

1 0001
 2 M NELSON SEGEL, CHARTERED
 3 M NELSON SEGEL, ESQUIRE
 Nevada Bar No. 0530
 4 624 South 9th Street
 Las Vegas, Nevada 89101
 Telephone: (702) 385-5266
 Attorneys for Defendants Larry Hahn
 5 and Hahn's World of Surplus, Inc.

FILED
 SEP 23 2009
Alvin J. Johnson
 CLERK OF COURT

6 DISTRICT COURT OF NEVADA
 7
 8 COUNTY OF CLARK

9 TED R. BURKE; MICHAEL R and LAURETTA
 L. KEHOE; JOHN BERTOLDO; PAUL
 10 BERNARD; EDDY KRAVETZ; JACKIE
 and FRED KRAVETZ; STEVE FRANKS;
 11 PAULA MARIA BARNARD; LEON GOLDEN;
 C.A. MURFF; GERDA FERN BILLBE; BOB and
 12 ROBYN TRESKA; MICHAEL RANDOLPH, and
 FREDERICK WILLIS,

CASE NO. A558629
 DEPT. XI

08A558629
 412473


13 Plaintiffs,

14 vs.

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

19 Defendants,

20 and

DATE: 10/23/09
 TIME: In Chambers

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

23 Nominal Defendants.

24
 25 DEFENDANTS LARRY HAHN AND HAHN'S WORLD OF SURPLUS, INC.'S
 26 MOTION TO TRANSFER CASE TO DEPARTMENT 13

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

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 CLERK OF THE COURT

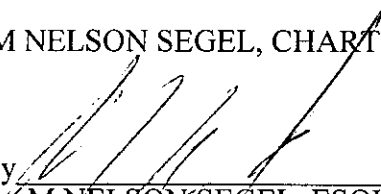


23

1 this Court for its order transferring the present case back to Department 13 on the grounds that this
2 matter has been pending in said Department for approximately one year and one half (1 ½) years,
3 substantial proceedings have taken place and it would promote judicial economy to return the case
4 to Department 13. This Motion is made and based upon all of the pleadings and papers on file, the
5 points and authorities set forth herein and the declaration of M Nelson Segel, Esquire ("SEGEL")
6 attached hereto as **Exhibit "A"**.

7 DATED this 2ST day of September, 2009.

8 M NELSON SEGEL, CHARTERED

9
10 By 
11 M NELSON SEGEL, ESQUIRE
12 Nevada Bar No. 0530
13 624 South 9th Street
14 Las Vegas, Nevada 89101
15 Attorneys for Defendants Larry Hahn and
16 Hahn's World of Surplus, Inc.

17 **NOTICE OF MOTION**

- 18 TO: PLAINTIFFS;
19 TO: JENNIFER TAYLOR, ESQUIRE, their attorney;
20 TO: PATRICK C. CLARY, Defendant;
21 TO: KOKOWEEF, INC., Defendant; and
22 TO: PATRICK C. CLARY, ESQUIRE, attorney for Clary and Kokoweef.

23 NOTICE IS HEREBY GIVEN that the hearing on the above and foregoing DEFENDANTS
24 LARRY HAHN AND HAHN'S WORLD OF SURPLUS, INC.'S MOTION TO TRANSFER CASE
25 TO DEPARTMENT 13 will be held in Dept. No. 11 of the above-entitled Court, in the Regional
26 Justice Center, 200 Lewis Avenue, Las Vegas, Clark County, Nevada on the ~~23rd~~ day of October,

27 ...
28 ...

28

1 2009, in Chambers.

2 DATED this 21st day of September, 2009.

3 M NELSON SEGEL, CHARTERED

4
5 By 

6 M NELSON SEGEL, ESQUIRE

7 Nevada Bar No. 0530

8 624 South 9th Street

9 Las Vegas, Nevada 89101

10 Attorneys for Defendants Larry Hahn and

11 Hahn's World of Surplus, Inc.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 PROCEDURAL HISTORY

14 The original Verified Derivative Complaint ("ORIGINAL COMPLAINT") in this matter was
15 filed by Plaintiff Ted R. Burke ("BURKE") and the other Plaintiffs (BURKE and the other Plaintiffs
16 collectively referred to herein as "PLAINTIFFS") on or about the 7th day of March, 2008 as a
17 derivative action pursuant to NRCP 23.1. This matter was randomly assigned to Judge Denton in
18 Department 13.

