

CLERK OF THE COURT

1 **OPPS**
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7 **DISTRICT COURT OF NEVADA**

8 **COUNTY OF CLARK**

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

CASE NO. 08A558629
DEPT NO. XI

14 Plaintiffs,

15 vs.

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

20 Defendants,

21 and

22 KOKOWEEF, INC., a Nevada corporation;)
23 EXPLORATIONS INCORPORATED OF)
24 NEVADA, a dissolved corporation,)

DATE: 3/12/10
TIME: In Chambers

25 Nominal Defendants.)

26 **OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL RESPONSES TO REQUESTS**
27 **FOR PRODUCTION AND TO EXTEND DISCOVERY DEADLINES (SECOND REQUEST)**

28 Defendants Larry Hahn ("HAHN") and Hahn's World of Surplus, Inc. ("SURPLUS") ("HAHN and

1 SURPLUS sometimes collectively referred to herein as “RESPONDING DEFENDANTS”) hereby
2 respond to and oppose Plaintiffs’ Motion to Compel Responses to Requests for Production and to
3 Extend Discovery Deadlines (Second Request)(“MOTION”).

4 The MOTION is a purported “discovery motion” that has been filed in Department XIII
5 instead of Department XI, where this case is pending. NRCP 16.1 and EDCR 2.34 require all
6 discovery motions to be filed before the Discovery Commissioner. As set forth below, and in the
7 declaration of M Nelson Segel, Esquire, that has been submitted herewith as **Exhibit “A”**, sets forth
8 facts that make it clear that this is a calculated action by Plaintiffs to forum shop!

9 The Plaintiffs failure to adhere to these established procedures is especially egregious because
10 on one occasion, during a Rule 16 Case Conference in chambers, Plaintiffs’ counsel made an oral
11 request that discovery matters be heard by the Court and not the Discovery Commissioner, which
12 request was summarily denied by Judge Denton. Later, in the last hearing in this case before Judge
13 Gonzalez, Plaintiffs’ counsel orally sought a determination that this was a “complex case” and
14 Judge Gonzalez ordered that a motion be filed and heard. Notwithstanding the direct order of Judge
15 Gonzalez, Plaintiffs have filed the MOTION, before the Court, not the Discovery Commissioner.
16 The fact that it was filed in Department XIII, not Department XI, and noticed for an “in chambers”
17 calendar in Department XIII, it is not properly before the Court and should be re-noticed.

18 **POINTS AND AUTHORITIES**

19 The MOTION is a “discovery motion.” NRCP 16 and EDCR 2.34 require said motion to be
20 heard by the discovery commissioner, not the presiding judge. On this basis, the Court should either
21 summarily deny the motion, or transfer it to the Discovery Commissioner for hearing.

22 EDCR 2.34 states, “[u]nless otherwise ordered, all discovery disputes (except disputes
23 presented at the pretrial conference or at trial) **must** first be heard by the discovery commissioner”.
24 (emphasis added).

25 NRCP 16.1(f) provides:

26 In a potentially difficult or protracted action that may involve complex issues,
27 multiple parties, difficult legal questions, or unusual proof problems, the court may,
28 upon motion and for good cause shown, waive any or all of the requirements of this
rule. If the court waives all the requirements of this rule, it shall also order a
conference pursuant to Rule 16 to be conducted by the court or the discovery

1 commissioner.

2 This rule is specific. It requires that a motion be filed and the Court must find that “good cause
3 shown.” The Supreme Court of Nevada addressed this Rule in the case, *Mays v. Eighth Judicial*
4 *district Court*, 105 Nev. 60, 768 P. 2d 877 (1989) and stated, commencing at page 62:

5 The defendants below did not comply with Rule 16.1 before requesting discovery
6 under Rule 26 by deposition and production of documents. The attorneys did not
7 conduct a case conference pursuant to Rule 16.1(a), or prepare a case conference
8 report pursuant to Rule 16.1(c). The district court waived these requirements. The
9 district court's order allowed the defendants alone to proceed with discovery, in
10 contravention of Rule 16.1(b). **None of these waivers was supported by the
11 required finding under Rule 16.1(f) that the case is “a potentially difficult or
12 protracted action that may involve complex issues, multiple parties, difficult
13 legal questions, or unusual proof problems...”** (Emphasis added).

14 Plaintiffs chose to flaunt the express rulings of Judge Denton and Judge Gonzalez, as well as the
15 formal rules of procedure, in an effort to obtain a ruling directly from the Court.

16 This Court is already burdened by the cases and matters that it is obligated to hear, without
17 being saddled with matters that have been delegated to the Discovery Commissioner and for which
18 the Court has advised Plaintiffs is within the domain of the Discovery Commissioner.

19 At the hearing held by this Court on October 29, 2009, Ms. Taylor requested that this Court
20 handle discovery matters. The Court inquired of Mr. Clary and Mr. Segel whether this matter was
21 “complex” to which each of them said, “no.” The Court then directed Ms. Taylor to file a motion
22 if she wanted the Court to address the issue. The Court’s records should reflect that no such motion

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1 was filed.

