

FILE #	<u>5081-01</u>
INDEX: YES	<u>NO</u>
CALENDAR:	
DATE 1:	_____
DATE 2:	_____
BY:	_____
OTHER:	_____
ATTORNEY:	<u>JT-P</u>
ROUTE TO:	_____

1 OPPTS  
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 10  
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 12 Defendant Kokoweef, Inc.

DISTRICT COURT  
 CLARK COUNTY, NEVADA

**W/C**

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12 TED R. BURKE; MICHAEL R and LAURETTA L. ) CASE NO. A558629  
 13 KEHOE; JOHN BERTOLDO; PAUL BERNARD; ) DEPT. NO. XI  
 14 EDDY KRAVETZ; JACKIE and FRED KRAVETZ; )  
 15 STEVEN FRANKS; PAULA MARIA BARNARD; )  
 16 PETE T. and LISA A. FREEMAN; LEON )  
 17 GOLDEN; C.A. MURFF; GERDA FERN BILLBE; )  
 18 BOB and ROBYN TRESKA; MICHAEL RANDOLPH, )  
 19 and FREDERICK WILLIS, )  
 20 ) DEFENDANT KOKOWEEF, INC.'S  
 21 ) OPPOSITION TO PLAINTIFFS'  
 22 ) MOTION TO COMPEL RESPONSES  
 23 ) TO REQUESTS FOR PRODUCTION  
 24 ) AND TO EXTEND DISCOVERY  
 25 ) DEADLINES (SECOND REQUEST)  
 26 )  
 27 ) DATE OF HEARING: 3/12/10  
 28 ) TIME OF HEARING: Chambers

Plaintiffs,  
 vs.  
 LARRY L. HAHN, individually, and as  
 President of and Treasurer of Kokoweef,  
 Inc., and former President and  
 Treasurer of Explorations Incorporated  
 of Nevada; HAHN'S WORLD OF SURPLUS,  
 INC., a Nevada corporation; DOES I-X,  
 inclusive; DOE OFFICERS, DIRECTORS and  
 PARTICIPANTS I-XX,  
 Defendants,  
 and  
 KOKOWEEF, INC., a Nevada corporation;  
 EXPLORATIONS INCORPORATED OF NEVADA, a  
 dissolved Nevada corporation;  
 Nominal Defendants.

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1 I.

2 This discovery motion should first have been filed with and heard  
3 by the Discovery Commissioner and, therefore, is not properly before  
4 the District Court in Dept. XI.

5 The Plaintiffs' "Motion to Compel Responses to Requests for  
6 Production and to Extend Discovery Deadlines (Second Request)" (which  
7 was erroneously filed in Dept. XIII instead of Dept. XI, to which it  
8 had been transferred) ("the Subject Motion") is obviously a "discovery"  
9 motion and, according to the applicable procedures in the Eighth  
10 Judicial District Court, should have been first filed with and heard  
11 by the Discovery Commissioner.

12 The Plaintiffs' counsel's failure to adhere to these established  
13 procedures is especially egregious because on one occasion in an  
14 informal conference in chambers before His Honor Judge Denton, the  
15 Plaintiffs' counsel made an oral request that discovery matters be  
16 heard by the Court and not the Discovery Commissioner, which request  
17 was summarily denied by Judge Denton. Later, in the last hearing in  
18 this case before Her Honor Judge Gonzales, the Plaintiffs' counsel  
19 made the same request, which also was soundly denied by Judge  
20 Gonzales. See Affidavit of Patrick C. Clary attached hereto as Exhibit  
21 A ("the Clary Affidavit").

22 Yet, the Plaintiffs' counsel, in violation of both of these  
23 ruling has the audacity to file the Subject Motion in Dept. XIII, and  
24 set there for hearing, which should have been Dept XI! Once again, the  
25 Subject Motion should be summarily denied by the Court.  
26 Alternatively, the Motion should be referred to the Discovery  
27 Commissioner for hearing.