19 From the initial filing of this matter, through January 2009, Judge Denton heard
20 approximately sixteen (16) motions regarding various substantive and procedural matters. He also
21 presided over a one half day evidentiary hearing pursuant to NRS §41.520. There are in excess of
22 thirty (30) substantive documents that have been filed in this matter which were as follows:

- 23 1. The original Complaint, prepared by the Plaintiffs' former counsel, Neil J. Beller,
24 Esquire, was filed on March 7, 2008, as a so-called derivative stockholders' action.
- 25 2. On April 11, 2008, prior to filing an Answer to the Complaint, so-called "Nominal
26 Defendants" Kokoweef, Inc. ("Kokoweef") filed a Motion to Require Security from
27 Plaintiffs, which, in a renewed form, was eventually granted by the Court as indicated
28 below.
3. On April 29, 2008, Plaintiffs filed their Motion to Disqualify Law Firm and Motion
to Strike, both of which were later denied by the Court.
4. On May 7, 2008, Defendants' Motion to Continue Hearings was filed, and the

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- Court's Order granting the Motion was entered on May 12, 2006.
5. On May 15, 2008, the Plaintiffs filed their Supplement to Motion to Strike Motion to Require Security from Plaintiffs Or, in the Alternative, Opposition to Motion to Require Security from Plaintiffs.
 6. On May 16, 2008, Kokoweef filed the Affidavit of Patrick C. Clary in Support of Motion to Require Security from Plaintiffs and the Affidavit of Reta Van Da Walker in Opposition to Supplement to Motion to Strike Motion to Require Security from Plaintiffs Or, in the Alternative, Opposition to Motion to Require security from Plaintiffs.
 7. On May 19, 2008, Kokoweef, Inc. filed a Motion for Order Extending Time to File Request for Security.
 8. On June 12, 2008, Kokoweef, Inc. filed its Renewed Motion for Security from Plaintiffs.
 9. On June 18, 2008, the Plaintiffs filed their Motion to Strike Defendant Kokoweef's Renewed Motion for Security from Plaintiffs.
 10. On June 23, 2008, the Plaintiffs filed their Renewed Motion to Strike Renewed Motion to Require Security from Plaintiffs.
 11. On June 26, 2008, the Court continued the hearing on certain pending Motions including the evidentiary hearing on Kokoweef, Inc.'s Renewed Motion for Security from Plaintiffs.
 12. On July 30, 2008, the Court conducted the evidentiary hearing on Kokoweef, Inc.'s Renewed Motion for Security from Plaintiffs.
 13. On August 11, 2008, the Court rendered its Decision granting Kokoweef, Inc.'s Renewed Motion for Security from Plaintiffs and requiring the Plaintiffs to post \$75,000 as security (A copy of which is attached to the Declaration of SEGEL as Attachment "1").
 14. On August 28, 2008, formal Preliminary Findings of Fact, Conclusions of Law, and Order Granting Kokoweef's Renewed Motion to Require Security from Plaintiffs were entered by the Court.
 15. On September 12, 2008, a Substitution of Attorneys was filed substituting Roberts & Vick, LLP for Neil J. Beller as Attorneys for the Plaintiffs.
 16. On September 12, 2008, the Plaintiffs also posted their \$75,000 Bond.
 17. On September 22, 2008, the Plaintiffs filed their Amended Complaint.
 18. On October 27, 2008, Defendant Patrick C. Clary filed his Motion for Sanctions under Rule 11 of the Nevada Rules of Civil Procedure.