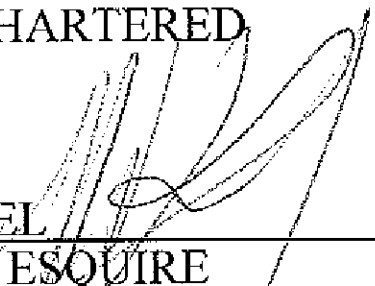
2 CONCLUSION

3 Based upon the foregoing, the Court should deny the MOTION. Alternatively, the Court can
4 transfer the matter to be heard by the Discovery Commissioner as required by the Nevada Rules of
5 Civil Procedure and the Eighth Judicial District Court's rules.

6 If the Court determines that this matter should be heard by it, notwithstanding the failure of
7 Plaintiffs to file a motion to declare this case complex, oral argument should be allowed.

8 DATED this 22nd day of February, 2010.

9 M NELSON SEGEL, CHARTERED

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

16 CERTIFICATE OF SERVICE

17 The undersigned hereby certifies that on February 24, 2010, she caused true and correct
18 copies of the foregoing OPPOSITION to be placed in the United States Mail, postage fully prepaid
19 thereon and addressed as follows:

20 Jennifer Taylor, Esquire 21 ROBERTSON & VICK, LLP 22 401 North Buffalo Drive, Suite 202 Las Vegas, Nevada 89145	Patrick Clary, Esquire 7201 West Lake Mead Drive, Suite 410 Las Vegas, Nevada 89128
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23
24 /s/ Diana Wolf 
25 An employee of M NELSON SEGEL, CHARTERED
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Exhibit “A”

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DECLARATION OF M NELSON SEGEL

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

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 Defendants Larry Hahn and Hahn’s World of Surplus, Inc.’s Opposition to Plaintiffs’ Motion to Compel Responses to Requests for Production and to Extend Discovery Deadlines (Second Request)(“MOTION”); 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 Larry Hahn (“HAHN”) and Hahn’s World of Surplus, Inc. (“SURPLUS”)(HAHN and SURPLUS referred to herein as “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 29th day of July, 2009.

3. The MOTION requests that this Court enter an order requiring Nominal Defendant, Kokoweef, Inc. (“KOKOWEEF”) to produce documents that purportedly have not been supplied and suggests that no documents have been produced. In reality, documents have been produced that would reach approximately one foot thick!

4. I am aware of the letter dated November 24, 2009, from Jennifer Taylor, Esquire (“TAYLOR”) to Patrick Clary, Esquire (“CLARY”). Mr. Clary and I discussed the letter and whether documents existed that could, or should, be provided as a supplement to the documents provided previously.

5. CLARY advised me that he had a lengthy discussion with TAYLOR and they had worked out the issues. He also informed me that TAYLOR was sending a letter to memorialize the agreement. I have never seen any such letter.

6. The MOTION suggests that CLARY and I are “agents” of each other. I am not certain of the intent; however, this is incorrect. CLARY represents the nominal defendants and himself. I represent the HAHN DEFENDANTS. However, as President of KOKOWEEF, HAHN is obligated to satisfy, or cause to be satisfied, anything that must be done as part of this litigation

1 and the operation of KOKOWEEF, in general. For that reason, CLARY and I have worked together
2 in this litigation. It should be clear; however, that I do not specifically represent KOKOWEEF. It
3 should also be clear that TAYLOR has communicated with me regarding various matters in this
4 litigation that could have been considered duties of KOKOWEEF. I have acted as a "go between"
5 for various matters. No objection has ever been expressed by CLARY or me regarding TAYLOR
6 utilizing me as a conduit. I am not certain Plaintiffs' perceived need to raise this issue.

7 5. I am concerned that Plaintiffs continue to intentionally take action that is contrary to
8 the rules of civil procedure, as well as prior orders of the Court, with the result that KOKOWEEF
9 and the HAHN DEFENDANTS are obligated to expend funds that could be better utilized to conduct
10 KOKOWEEF's business.

11 6. The MOTION has been filed before Judge Denton, although Judge Gonzalez is
12 currently the presiding judge. Additionally, as a discovery motion, it should have been filed with
13 the Discovery Commissioner.

14 7. This is especially true since Judge Denton specifically denied Plaintiffs request to
15 have him handle discovery matters in place of the Discovery Commissioner. Please see the minutes
16 of the Rule 16 Conference held by Judge Denton in his Chambers on May 11, 2009. Ms. Taylor
17 requested that Judge Denton hear discovery matters and he refused to do so. The substance of the
18 minutes are attached hereto as **Attachment "1"**.