28

1 II.

2 The Plaintiffs have never served a proper Request for Production  
3 of Documents which complies with the applicable Rules.

4 The insertion of a request for production of documents (without  
5 calling it that) in the Plaintiffs' "Notice of Deposition pursuant to  
6 NRCPC 30(b)(6) of the Custodian and Keeper of Records of Kokoweef,  
7 Inc.," which is all that the Plaintiffs' served on so-called "Nominal  
8 Defendant Kokoweef, Inc." ("Kokoweef)", was and is procedurally  
9 defective. The Plaintiffs' quotation of Rule 30(b)(6) does not support  
10 their position, because the quotation clearly states as follows:

11 The notice to a party deponent may be accompanied by a  
12 request made in compliance with Rule 34 for the production of  
documents and tangible things at the taking of the deposition.  
13 The procedure of Rule 34 shall apply to the request.

14 (Emphasis supplied.)

15 An insertion in a deposition notice is not the equivalent or an  
16 "accompanying" document, and the Plaintiffs did not follow the  
17 procedure outlined in Rule 34. Neither does Rule 30(b)(6) support the  
18 Plaintiffs' position. Again, with respect to the foregoing exception,  
19 had the Plaintiffs' served a proper Request for Production of  
20 Documents under Rule 34, Kokoweef would have timely served a written  
21 response or objection to the Request.

22 III.

23 The Plaintiffs' received all of the documents to which they were  
24 entitled.

25 The foregoing technical objections to the contrary  
26 notwithstanding, the Plaintiffs received all of the documents  
27 requested by them and to which they were entitled. The lone exception  
28 was that Kokoweef refused to provide the names, addresses, and  
telephone numbers of its stockholders and copies of all stock

1 certificates. The reason for the refusal was pure and simple: Kokoweef  
2 knew that the Plaintiffs, especially Plaintiff Ted R. Burke, would use  
3 that information, as other confidential information had been used, not  
4 only to harass the Defendants but also to try to continue to destroy  
5 Kokoweef.

6 IV.

7 **The Plaintiffs' counsel has distorted the evidence in the Subject**  
8 **Motion by deliberately and fraudulently omitting material facts**  
9 **regarding the real circumstances involving the discovery process.**

10 What the Plaintiffs' counsel failed to point out in the Subject  
11 Motion is that the "lengthy 2.34 conference" which Jennifer L. Taylor  
12 and Patrick C. Clary had on December 27, 2009 (which is referenced in  
13 paragraph 14 of her sworn Affidavit in support of the Subject Motion)  
14 resulted in an orally agreed discovery plan between them and that  
15 following the conference she, at her own volition, was to write Mr.  
16 Clary a letter confirming the details of the plan, but she never wrote  
17 the letter! Mr. Clary did not receive any communication from Ms.  
18 Taylor after said meeting and prior to the service of the Motion.

19 Furthermore, when sometime later she determined that she needed  
20 an extension of the discovery deadlines, she never inquired of either  
21 M Nelson Segel or Mr. Clary whether they would stipulate to such an  
22 extension.

23 See the Clary Affidavit (Exhibit A hereto).

24 ...

25 ...

26 ...

27 ...

28 ...

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Conclusion

For the foregoing reasons the Subject Motion should be denied.

Respectfully submitted,  
PATRICK C. CLARY, CHARTERED

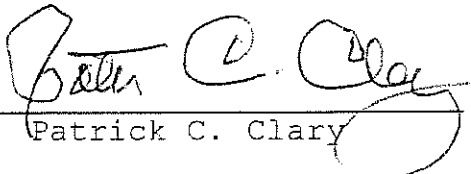
By   
Patrick C. Clary

Attorneys for Nominal  
Defendant Kokoweef, Inc.