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- 19. On November 4, 2008, Defendants Hahn and Hahn's World of Surplus, Inc. filed their Motion to Dismiss Amended Complaint, a substantial portion of which was granted.
- 20. On November 4, 2008, Kokoweef, Inc. and Defendant Patrick C. Clary filed their Joinder in Defendants Hahn's and Hahn's World of Surplus, Inc.'s Motion to Dismiss Amended Complaint.
- 21. On November 17, 2008, the Plaintiffs filed their Motion for Temporary Restraining Order, Appointment or Receiver, and for Preliminary Injunction, which was substantially denied by the Court.
- 22. On November 24, 2008, the Plaintiffs also filed their Opposition to Defendants Hahn and Hahn's World of Surplus Inc., Motion to Dismiss Amended Complaint and their Counter-motion to Strike the Joinder in the said Motion by Kokoweef, Inc. and Defendant Patrick C. Clary
- 23. On December 4, 2008, there was filed the Reply to Plaintiffs' Opposition to Defendants Hahn and Hahn's World of Surplus, Inc.'s Motion to Dismiss Amended Complaint.
- 24. On December 4, 2008, there was also filed the Memorandum of Points and Authorities of Kokoweef, Inc. and Defendant Patrick C. Clary in Support of Defendants Hahn and Hahn's World of Surplus, Inc.'s Motion to Dismiss Amended Complaint and in Opposition to Plaintiffs' Counter-motion to Strike Kokoweef, Inc.'s Joinder.
- 25. On December 24, 2008, Oppositions to Plaintiffs' Motion for Temporary Restraining Order, Preliminary Injunction, and Appointment of Receiver were filed by the Defendants.
- 26. After conducting hearings on January 12 and 26, 2009, on January 29, 2009, the Court entered its Decision and Order dismissing the First, Second, Third, Fifth, and Sixth Causes of Action in the Amended Complaint, denying the Motion for Temporary Restraining Order, Preliminary Injunction, and Appointment of Receiver, except that injunctive relief was granted relative to destruction or alteration of corporate records, denying Defendant Patrick C. Clary's Motion for Sanctions "without prejudice to renewal after the viability of the remaining cause of action pleaded against Defendant Clary (the Fourth Cause of Action) [for negligent misrepresentation] is determined." (A copy of the Decision and Order is attached to SEGEL's Declaration as Attachment "2".)
- 27. On February 23, 2009, the Defendants' Answers were filed, and on March 16, 2009, their Amended Answers were filed.
- 28. On April 28, 2009, Defendant Hahn and Hahn's World of Surplus, Inc. filed a Motion to Quash improper, *ex parte* Subpoenas, and Kokoweef, Inc. and Defendant Patrick C. Clary filed a Joinder in the Motion.
- 29. On May 29, 2009, Defendant Patrick C. Clary filed a Motion for Partial Summary Judgment on my behalf on the Fourth Cause of Action (for negligent misrepresentation) in the Amended Complaint. The hearing on that Motion was

1 continued and has not yet been reset by me.

2 30. On June 26, 2009, a hearing was held on the Motion to Quash before the Discovery
3 Commissioner, who recommended to the Court that the Motion be granted and the
Subpoenas be quashed.

4 Most of the documents filed by Plaintiffs contained in excess of Fifty (50) pages. In addition,
5 Plaintiffs presented an exhibit book at the evidentiary hearing that was approximately four (4) inches
6 thick. The exhibit book for Defendants was three (3) inches thick.

7 Effective July 1, 2009, Judge Delaney became a Business Court Judge to assist Judge Denton
8 and Judge Gonzalez with their enormous caseloads. This resulted in a reassignment of cases. This
9 case is now before Judge Gonzalez. As set forth herein, there has been a substantial amount of
10 activity in this case. Numerous motions have been heard by Judge Denton, some of which he only
11 partially ruled and opened the door to return for further proceedings.

12 While the HAHN DEFENDANTS are confident that Judge Gonzalez has sufficient
13 experience and can deal with the issues set forth in this matter, they believe that requiring her to
14 spend the time to comb through the enormous amount of pleadings that have been filed would be
15 burdensome and a waste of judicial resources. What Judge Gonzalez cannot gain from the review
16 of the pleadings and other filings in this case, is the veracity of the witnesses who have testified or
17 the atmosphere in which this case revolves.

18 This case was originally filed in March 2008. Judge Denton has heard, and ruled on
19 approximately sixteen (16) motions, including holding an evidentiary hearing that took in excess of
20 Three (3) hours. These motions included Motions to Dismiss filed by Defendants and a document
21 entitled Application for Temporary Restraining Order and Application for Temporary Appointment
22 of a Receiver; Motion for Preliminary Injunction and Motion for Appointment of Receiver filed by
23 Plaintiffs.

24 Judge Denton granted a substantial portion of Defendants' Motion to Dismiss, but withheld
25 rulings on certain aspects of said motion. The only claim for relief in the Verified Amended
26 Complaint ("Amended Complaint") which added alleged violations of securities laws that was not
27 granted was the Fourth Claim for Relief for Negligence Misrepresentations. Defendant Patrick C.
28 Clary had filed a Motion for Partial Summary Judgment relating to the Fourth Claim for Relief that

1 was added by the Amended Complaint. However, he caused said Motion to be taken off calendar
2 due to the expectation that the HAHN DEFENDANTS would be filing a Motion for Partial
3 Summary Judgment on said claim, as well as other claims for relief. As set forth in the declaration
4 of SEGEL, he has been unable to file said motion based upon business and professional obligations.
5 The motion will also include a request for clarification of portions of the Court's January 29, 2009
6 Decision and Order that does not appear to have addressed issues set forth. A copy of said Decision
7 and Order is attached to SEGEL's Declaration as Attachment ("2"). However, it is anticipated that
8 said motion will be filed once the Court rules on the present motion.

