr. Clary") joined,  
12 and in opposition to the Plaintiffs' Counter-motion to Strike  
13 Kokoweef's Joinder in the Subject Motion ("the Counter-motion").

14 As indicated, the Plaintiffs seek not only to defeat the Subject  
15 Motion but also to strike the joinder in the Subject Motion by  
16 Kokoweef (but apparently not the joinder by Mr. Clary).

17 The above-captioned case, brought as an alleged stockholders'  
18 derivative action, has been considered by Kokoweef since its inception  
19 to be defective, deceptive and fraudulent and clearly not in the best  
20 interests of Kokoweef or its stockholders. Accordingly, the so-called  
21 Amended Verified Derivative Complaint should be dismissed for all of  
22 the reasons set forth in the Subject Motion, which clearly would be  
23 in the best interests of Kokoweef and its stockholders.

24 Because it was perceived from the beginning by the Board of  
25 Directors of Kokoweef that this action would not benefit either  
26 Kokoweef or its stockholders, relatively early in this case, on April  
27 11, 2008, Kokoweef filed a Motion to Require Security from Plaintiffs  
28 permitted by Section 41.520 of Nevada Revised Statutes. Following a  
hearing before the Court on May 19, 2008, there was entered a Decision  
and Order on May 28, 2008, which permitted Kokoweef to file a Renewed

1 Motion to Require Security from Plaintiffs, which was done on May 28,  
2 2008. Following an evidentiary hearing on July 30, 2008, on August 11,  
3 2008 the Court's Decision was entered. As the Court will recall, it  
4 found, based on the evidence presented by the Plaintiffs and the  
5 Defendants, that, as provided in Subsection (3)(a) of Section 41.520  
6 of Nevada Revised Statutes, "there was no reasonable possibility that  
7 the prosecution of the cause of action alleged in the complaint  
8 against the moving party will benefit the corporation of its security  
9 holders," and the Plaintiffs were required to post \$75,000 security,  
10 which they did.

11 After the Plaintiffs lost that critical matter in this  
12 litigation, its new counsel decided to pursue the allegations of  
13 securities fraud, and filed a so-called Amended Verified Derivative  
14 Complaint, adding Mr. Clary as an additional Defendant. The Plaintiffs  
15 and their new counsel alleged that Mr. Clary's involvement as  
16 Kokoweef's counsel in connection with a reorganization between  
17 Kokoweef and its predecessor, Explorations Incorporated of Nevada,  
18 which involved the exchange of equivalent numbers of shares of stock  
19 in the predecessor for new shares in Kokoweef, was fraudulent,  
20 although Mr. Clary has insisted that the exchange complied with the  
21 exemption from registration under Subsection 17 of Section 90.530 of  
22 Nevada Revised Statutes, which the Plaintiffs and their new counsel  
23 have failed even to acknowledge let alone refute.

24 Although the so-called Amended Verified Derivative Complaint  
25 expressly seeks rescission of that perfectly lawful transaction to  
26 the detriment of Kokoweef, the Plaintiffs' new counsel try to make the  
27 argument, in their Opposition, without any factual or legal authority  
28 therefor, on page 15 at lines 8-10, that "[a] rescission and legal re-

1 issuance of the stock to all shareholders will clean up the past  
2 security fraud upon all shareholders and mitigate against potential  
3 criminal and civil penalties, as well as potential third party [sic]  
4 claims for monetary damages by the shareholders." How will they do  
5 this? There is no Nevada statute that provides for the rescission and  
6 reissuance of a corporation's securities.

7 Then the Plaintiffs and their new counsel go on to conclude in  
8 their Opposition, on page 16 at lines 1-2, that "the true party in  
9 interest, regardless of Defendants' interpretation of the pleadings  
10 is Kokoweef," without revealing the enormous harm that has been done  
11 and will be done in the future to Kokoweef and its stockholders if  
12 their illegal "scheme" (a term they love to use) somehow goes forward.

13 Furthermore, the Plaintiffs' new counsel cite a recent California  
14 appellate case, Patrick v. Alacer Corporation, 167 Cal.App.4th 995, 84  
15 Cal.Rptr.3d 642 (2008), for the proposition that a "corporation has  
16 no ground to challenge the merits of a derivative claim filed on its  
17 behalf and from which it stands to benefit." However, as indicated  
18 above, a Nevada corporation does have that right as expressly provided  
19 in above-quoted language contained in Section 41.520 of Nevada Revised  
20 Statutes, and that is precisely what Kokoweef has been doing and  
21 continues to do.

22 Especially since the Court determined that "there was no  
23 reasonable possibility that the prosecution of the cause of action  
24 alleged in the [original] complaint against the moving party will  
25 benefit the corporation of its security holders," surely with the  
26 additional causes of action and relief sought in this new Amended  
27 Verified Derivative Complaint, the Court should have no difficulty  
28 reaching the same conclusion, which is even more compelling under the

1 present circumstances of this case.

2 For the foregoing reasons, the Subject Motion (to Dismiss) should  
3 be granted, and the Counter-motion (to strike) should be denied.

4 DATED: December 3, 2008.

5 Respectfully submitted,

6 PATRICK C. CLARY, CHARTERED

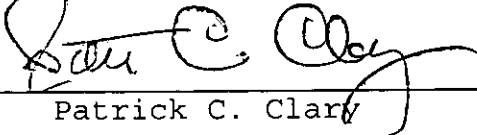
7 By   
8 Patrick C. Clary

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

12 CERTIFICATE OF SERVICE BY MAILING

13 The above and foregoing Reply Memorandum of Points and  
14 Authorities of Nominal Defendant Kokoweef, Inc. and Defendant Patrick  
15 C. Clary in Support of Defendants Larry Hahn and Hahn's World of  
16 Surplus, Inc.'s Motion to Dismiss Amended Verified Derivative  
17 Complaint ("the Subject Motion") and in Opposition to Plaintiffs'  
18 Counter-motion to Strike Kokoweef, Inc.'s Joinder in the subject  
19 Motion was served on the Plaintiffs by mailing a copy thereof, first-  
20 class postage prepaid, to their attorneys, Robertson & Vick, LLP, 401  
21 North Buffalo Drive, Suite 202, Las Vegas, Nevada 89145, and was  
22 served on Defendants Larry Hahn and Hahn's World of Surplus, Inc. by  
23 mailing a copy thereof, first-class postage prepaid, to their  
24 attorney, M Nelson Segel, Esq., M Nelson Segel, Chartered, 624 South  
25 9<sup>th</sup> Street, Las Vegas, Nevada 89101, on December 3, 2008.

26 PATRICK C. CLARY, CHARTERED

27 By   
28 Patrick C. Clary

Attorneys for so-called Nominal  
Defendant Kokoweef, Inc. and  
Defendant Patrick C. Clary

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