CERTIFICATE OF SERVICE BY MAILING

The above and foregoing Defendant Kokoweef, Inc.'s Opposition to Plaintiffs' Motion to Compel Responses to Requests for Production and to Extend Discovery deadlines (Second Request) was served on the Plaintiffs by mailing a copy thereof, first-class postage prepaid, to their attorneys, Jennifer L. Taylor, Esq., Robertson & Vick, LLP, 401 North Buffalo Drive, Suite 202, Las Vegas, Nevada 89145, and was served on Defendants Larry L. Hahn, individually, and as President of and Treasurer of Kokoweef and former President and Treasurer of Explorations Incorporated of Nevada, and Hahn's World of Surplus, Inc. by mailing a copy thereof, first-class postage prepaid, to their attorney, M Nelson Segel, Esq., 624 South 9th Street, Las Vegas, Nevada 89101, on February 19, 2010.

PATRICK C. CLARY, CHARTERED

By   
Patrick C. Clary

Attorneys for Nominal  
Defendant Kokoweef, Inc.

AFFIDAVIT OF PATRICK C. CLARY

STATE OF NEVADA )  
                  ): ss.  
COUNTY OF CLARK )

I, PATRICK C. CLARY, having been first duly sworn, upon my oath, depose and state as follows:

1. I am the sole officer, director and stockholder of Patrick C. Clary, Chartered, a Nevada professional corporation ("Chartered"), which is counsel for so-called Nominal Defendant Kokoweef, Inc., a Nevada corporation ("Kokoweef").

2. I make this Affidavit upon my personal knowledge in support of Defendant Kokoweef, Inc.'s Opposition to Plaintiffs' Motion to Compel Responses to Requests for Production and to Extend Discovery Deadline (Second Request) ("the Opposition"), and, if called as a witness, I am competent to testify to the matters set forth herein.

3. On one occasion when I was personally present, in an informal conference in chambers before His Honor Judge Denton, the Plaintiffs' counsel, Jennifer L. Taylor, Esq., made an oral request that discovery matters be heard by the Court and not the Discovery Commissioner, which request was summarily denied by Judge Denton. Later, in the last hearing in this case before Her Honor Judge Gonzales, the same Plaintiffs' counsel made the same request, which was also soundly denied by Judge Gonzales.


4. The technical objections contained in Point II of the Opposition were previously made known to the Plaintiffs counsel and were reiterated in a letter which I sent to Ms. Taylor on September

23, 2009. Nevertheless, I did produce numerous documents on computer discs with the exception of the names, addresses, and telephone numbers of Kokoweef's stockholders and copies of stock certificates. The reason for the refusal was pure and simple: Kokoweef knew that the Plaintiffs, especially Plaintiff Ted R. Burke, would use that information, as other confidential information had been used, not only to harass the Defendants but also to try to continue to destroy Kokoweef.

5. In their Motion, the Plaintiffs' counsel failed to point out that the "lengthy 2.34 conference" which Ms. Taylor and I had on December 27, 2009 (which is referenced in paragraph 14 of her sworn Affidavit attached to the Motion) resulted in an orally agreed discovery plan between her and me that following the conference she, upon her own volition, was to write me a letter confirming the details of the plan, but she never wrote the letter or sent any other communication since then.

6. Furthermore, when sometime later she apparently determined that she needed an extension of the discovery deadlines, because of her own dilatory actions, she never inquired of either M. Nelson Segel or me as to whether we would stipulate to such an extension.

7. So much for "meet and confer!"

  
\_\_\_\_\_  
PATRICK C. CLARY

SUBSCRIBED AND SWORN TO before me on February 19, 2010.

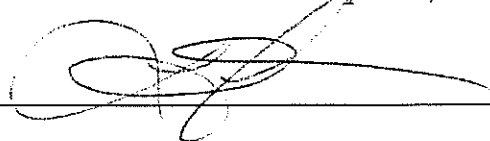
  
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Exhibit A - Page 2