9 Judge Denton denied substantially all of the requests in the Application for Temporary
10 Restraining Order and Application for Temporary Appointment of a Receiver; Motion for
11 Preliminary Injunction and Motion for Appointment of Receiver filed by Plaintiffs. The only portion
12 of said motion that was granted as the issuance of an injunction was set forth on page 4, line 14 and
13 stated:

14 Even though injunctive relief is not specifically sought in connection with any of the
15 causes of action besides the Second¹, the Court will proceed to entertain the Motion
16 for injunctive relief relative to the destruction or alteration of corporate records, and
17 the same is GRANTED to that extent; and, since the Court is only enjoining
something that should not be done anyway, it considers that security in the sum of
\$250.00 should suffice.

18 Essentially, all of the relief sought by Plaintiffs was denied. More significantly, the Court found
19 under NRS §41.520(3)(a) that Kokoweef, Inc. met its burden as the moving Defendant to show that
20 there is "... no reasonable possibility that the prosecution of the cause of action ... will benefit the
21 corporation or its security holders." This was the result of a half day evidentiary hearing!

22 The HAHN DEFENDANTS are not aware of any rule of court exists to address the present
23 situation. However, EDCR 1.60 provides, in pertinent part:

24 (a) The Chief Judge shall have the authority to assign or reassign all cases pending
25 in the district. Unless otherwise provided in these rules, all cases must be distributed
26 on a random basis.

26 ...

27 ¹ The court granted the dismissal of the Second Cause of Action in the Decision and Order; therefore, there
28 was no pleading basis for the entry of this injunction. However, all Defendants had stipulated that no documents would
be destroyed; therefore, they did not take any action regarding this portion of the Decision and Order.

1 (d) Judges who disqualify themselves from hearing a case must direct the entry of an
2 appropriate minute order for the reassignment on a random basis.

3 This is a Business Court case. There are three (3) Business Court Judges; Judge Gonzalez, Judge
4 Denton and Judge Delaney. Judge Denton had this case until Judge Delaney became a Business
5 Court Judge and the case was reassigned. Judge Delaney was challenged and is not able to sit as the
6 Judge in this matter. If Judge Gonzalez agrees that it would be appropriate to recuse or have this
7 case reassigned, Judge Denton is the only Judge who could properly preside over this matter.

8 It is a common rule that actions that affect judicial economy and expediency may be utilized
9 to obtain a desired result. See *Las Vegas Taxpayer Accountability Committee v. City Council*, 125
10 Nev. 17, 208 P.3d 429 (Nev. 2009). In this case, not only would judicial economy be served, but
11 Judge Gonzalez would be relieved of the burden of pouring through reams of pleadings and
12 numerous decisions by Judge Denton regarding prior proceedings. This would also require the
13 parties to expend time to educate Judge Gonzalez regarding the prior proceedings and could result
14 in rulings that are contrary to the prior rulings of Judge Denton. Since the parties have conducted
15 themselves based upon the rulings of Judge Denton, this would be prejudicial to them; Plaintiffs and
16 Defendants.

17 Based upon the foregoing, the HAHN DEFENDANTS request Judge Gonzalez transfer this
18 case back to Judge Denton to enable him to hear the remaining motions and hold the trial of this
19 matter.


20 CONCLUSION

21 EDCR 1.60 provides a mechanism for the assignment, or reassignment of cases by the Chief
22 Judge of the Eighth Judicial District Court. Based upon this authority, Judge Richie reassigned the
23 present case. As set forth above, the HAHN DEFENDANTS request that Judge Gonzalez allow this
24 matter to be transferred to Department 13 to enable Judge Denton to complete this case. Doing so
25 will benefit the parties and the Court. The parties will be benefitted since they will not have to
26 present all of the prior Court documents to Judge Gonzalez for review. Additionally, it will benefit
27 the Court since Judge Gonzalez will not have to spend the numerous hours necessary to educate
28 herself regarding the voluminous pleadings and numerous hearings and rulings made by Judge

1 Denton in this matter. Justice would be promoted by granting of the foregoing motion.

2 DATED this 21st day of September, 2009.

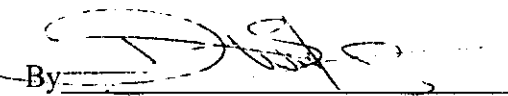
3 M NELSON SEGEL, CHARTERED

4
5 By 
6 M NELSON SEGEL, ESQUIRE
7 Nevada Bar No. 0530
8 624 South 9th Street
9 Las Vegas, Nevada 89101
10 Attorneys for Defendants Larry Hahn and
11 Hahn's World of Surplus, Inc.