19 8. Ms. Taylor attempted to obtain an order from Judge Gonzalez declaring this case
20 "complex" at the hearing held on October 28, 2009, in an effort to bypass the Discovery
21 Commissioner and have discovery matters heard by the Court. The substance of the minutes are
22 attached hereto as **Attachment "2"**. CLARY and I did not believe this was a complex case. Based
23 upon our comments, Judge Gonzalez **instructed** TAYLOR to file a motion. Clearly, no such motion
24 was ever filed. Notwithstanding said direct instruction from the Court, Plaintiffs have filed the
25 MOTION in direct contravention of the Court's order!

26 9. I cannot tell from the MOTION what documents were not produced. It is my
27 understanding that some, if not all, of the requested documentation had been produced. I have never
28 been advised what is missing.

1 10. One area that is a problem for the HAHN DEFENDANTS is the request for a copy
2 of the shareholder's list. The existing complaint is not a derivative action that is being brought for
3 the benefit of all shareholders. It is a complaint by a limited number of shareholders who are seeking
4 damages for their benefit, not KOKOWEEF.

5 11. Plaintiff Ted Burke ("BURKE"), along with a former director of KOKOWEEF or its
6 predecessor, Explorations Incorporated of Nevada ("EIN"), a purported nominal defendant herein,
7 have "hijacked" the web site, "Kokoweef.com" that was established as a communication tool for
8 KOKOWEEF to keep its shareholders advised of the company's activities. Shortly after the
9 commencement of this action, it became the web site for the "Kokoweef Shareholders for Truth."
10 BURKE and those acting with him, have posted information putting HAHN and KOKOWEEF in
11 bad light, attempting to sway other shareholders to join in his activities. This does not appear to be
12 in the best interests of KOKOWEEF. Therefore, allowing disclosure of the shareholders of
13 KOKOWEEF will likely result in the destruction and termination of KOKOWEEF, which appears
14 to be the plan of Plaintiffs.

15 12. I cannot comment on any other issues regarding documents because I am not aware
16 of what is being requested.

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

18 DATED this 22nd day of February, 2010.

19
20 
 /s/ M NELSON SEGEL
 M NELSON SEGEL

Attachment "1"

Mandatory Rule 16 Conference (3:45 PM) (Judicial Officer Denton, Mark R.)

MANDATORY RULE 16 CONFERENCE Minutes 05/11/2009 3:45 PM 05/11/2009 3:45 PM

IN CHAMBERS: Mr. Clary stated the 16.1 Case Conference Report is being put together and will probably have it filed within a week. Regarding discovery issues, Ms. Taylor stated she prefers the Court handle discovery issues. Following colloquy regarding same, Court stated that right now discovery issues will remain with the Discovery Commissioner. Following colloquy as to a Settlement Conference, Court stated that if and when there is a consensus that a Settlement Conference would be beneficial, counsel to contact the Court's JEA, who will advise how to proceed; and if there is no consensus but one side feels a Settlement Conference would be beneficial, counsel can file a motion as to same. Mr. Segel stated some motion practice needs to be completed first, and that would narrow the issues as to a Settlement Conference. Upon Court's inquiry as to case management issues, counsel made statements as to Deft's records. Ms. Taylor referred to the restraining order that documents, including electronic records, not be destroyed; and expressed concern that she cannot get a commitment as to the hard drives of the computers. Mr. Clary stated they have stipulated to that already. Mr. Segel made statements as to not having computerized records to erase. Upon Court's inquiry, Ms Taylor stated there is an Order in effect not to destroy documents. Mr. Clary made further statements. Upon Court's inquiry, Mr. Clary advised they will not stipulate that it includes hard drives. Further statements by counsel. Court directed counsel to try to work it out and if they cannot, counsel can file a motion as to same. Further statements by counsel. Mr. Clary stated that if any associates of his or Mr. Segel's client have advised there has been a destruction of documents, advise him and he will sign a Stipulation. Court directed counsel to try to work it out and if they cannot do so, bring it to the Court's attention. Court directed counsel to file the Case Conference Report so the Discovery Commissioner can issue a Scheduling Order; and directed counsel to try to let the Court know if and when a Settlement Conference would be ripe.

ATTACHMENT "1"

Attachment "2"

Motion (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)

Defendants Larry Hahn and Hahn's World of Surplus Inc's Motion to Transfer Case to Department 13 Minutes 10/28/2009 3:00 AM 10/29/2009 9:00 AM

Arguments by Counsel. Upon Court's inquiry, Ms. Taylor agreed to deem case complex and Mr. Clary objected. Court advised Ms. Taylor to file a written motion for arguments. Colloquy regarding setting the rule 16 Conference and waiting for the discovery report. Mr. Segel noted he would be filing a Motion for partial summary judgment and would like it heard prior to setting the rule 16 Conference. Court stated its findings and ORDERED, Deft's Motion to Transfer Case to Dept. 13 and Joinder, DENIED. COURT FURTHER ORDERED, future Status Check date, VACATED. Court noted it will issue a trial order following the discovery scheduling and will set the rule 16 conference date after the summary judgment motion is filed.

ATTACHMENT "2"