12 **CERTIFICATE OF SERVICE**

13 The undersigned hereby certifies that on the 22nd day of September, 2009, she served the
14 foregoing DEFENDANTS LARRY HAHN AND HAHN'S WORLD OF SURPLUS, INC.'S
15 MOTION TO TRANSFER CASE TO DEPARTMENT 13 by causing true and correct copies to be
16 placed in the United States Mail, postage fully prepaid thereon and addressed as follows:

17 Jennifer Taylor, Esquire 18 ROBERTSON & VICK, LLP. 19 401 North Buffalo Drive, Suite 202 20 Las Vegas, Nevada 89145 <i>Facsimile Number (702) 247-6227</i>	Patrick Clary, Esquire 7201 West Lake Mead Drive, Suite 410 Las Vegas, Nevada 89128 <i>Facsimile Number (702) 382-7277</i>
---	---

21
22 By 
23 An employee of M NELSON SEGEL, CHARTERED

24
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27
28

EXHIBIT "A"

ATTACHMENT“1”

ORIGINAL

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA

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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,)

Cliff
CLERK OF THE COURT

CASE NO. A558629
DEPT. NO. XIII

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

Plaintiffs,

vs.

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

Defendant(s).

and

KOKOWEEF, INC.; EXPLORATIONS
INCORPORATION OF NEVADA,

Nominal Defendants.

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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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.

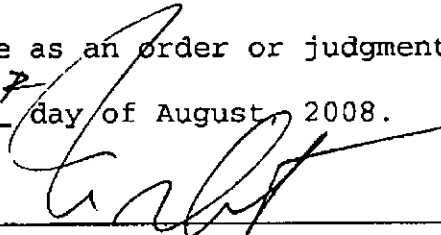
16 However, the Court is not persuaded that the security
17 required should be of the magnitude sought at this point by
18 Defendant. Instead, the Court will order security in the sum of
19 \$75,000.00. In this regard, the Court takes some comfort in the
20 language of subsection 4(b) of the statute 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 11th day of August, 2008.

7
8 
9 MARK R. DENTON
DISTRICT JUDGE

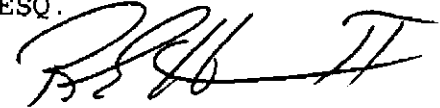
10
11 **CERTIFICATE**

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

for

ATTACHMENT“2”

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED
JAN 29 1 17 PM '09

E. J. [Signature]
CLERK OF THE COURT

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

CASE NO. A558629-B
DEPT. NO. XIII

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

9 Plaintiff(s),)

10 vs.)

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

16 Defendant(s).)

17 AND ALL RELATED CLAIMS.)
18

19
20 DECISION AND ORDER

21 THIS MATTER having come before the Court on January 12,
22 2009 and January 26, 2009 on the motions referenced hereinbelow,
23 and the Court, having considered the papers submitted in
24 connection with such item(s) and heard the arguments made on
25 behalf of the parties and then taken the matter under advisement
26 for further consideration;

27 NOW, THEREFORE, the Court decides the submitted issues
28

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 as follows:

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

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

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

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

23 The Court is not of the view that negligent
24

25
26 ¹Paragraph 49 alleges that the fraud is found in the "making
27 of false representations," but nothing is alleged regarding what
28 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.²

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 ²The 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
remedy of rescission is sought in the Third, Fourth, Fifth, and
Sixth Causes of Action, the subject corporations are named only
as "Nominal Defendants."

26 The Court agrees with Plaintiffs that they have adequately
27 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.

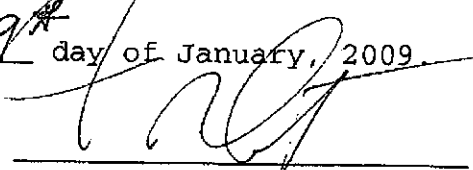
22
23 Therefore, the sanction Motion is DENIED without
24 prejudice to renewal after the viability of the remaining cause
25 of action pleaded against Defendant Clary (the Fourth Cause of
26 Action) is determined.

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NOW, THEREFORE, IT IS HEREBY SO ORDERED, ADJUDGED, AND
DECREED.

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

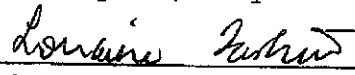
DATED this 29th day of January, 2009.


MARK R. DENTON
DISTRICT JUDGE

CERTIFICATE

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

- PATRICK CLARY, ESQ.
- M. NELSON SEGAL, ESQ.
- ROBERTSON & VICK
Attn: Jennifer L. Taylor, Esq.


LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII