

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

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; DOES 1
through 100, inclusive;

Defendants,

and

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

Nominal Defendants.

CASE NO. A558629

DEPT: XI

**PLAINTIFFS' OPPOSITION TO
DEFENDANT LARRY L. HAHN and
HAHN'S WORLD OF SURPLUS, INC.'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

1 Plaintiffs Ted R. Burke; Michael R. And Laretta L. Kehoe; John Bertoldo; Paul Barnard;
2 Eddy Kravetz; Jackie and Fred Kravetz; Steven Franks; Paula Maria Barnard; Leon Golden; C.A.
3 Murff; Gerda Fern Billbe; Bob and Robyn Treska; Michael Randolph and Frederick Willis
4 (hereinafter collectively referred to as "Plaintiffs"), by and through their undersigned counsel of
5 record, Robertson & Vick LLP, hereby file their Opposition to Defendants Larry L. Hahn's
6 (hereafter "Hahn") and Hahn's World of Surplus, Inc.'s (hereafter "HWS") (hereafter
7 collectively the "Hahn Defendants") Motion for Partial Summary Judgment (hereafter the
8 "Motion").

9 This Opposition is based upon the points and authorities set forth herein, the pleadings
10 and papers on file herein, the exhibits attached hereto, and any oral argument requested of
11 counsel.

12 DATED this 16thth day of March, 2009.

13
14 ROBERTSON & VICK, LLP

15
16 By: 

ALEXANDER ROBERTSON, IV

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Attorneys for Plaintiffs

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22 **MEMORANDUM OF POINTS AND AUTHORITIES:**

23 **I. INTRODUCTION:**

24 The Court is well versed in the facts of this case. It is a shareholder derivative lawsuit
25 against Defendant Hahn, Kokoweef, Inc's ("Kokoweef") president, and his alter-ego, HWS. This
26 shareholder derivative suit seeks damages owed to Kokoweef, and to its predecessor,

1 Explorations Incorporated of Nevada ("EIN"), as a result of, among other acts of malfeasance,
2 self-dealing, securities fraud, and conversion of corporate assets by the Defendants.¹

3 This matter despite the dates and deadlines set out, is really still in its infancy.
4 Defendants have stonewalled discovery, and prevented Plaintiffs, and their experts, from moving
5 forward in this litigation. As such, Defendant's Motion is extremely premature.

6 Additionally, this Motion is the Hahn Defendants' second attempt at dismissal, but
7 without bringing any new information or facts to the table. The Hahn Defendants' arguments
8 regarding the Fourth and Eighth Causes of Action utterly ignore the fact that Nevada is a notice
9 pleading State, and attempt to force much higher thresholds onto the pleading mandates for
10 these two causes of action. Additionally, the Hahn Defendants' second general argument
11 regarding the status of this suit as a derivative suit, and the adequacy of the Plaintiffs to bring
12 these claims, has already been unsuccessfully argued in front of Judge Denton. They are,
13 essentially, seeking a Motion for Reconsideration of Judge Denton's ruling well past the
14 permitted time.

15 Finally, in presenting their Motion for Summary Judgment, the Hahn Defendants have
16 made significant misrepresentations that raise questions of fact sufficient to preclude a summary
17 adjudication of these issues. Yet, they have prevented Plaintiffs' from discovering documents
18 which likely exist in contravention of these allegations. Therefore, Defendants' Motion must be
19 denied.

21 II. STATEMENT OF FACTS

22 A. Procedural History:

23 The Hahn Defendants' current Motion is part of a long history of law and motion practice
24 in this litigation, including a prior Motion to Dismiss filed on November 4, 2008, by the Hahn
25 Defendants for which they have already received a ruling on their arguments related to the
26

27
28 ¹ Plaintiffs are also asserting a claim against Defendant Patrick C. Clary for negligent misrepresentation, which is the subject of a separate Motion for Partial Summary Judgment.

1 adequacy of Plaintiffs' representations on behalf of Kokoweef. A true and correct copy of this
2 Motion to Dismiss is attached hereto as Ex. 1.

3 The Hahn Defendants address the evidentiary hearing of July 30, 2008, and the ruling
4 thereon pursuant to NRS §41.520(2). The Hahn Defendants again represent to this Court that
5 somehow the ruling on the evidentiary hearing should bear on the determination of any other
6 issues, and dictate the conduct of the Plaintiffs. Mot. 3:1-7. However, NRS §41.520(4)(b)
7 specifically prohibits such reliance upon the results of a requested evidentiary hearing: "A
8 determination by the court that security either must or must not be furnished or must be furnished
9 as to one or more defendants and not as to others shall not be deemed a determination of any one
10 or more issues in the action or of the merits thereof".

11 The Motion to Dismiss, filed by the Hahn Defendants sought to dismiss Plaintiffs' entire
12 Verified Derivative First Amended Complaint, including all the claims against Defendant Patrick
13 Clary. This Motion was ruled upon by Judge Denton on January 29, 2009 (the "January 2009
14 Decision"). It was not until the Hahn Defendants filed their Motion to Transfer Case to
15 Department 13 in October of 2009, that any Defendant indicated an intent to seek clarification on
16 the January 2009 Decision. At this late date, Defendants are precluded from, essentially, seeking
17 a rehearing or reconsideration of the January 2009 Decision, as set forth in more detail herein.

18 The limited, but essential discovery that Plaintiffs have attempted has been met with
19 delay tactics by Defendants.² As a result of these tactics, Plaintiffs filed a Motion to Compel
20 Kokoweef's Response to Requests for Production and to Extend Discovery Deadlines (Second
21 Request) on February 9, 2010 (hereafter the Motion to Compel). The Motion to Compel is
22 currently pending before this Court, and is also set for hearing on March 30, 2010. Accordingly,

23
24 ² Although the Motion to Compel was filed against Kokoweef, Inc., it applies in equal force to its officer,
25 Defendant Larry Hahn, who, as his counsel admits is charged with ensuring his company's compliance with issues in
26 this litigation. However, the Hahn Defendants themselves have also employed delay tactics to prevent access to
27 records by Plaintiffs. On August 14, 2009, this Court granted the Hahn Defendants' Motion to Quash certain
28 Subpoenas and ordered the Hahn Defendants to prepare the Recommendation for Plaintiffs' counsel to review. To
this date, that Recommendation has still not been prepared, and, therefore, Plaintiffs have been prejudiced because
they are unable to take any further action on that ruling. Plaintiffs' submission of this Report and Recommendation
was rejected by the Discovery Commissioner because it had not been prepared by counsel for the Hahn Defendants.
Yet, counsel for the Hahn Defendants have still not prepared this document, nor responded to Plaintiffs assertions
regarding the same.

1 additional time for discovery is warranted prior to the Hahn Defendants' presentation of such a
2 motion. Harrison v. Falcon Prods., Inc., 103 Nev. 558, 746 P.2d 642 (Nev. 1987) (concluding
3 that the court erred in granting summary judgment when not even two years had passed since the
4 filing of the complaint until the time summary judgment was granted, and the plaintiff's
5 diligence in pursuing the action was reflected by her request for additional time to take
6 depositions and to seek admissions).

7 **B. Statement of Facts:**

8 Defendants have failed to provide "a concise statement setting forth each fact material to
9 the disposition of the motion." NRCP 56(c). Instead, the Hahn Defendants have simply claimed
10 Plaintiffs First Amended Complaint is deficient on its face and included unsupported statements
11 of counsel, (Mot. 10:25-28 - 11:1-13, describing the number of shares owned by Plaintiffs, and in
12 particular, Plaintiff Ted Burke), and self-serving unsupported Affidavits of Defendant Larry
13 Hahn. The unsupported Affidavit of Larry Hahn refers to stock records, but produces no
14 documentary evidence to support their statements. The production of stock records, as requested
15 in Plaintiffs' pending Motion to Compel is now, even more relevant, because Defendant Hahn
16 has now squarely placed the content and accuracy of shareholder records at issue. See Mot., Ex.
17 B, Affidavit of Larry Hahn (discussing the status of Ted Burke as a stockholder, and the records
18 which reflect that status).

19 The Hahn Defendants also attach the Affidavit of Christina Hahn. See Mot. Ex. B,
20 Affidavit of Christina Hahn. Ms. Hahn's Affidavit makes a number of factual assertions which
21 Plaintiffs contest. Ms. Hahn states: "KOKOWEEF does not have paid employees. Substantially
22 all of the work performed at KOKOWEEF is done by investors for NO PAY!." Mot. Ex. B.,
23 Affidavit of Christina Hahn, 1:17-18. However, Plaintiffs have identified evidence that
24 contradicts Ms. Hahn. Attached hereto as Ex.2 is the Affidavit of Laretta Kehoe (hereafter the
25 "L. Kehoe Affidavit"). Ms. Kehoe has spent a significant amount of time analyzing the
26 incomplete records received to date from Kokoweef, and avers that checks have been located
27 demonstrating payment to "employees" of Kokoweef. Ex. 2, 2:7-13.

1 Further, Ms. Hahn asserts in her Affidavit that "not one of the Plaintiffs participates in the
2 exploration operations of KOKOWEEF." Mot. Ex. B., Affidavit of Christina Hahn, 1:20-21.
3 However, attached hereto as Ex. 3 is the Affidavit of Michael Kehoe (hereafter the "M. Kehoe
4 Affidavit"). In it, Mr. Kehoe describes in detail the significant exploration operations he was
5 involved in prior to being precluded from continuing this work by Defendant Hahn. Ex. 3, 1:11-
6 28 - 2:1-16. Additionally, attached hereto as Ex. 4 is the Affidavit of Plaintiff Ted Burke. As
7 with Mr. Kehoe, Mr. Burke's Affidavit sets forth in detail the vast amount of work he performed
8 in the exploration operations of Kokoweef. This conflicting evidence precludes any grant of
9 summary judgment which might be requested based upon the Christina Hahn Affidavit.³

10 Plaintiffs have been attempting to obtain shareholder records for months. See Plaintiffs'
11 Motion to Compel. Plaintiffs' Motion to Compel details Defendants ongoing, unsupported
12 refusal to produce stock ledgers, stock certificate, and shareholder lists, among other documents.
13 The Hahn Defendants have also failed and refused to prepare and submit a Report and
14 Recommendation directed by the Discovery Commissioner on August 14, 2009, that would allow
15 Plaintiffs to appeal the Discovery Commissioner's ruling on the Hahn Defendants' Motion to
16 Quash certain Subpoenas. Ex. 5. These refusals have prevented Plaintiffs from presenting facts
17 essential to justify their. See Declaration of Jennifer L. Taylor pursuant to NRCP 56(f).

18 19 **III. LEGAL AUTHORITY:**

20 21 **A. STANDARD FOR SUMMARY JUDGMENT:**

22 The standard for Summary Judgment is well known: "The judgment sought shall be
23 rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions of
24

25 ³ NRCP 56(g) states: Should it appear to the satisfaction of the court at any time that any of the affidavits
26 presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith
27 order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of
28 the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or
attorney may be adjudged guilty of contempt. Plaintiffs will leave it for the Court's analysis and determination as to
whether the Christina Hahn Affidavit was made in bad faith. However, Plaintiffs find it difficult to conceive that
given their long time involvement at the mine site that Ms. Hahn could assert "not one of the Plaintiffs participates in
the exploration operations of KOKOWEEF."

1 file, together with the affidavits, if any, show that there is no genuine issue as to any material
2 fact.” NRCP 56(c). This case is, despite impending dates and deadlines, is still in its infancy as
3 a result of Defendants’ delay on Plaintiffs’ discovery. Plaintiffs have served written discovery,
4 but answers have not been provided and the Motion to Compel had to be filed. The Hahn
5 Defendants’ Motion is simply another tactic to forestall the ability of Plaintiffs to substantively
6 move this case forward.

7 Trial courts should exercise great care in granting summary judgment. Pleadings and
8 documentary evidence must be construed most favorably to the party against whom the motion is
9 made. Copeland v. Desert Inn Hotel, 99 Nev. 823, 673 P.2d 490 (Nev. 1983). Additionally, in
10 determining whether a summary judgment is proper, the nonmoving party is entitled to have the
11 evidence and all inferences therefrom accepted as true. Johnson v. Steel, Inc., 100 Nev. 181, 678
12 P.2d 676 (Nev. 1984). Further, the trial judge may not, in granting summary judgment, pass
13 upon the credibility or weight of the opposing affidavits or evidence; that function is reserved for
14 the finder of fact at trial. Hidden Wells Ranch, Inc. v. Strip Realty, Inc., 83 Nev. 143, 425 P.2d
15 599 (Nev. 1967). On summary judgment motions the court is obligated to accept as true all
16 evidence favorable to the party against whom the motion is made. Id. In this matter, given the
17 fact that the Hahn Defendants’ fail to assert a legal basis for their Motion for Summary
18 Judgment, because conflicting evidence has been presented and because the Defendants,
19 collectively, have endeavored to avoid their discovery obligations, the Hahn Defendants’ Motion
20 for Summary Judgment must be denied.

21 As noted above, this matter, while appearing to be far along in terms of dates and
22 deadlines, remains stagnant in the early discovery stages. Therefore, pursuant to NRCP 56(f),
23 Plaintiffs respectfully requests that this Court deny the Hahn Defendant's, as well as Defendant
24 Clary's, Motions for Partial Summary Judgment in order for additional discovery to be
25 completed. NRCP 56(f) states:

26 (f) When Affidavits Are Unavailable. Should it appear from the
27 affidavits of a party opposing the motion that he cannot for reasons
28 stated present by affidavit facts essential to justify his opposition,
the court may refuse the application for judgment or may order a
continuance to permit affidavits to be obtained or depositions to be

1 taken or discovery to be had or may make such other order as is
2 just.

3 Currently, without having had the opportunity to review the documents that are the subject of
4 Plaintiffs' Motion to Compel, and to conduct further depositions, Plaintiffs are unable to provide
5 affidavits and documentary evidence to fully state their Oppositions to the Motions for Partial
6 Summary Judgment of both the Hahn Defendants and Defendant Clary. See Ameritrade, Inc. v.
7 First Interstate Bank, 105 Nev. 696, 699, 782 P.2d 1318 (1989) (holding that a memorandum in
8 opposition to a motion for summary judgment that contained a request for additional time for
9 discovery was sufficient for the court to order continuance pursuant to N.R.C.P. 56(f));
10 Summerfield v. Coca Cola Bottling Co., 113 Nev. 1291, 948 P.2d 704 (1997) (holding that
11 where plaintiff requested continuance and there was no evidence that plaintiff was dilatory in
12 conducting discovery, district court erred in granting summary judgment in favor of defendant).

13 **B. DEFENDANTS HAVE NOT MET THEIR BURDEN FOR SUMMARY**
14 **ADJUDICATION OF THE FOURTH AND EIGHTH CAUSES OF ACTION.**

15 **1. Defendants are estopped from seeking a renewed dispositive ruling on the Fourth**
16 **(Negligent Misrepresentation) and Eighth (Unjust Enrichment) Causes of Action.**

17 In their January 2009 Motion to Dismiss, the Hahn Defendants sought a complete
18 dismissal of the entire First Amended Complaint, including the Fourth (negligent
19 misrepresentation) and Eighth (unjust enrichment) causes of action. See Ex. 1. Upon review and
20 extensive oral argument, Judge Denton rendered the following decision in regard to Plaintiffs'
21 Fourth Claim for Relief, Negligent Misrepresentation:

22 The Court is not of the view that negligent misrepresentation
23 requires the same particularity in pleading as fraud. Therefore, the
24 Court cannot say that the Fourth Cause of Action fails to state a
25 claim on which relief can be granted, and the Motion is thus
26 DENIED as to such cause of action.

27 See Mot., Ex. 2, 2:23-3:1-5. Similarly, Judge Denton concluded that the Motion to Dismiss "is
28 denied as to the Seventh, Eighth, Ninth and Tenth Causes of Action, as they do not fail to state
 claims upon which relief can be granted." See Mot., Ex. 2, 3:13-15.

1 The Motion is nothing more than a renewed attempt to challenge the sufficiency of
2 Plaintiffs' pleadings through the same arguments that had been presented in the Hahn
3 Defendants' Motion to Dismiss. Even if the Hahn Defendants wanted to seek clarification or
4 reconsideration of the rulings on either of these causes of action, the time for doing so has long
5 past. The first mention of an intent to seek clarification on Judge Denton's January 29, 2009
6 Ruling was in the Hahn Defendants' Motion to Transfer Case, filed in October 2009. Plaintiffs'
7 argument regarding the Hahn Defendants improper attempt to obtain reconsideration is the same
8 as Plaintiffs' argument in October 2009; the Hahn Defendants have no legal basis upon which to
9 seek summary adjudication of the Fourth and Eighth Causes of Action because Judge Denton
10 previously denied their Motion to Dismiss these Causes of Action, and no timely pleading was
11 filed to challenge the ruling.

12 The Hahn Defendants are essentially seeking reconsideration of Judge Denton's prior
13 ruling, and "no motion once heard and disposed of may be renewed in the same cause, nor may
14 the same matters therein embraced be reheard, unless by leave of the court." EDCR 2.24(a).
15 Such reconsideration cannot be sought through the MPSJ because pursuant to EDCR 2.24 "such
16 relief must be sought within ten (10) days after service of written notice of the order or judgment
17 unless the time is shortened or enlarged by order", which has not been done in this matter.
18 EDCR 2.24(b).

19 Further, such relief cannot be sought under NRCP 60, because the outside time in which
20 an order can be challenged is six (6) months. NRCP 60(b). The Notice of Entry on Judge
21 Denton's ruling was more than one year ago. Accordingly, the Hahn Defendants should be
22 estopped from seeking summary adjudication on the Fourth and Eighth Causes of Action, and
23 their Motion denied.

24 **2. Defendants cite to irrelevant and incorrect authority in support of their request**
25 **for Summary Judgment on the claim for Negligent Misrepresentation .**

26 The Hahn Defendants rely upon two cases to obtain the standard for maintenance of a
27 claim for Negligent Misrepresentation: Bill Stremmel Motors, Inc. v. First National Bank of
28 Nevada, 94 Nev. 131, 575 P.2d 938 (Nev. 1978) and Nelson v. Herr, 123 Nev. 217, 163 P.3d 420

(Nev. 2007). Neither of these cases cite the elements for negligent misrepresentation, and, Nelson, in fact analyzes the cause of action for intentional misrepresentation. Plaintiffs are at a loss to understand how the Hahn Defendants can, in good faith, rely on a case addressing a completely different cause of action. Nonetheless, Nelson has no applicability to the instant matter, and therefore, fails to support any of the assertions by the Hahn Defendants related to the elements required to be pled by Plaintiffs. Mot. 6:1-21.

3. Plaintiffs Have Adequately Pled Causes of Action for Negligent Misrepresentation.

Should this Court decide to consider the Hahn Defendants' Motion on the Fourth and Eighth Causes of Action, the Hahn Defendants utterly fail to meet their burden to obtain summary judgment on these two causes of action. Additionally, the Hahn Defendants' misapprehend the standards required for pleading on Causes of Action for Negligent Misrepresentation. Nevada is a "notice" pleading state, which, therefore, means that Nevada's courts "liberally construe pleadings to place into issues matters that are fairly noticed to the adverse party". Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 675 (Nev. 1984). Causes of action which require pleading with specificity are contained in NRCP 9(b), and include fraud, mistake or condition of mind. Negligent misrepresentation simply does not fall within the parameters of NRCP 9(b), and does not mandate the level of pleading asserted by the Hahn Defendants.

Nonetheless, the First Amended Complaint (hereafter the "FAC") more than adequately pleads the requisite assertions to support a claim for Negligent Misrepresentation. Paragraph 57, which is the first paragraph in the Fourth Cause of Action for Negligent Misrepresentation incorporates by reference the preceding paragraphs, 1-38. A true and correct copy of the First Amended Complaint is attached hereto as Ex. 6. Paragraphs 13 - 18 of the FAC sets forth specific representations including, the date statements were made, the person making the statements and the recipient of the statements. Ex. 6, 5:17-28 - 7:1-20. Additionally, the Fourth Cause of Action alleges:

66. Defendants supplied false guidance to the Plaintiffs

1 in the sale of the securities of EIN and KOKOWEEF by representing that such
2 sales were exempt from registration under both federal and Nevada securities laws
3 when in fact the sale of these securities were illegal and not exempt from
4 registration under either federal or Nevada securities laws.

5
6 68. Defendants, and each of them, made these
7 representations negligently, and without any reasonable basis for
8 believing them to be true.

9 69. Plaintiffs were ignorant of the truth of the
10 misrepresentations and concealments made by Defendants and in
11 fact justifiably relied on the misrepresentations made by
12 Defendants.

13 70. As a direct and proximate result of Defendants'
14 misstatements and misrepresentations of material facts, Plaintiffs
15 purchased securities from the Defendants in EIN and KOKOWEEF
16 and have suffered damages as more fully set forth herein in an
17 amount to be proved at trial.

18 Finally, the Hahn Defendants argue that each Plaintiff must show that they affirmative
19 relied upon a negligent misrepresentation and were harmed. This argument, however, is
20 contradicted by the specific facts plead in the FAC, as set forth above. More significantly, the
21 Hahn Defendants present this argument without any legal support or authority. The Court has no
22 obligation to even consider, and should summarily reject, the Hahn Defendants' unsupported and
23 flawed arguments on this issue. Quillen v. State, 112 Nev. 1369, 1380, 929 P.2d 893, 900 (Nev.
24 1996) (concluding that a court may summarily reject a novel legal proposition when no relevant
25 authority is cited)(citing Tahoe Village Realty v. DeSmet, 95 Nev. 131, 136, 590 P.2d 1158,
26 1162 (1979)).

27 **4. Defendants' argument regarding damages is misplaced.**

28 As noted above, Plaintiffs' have more than sufficiently pled their claim for negligent
misrepresentation. However, Defendants also argue that they are entitled to summary judgment
because, they assert, Plaintiffs have suffered no damages. The Hahn Defendants base this
assertion on their flawed interpretation of Goodrich & Pennington Mortgage Fund, Inc. v. J.R.
Woolard, Inc., 120 Nev. 777, 101 P.3d 792 (Nev. 2004). Defendants' rely on, and cite to the
court, paraphrased and incomplete language for the standard for damages in a negligent
misrepresentation case. Mot. 6:22-28 - 7:1-6.

1 The correct and complete analysis and ruling of the Nevada Supreme Court sets forth the
2 following analysis of damages in negligent misrepresentation cases:

3 We join those jurisdictions and embrace the notion that damage
4 awards in connection with negligent misrepresentation cases
5 include (1) the difference between the value of what the plaintiff
6 received in the induced transaction and the value given for it, and
7 (2) pecuniary loss sustained in consequence of the plaintiff's
8 reliance upon the false representation.

9 Id. at 782, 795-96. Therefore, the Hahn Defendants assertion that Plaintiff has suffered no
10 damages is inaccurate. Specifically, the Hahn Defendants argue that Plaintiffs have suffered no
11 damages because they purchased shares for six-dollars and so did every other shareholder. Mot.
12 7:15-18. This analysis is utterly misplaced and does not follow the standard set in Goodrich &
13 Pennington.

14 Plaintiffs have alleged that Defendants negligently misrepresented that the securities were
15 exempt from registration under Nevada securities laws because they fell within an exemption.
16 Ex. 6, 15:21-28 - 16:1-16. However, if that representation was false, as alleged, and the
17 securities do not qualify for that exemption, the value of those shares is not six dollars, but zero
18 dollars for every single shareholder, because they received illegally issued stock. Further, if the
19 representations were false, as alleged, Kokoweef is subject to potential liability to its
20 shareholders to rescind one-hundred percent of the shares, and potential civil and criminal
21 penalties for violating state securities laws. Thus, if Plaintiffs prove the stock was sold in
22 violation of securities laws the stock is worthless and Plaintiffs have suffered the loss of the
23 consideration they paid for their shares, as well as "consequential damages", defined as an
24 independent factual analysis of damages "of a kind that might reasonably be expected to result
25 from reliance upon the misrepresentation." Goodrich & Pennington, 120 Nev. at 784, 101 P.3d
26 at 796-97 (quoting Restatement (Second) of Torts § 549 cmt. d (1977)).

27 Based on Goodrich & Pennington, and the allegations in the FAC, the Hahn Defendants'
28 Motion for Summary Judgment on the Fourth Cause of Action for Negligent Misrepresentation
must fail.

////

1 **5. Plaintiffs Have Adequately Pled Causes of Action for Unjust Enrichment.**

2 Despite the fact that the Hahn Defendants should be barred from seeking any type of
3 summary adjudication on Plaintiffs' Eighth Cause of Action for Unjust Enrichment, should this
4 Court decide to consider the Hahn Defendants' MPSJ on the Eighth Cause of Action, the Hahn
5 Defendants utterly fail to meet their burden to obtain summary judgment on this cause of action
6 as well.

7 As noted above, the Hahn Defendants' misapprehend the standards required for pleading
8 on Causes of Action for Unjust Enrichment. Nevada is a "notice" pleading state, which,
9 therefore, means that Nevada's courts "liberally construe pleadings to place into issues matters
10 that are fairly noticed to the adverse party". Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 675
11 (Nev. 1984). Causes of action which require pleading with specificity are contained in NRCP
12 9(b), and include fraud, mistake or condition of mind. Unjust enrichment is a claim in equity
13 which precludes a person from having and retaining a benefit which in equity and good
14 conscience belongs to another. Unionamerica Mortgage and Equity Trust v. McDonald, 97 Nev.
15 210, 212, 626 P.2d 1272, 1273 (Nev. 1981). As such, unjust enrichment, does not fall within the
16 parameters of NRCP 9(b), and does not mandate the level of pleading asserted by the Hahn
17 Defendants. The Hahn Defendants have no legal support for this novel proposition, and,
18 therefore, the Court may summarily reject this argument. Quillen v. State, 112 Nev. 1369, 1380,
19 929 P.2d 893, 900 (Nev. 1996) (concluding that a court may summarily reject a novel legal
20 proposition when no relevant authority is cited)(citing Tahoe Village Realty v. DeSmet, 95 Nev.
21 131, 136, 590 P.2d 1158, 1162 (1979)).

22 Nonetheless, the First Amended Complaint (hereafter the "FAC") more than adequately
23 pleads the requisite assertions to support a claim for Unjust Enrichment. Paragraph 99 of the
24 FAC states: "Plaintiffs are informed and believe, and therein allege, that Defendants HAHN,
25 HAHN'S WORLD, and DOES 1 through 100, inclusive, were unjustly enriched by the illegal
26 transactions and activities of HAHN in the sale on unregistered securities and the diversion of
27 corporate funds and assets for the personal use of HAHN and HAHN'S WORLD." Ex. 6, ¶ 99.

1 Finally, Plaintiffs have been waiting for counsel for the Hahn Defendants to circulate a
2 Report and Recommendation (hereafter the "DCCR") on his April 2009 Motion to Quash Certain
3 Subpoenas, as ordered by the Discovery Commissioner in August 2009. Ex. 5. See Taylor
4 Declaration. When it became clear that counsel for the Hahn Defendants was not going to ever
5 prepare and circulate this DCCR, counsel for Plaintiffs drafted one based on the language of
6 Commissioner Bulla's minute order and submitted it to her office for review. It was rejected
7 because it was not prepared, as ordered, by counsel for the Hahn Defendants. As a result of this
8 delay, Plaintiffs have been unable to appeal Commissioner Bulla's ruling which quashed
9 subpoenas for certain bank records.

10 Plaintiffs' believe that these bank records contain information to refute the
11 contention in Christina Hahn's affidavit that: "All funds received by HAHN'S WORLD from
12 KOKOWEEF and EIN were provided for the payment of goods and materials delivered to
13 KOKOWEEF and EIN. If any funds were recived by LARRY from KOKOWEEF or EIN, they
14 were for reimbursement of advances made by LARRY for KOKOWEEF. Neither LARRY nor
15 HAHN'S WORLD have received payment of any funds or transfer of any property, that was not
16 given for payment fort advances made, goods supplied or reimbursement." See Mot., Ex. B.,
17 Affidavit of Christina Hahn, 2:1-7. As a result of Plaintiffs' inability to even argue to obtain
18 these records, Plaintiffs cannot present by affidavit facts essential to their Opposition, and, as
19 such, the Motion must be denied. NRCP 56(f).

20
21 **C. DEFENDANT'S REQUEST FOR AN ADVISORY OPINION AS TO WHETHER THE**
22 **PENDING ACTION WAS PROPERLY BROUGHT UNDER §41.520 FAILS TO MEET THE**
STANDARD FOR SUMMARY JUDGMENT

23
24 **1. Defendants' are improperly seeking reconsideration of a prior ruling.**

25 Defendants appear to be seeking some type of improper advisory ruling from the Court on
26 a question, that they claim was not properly addressed by Judge Denton at the time of the ruling
27 on their Motion to Dismiss. The Hahn Defendants assert that they do not believe that the FAC
28 constitutes a derivative action, as set forth in NRCP 23.1. Mot. 10:8. While the Hahn

1 Defendants admit raising this in their December 2008 Motion to Dismiss, they then state that
2 they “do not believe Judge Denton addressed the issue.” Mot. 10:6-8. The time for questioning
3 Judge Denton’s ruling on the Motion to Dismiss has long since past, and the Hahn Defendants
4 have no legal basis upon which to request this Court reconsider this previously ruled upon issue.

5 Judge Denton’s Order was entered more than one year ago. Mot., Ex. A, Attachment 3.
6 Such clarification cannot be sought pursuant to a motion for reconsideration under EDCR 2.24
7 because “such relief must be sought within ten (10) days after service of written notice of the
8 order or judgment unless the time is shortened or enlarged by order”, which has not been done in
9 this matter. EDCR 2.24(b). Further, such relief cannot be sought under NRCP 60, because the
10 outside time in which an order can be challenged is six (6) months. NRCP 60(b). Therefore,
11 Defendants’ complaint that they “do not believe Judge Denton addressed the issue”, is an utterly
12 inappropriate and unsupported attempt to circumvent the clear dictates in the Nevada Rules of
13 Civil Procedure and the Eighth Judicial District Court Rules, and should be disregarded by this
14 Court.

15 Further, Judge Denton’s ruling was clear and unequivocal. He stated: “The Eighth and
16 Tenth Causes of Action are the only ones that appear to be derivative.” Mot. Ex. A, Attachment
17 2, 3:22-24 n.2. Therefore, it is clear that Judge Denton did address the issue, and found that
18 Plaintiffs’ claims were derivative under NRCP 23.1.

19
20 **2. Judge Denton has already determined that Plaintiffs’ have a proper derivative**
21 **action.**

22 The argument submitted by the Hahn Defendants in their Motion is, with the exception of
23 different numbers of identified shareholders and new allegations about the status of Ted Burke as
24 a shareholder, the exact same argument presented in their Motion to Dismiss. Ex. 1. Judge
25 Denton read this argument, read Plaintiffs Opposition and ruled upon issue.

26 For this Court’s benefit, following is Plaintiffs’ response to the Hahn Defendant’s
27 recapitulation of their year-old argument.

1 Defendants argue that Plaintiffs fail to meet the requirements for a derivative action, as
2 provided by NRCP 23.1. However, Defendants' assertions regarding Plaintiffs' FAC in relation
3 to NRCP 23.1 includes unsupported, novel legal arguments, and inapplicable analysis, and
4 therefore, should be denied. As discussed below, Plaintiffs sufficiently meet the requirements for
5 a derivative action, and therefore, Defendants' Motion must be denied.

6 **a. Plaintiffs Fairly and Adequately Represent the Interests of the Shareholders:**

7 The Hahn Defendants first argue that Plaintiffs do not fairly and adequately represent the
8 interests of the remaining Kokoweef shareholders. The two flawed bases in the Motion for this
9 claim are that: 1) Plaintiffs do not represent a sufficient number of shares and shareholders; and
10 2) Plaintiffs interests are different than the majority of Kokoweef shareholders and their claim for
11 relief, allegedly, is only for their own benefit. Both of these arguments lack factual and legal
12 support, and therefore, must fail.

13 First, the Hahn Defendants make a stretched argument that Plaintiffs do not
14 mathematically represent a sufficient number of issued shares of the corporation to maintain this
15 action. Defendants cite no authority for this non-existent criteria, and such a technical
16 requirement is not found in NRCP 23.1 or in NRS 41.520. The Hahn Defendants fail to grasp
17 the basis for Plaintiffs' FAC. Regardless of the number of shares held by Plaintiffs, Plaintiffs'
18 claim asserts that the Kokoweef and EIN stock was not exempt from registration. When
19 Plaintiffs are able to review stock records and ledgers, and shareholder information to prove that
20 the stock did not fall under any exemption, then 100% of the shareholders will be holding invalid
21 stock. This question, therefore, affects all of the shareholders, and could have adequately been
22 raised by a shareholder owning and holding only one share of stock.

23 EDCR 2.20(e) requires that a memorandum of points and authorities contain more than
24 bare citations to statutes, rules of case authority, or the court may decline to consider it.
25 Additionally, the Nevada Supreme Court has repeatedly ruled that the court may disregard novel
26 legal arguments, which are unsupported by legal authority. See Quillen v. State, 112 Nev. 1369,
27 1380 (1996); Citti v. State, 107 Nev. 89, 91 (1991); Tahoe Village Realty v. DeSmet, 95 Nev.
28 131 (1979) (overruled on other grounds). Without a shred of legal authority, Defendants'

1 contention that Plaintiffs do not own a significantly significant portion of Kokoweef stock to
2 “fairly and adequately” represent the interests of the remaining shareholders should be
3 disregarded.

4 Notwithstanding Defendants’ lack of legal authority for this claim, Larson v. Dumke, 900
5 F.2d 1363 (9th Cir. 1990), the very case Defendants rely upon to argue that Plaintiffs interests are
6 different than the majority of the shareholders, provides contrary authority. In Larson, the court
7 stated: “[W]e are persuaded that a single shareholder may bring a derivative suit”. Id. at 1368
8 (citing Lewis v. Curtis, 671 F.2d 779, 788-89 (3d Cir. 1982) (holding that one plaintiff who
9 owned 100 shares in a corporation with nearly 8 million shares outstanding was considered an
10 adequate representative under Rule 23.1) (distinguished on other grounds)). See also Simon v.
11 Mann, 373 F. Supp. 2d 1196 (D. Nev. 2005), a case where the allegations are very similar to the
12 instant, in which the Court found that the interests of justice may best be served by applying the
13 closely-held corporation exception, which allows a minority shareholder to file a direct or
14 individual action against another shareholder for wrongs which would normally have to be
15 brought derivatively on behalf of the corporation. Simon, 373 F. Supp 2d at 1198. Kokoweef,
16 Inc. is a closely held corporation run by one majority shareholder who Plaintiffs allege is guilty
17 of many wrongs.

18 Defendants next claim that Plaintiffs do not fairly and adequately represent the interests
19 of the shareholders because, among other perceived deficiencies, Plaintiffs’ interests are
20 “different than the majority of the shareholders of KOKOWEEF.” Mot. 7:12-14. The basis for
21 this claim is the prayer for relief pled by Plaintiffs and a list of factors set forth in Larson v.
22 Dumke, 900 F. 2d 1363, 1367 (9th Cir. 1990), which Defendants claim describe the standards by
23 which a court should determine if Plaintiffs fairly and adequately represent the interests of the
24 shareholders.

25 An adequate representative must have the capacity to vigorously
26 and conscientiously prosecute a derivative suit and be free from
27 economic interests that are antagonistic to the interests of the class.
Other courts have stated certain factors to determine adequacy of
representation: “(1) indications that the plaintiff is not the true
party in interest; (2) the plaintiff’s unfamiliarity with the litigation
and unwillingness to learn about the suit; (3) the degree of control

1 exercised by the attorneys over the litigation; (4) the degree of
2 support received by the plaintiff from other shareholders; (5) the
3 lack of any personal commitment to the action on the part of the
4 representative plaintiff; (6) the remedy sought by plaintiff in the
5 derivative action; (7) the relative magnitude of plaintiff's personal
6 interests as compared to his interest in the derivative action itself;
7 and (8) plaintiff's vindictiveness toward the defendants. These
8 factors are "intertwined or interrelated, and its frequently a
9 combination of factors which leads a court to conclude that the
10 plaintiff does not fulfill the requirements of 23.1.

11 (Citations omitted). However, despite citing to this case, Defendants provide no analysis of these
12 factors, and simply assert that Plaintiffs do not meet them. In fact, pursuant to Larson, Plaintiffs
13 more than fairly and adequately represent the interests of the shareholders. NRCP 23.1.

14 First, in regard to Defendants' argument that Plaintiffs' interests are different than the
15 other Kokoweef shareholders, Defendants fail to appreciate that no direct cause of action has
16 been alleged by the Plaintiffs against the corporation. Plaintiffs have prayed for rescission,
17 because the Defendants illegally issued Kokoweef stock to ALL shareholders, not just the
18 Plaintiffs. This request is not to simply obtain damages for the individual Plaintiffs, but to
19 provide a benefit to Kokoweef and all its shareholders. Rescinding the illegal stock, and
20 re-issuing it to all of Kokoweef's shareholders will benefit the corporation and all of the
21 shareholders. A rescission and legal re-issuance of the stock to all shareholders will clean up the
22 past securities fraud upon all shareholders and mitigate against potential criminal and civil
23 penalties, as well as potential third party claims for monetary damages by the shareholders.

24 Plaintiffs also meet many of the other factors set forth in Larson. The facts underlying
25 Plaintiffs' Complaint began in June 2007, when Plaintiff Burke discovered that Defendant Hahn
26 was not complying with corporate by-laws, including the completion of a financial audit. Ex. 6,
27 ¶ 10. Plaintiffs also discovered that Defendant Hahn was using corporate funds for his personal
28 financial obligations. Ex. 6, ¶ 17. Finally, Plaintiffs discovered that Kokoweef's shares had been
illegally issued. Ex. 6, ¶ 14-15. Curing any and all of these offending and illegal behaviors by
Defendants remains the primary goal of Plaintiffs so that Kokoweef is operated legally, and with
the duty of care and loyalty owed to all shareholders. Therefore, the true party in interest,
regardless of Defendants' interpretation of the pleadings is Kokoweef.

1 Other Larson factors examine components of the Plaintiffs' vigorous and conscientious
2 prosecution of the derivative suit. These include the Plaintiffs' familiarity with the litigation and
3 willingness to learn about the suit, the degree of control of the Plaintiffs, the personal
4 commitment of the Plaintiffs to this action. Id. at 1367. By any measure, the Plaintiffs will fairly
5 and adequately represent the class under these factors. As has been demonstrated throughout this
6 litigation, the Plaintiffs, have vigorously and conscientiously prosecuted this action. They have
7 taken time off work and traveled from out of state to attend the majority of the hearings. They
8 have provided numerous affidavits in support of endless law and motion work. They have kept
9 in regular contact with non-Plaintiff shareholders to apprise them of the status of the litigation.

10 Defendants further claim that Plaintiffs' prayer for relief and manner of pleading indicates
11 that the Plaintiffs are not acting for the benefit of the corporation. As has been described above,
12 this is simply not the case, and Defendants have provided no legal authority in support of this
13 claim. Instead, Plaintiffs have properly pled their requests for relief and properly named
14 Kokoweef as a nominal defendant, even though the fruits of the litigation will be for the benefit
15 of Kokoweef. In a derivative suit, any recovery the suing shareholder obtains goes to the
16 corporation because, " '[I]n reality the corporation is the plaintiff, the stockholder being only a
17 nominal plaintiff.' " Sobba v. Elmen, 462 F. Supp. 2d 944 (E.D. Ark. 2006). " ' Although the
18 corporation is named in the complaint as a defendant, its interests are not necessarily adverse to
19 those of the plaintiff since it will be the beneficiary of any recovery.' " Id. at 947 (quoting 13
20 William Meade Fletcher Et Al., Fletcher Encyclopedia of the Law of Private Corporations § 5997
21 (perm. ed., rev. vol. 2004)).

22
23 D. DEFENDANTS REFUSAL TO PRODUCE DOCUMENTS HAS MADE IT IMPOSSIBLE, AS
24 CONTEMPLATED BY NRCP 56(f) TO MOVE FORWARD WITH THEIR CLAIMS

25 As noted in the Declaration of Jennifer L. Taylor, and as further detailed in the Motion to
26 Compel, Defendants' refusal to produce, or properly object to, Plaintiffs' discovery requests has
27 made it impossible for Plaintiffs to move forward with their case or "present by affidavit facts
28 essential to justify" Plaintiffs Opposition to the Motion. NRCP 56(f).

1 Defendants, and specifically Defendant Clary in his Motion for Summary Judgment,
2 assert that Plaintiffs' have no basis for allegations about the illegal issuance of Kokoweef shares
3 following the reorganization. However, Plaintiffs allegations surrounding the reorganization
4 center on securities exemptions being claimed by Defendant Clary.

5 Mr. Clary contends that he reorganized Kokoweef's predecessor company, Explorations
6 Incorporated of Nevada, under a so-called exemption to the Nevada Revised Statutes, found in
7 NRS 90.530 (17)(b) and NRS 90.530(11)(a) permitted the registration of the new Kokoweef
8 shares through the reorganization.

9 NRS 90.530 (17)(b) states:

10 A transaction involving the distribution of the securities of an
11 issuer to the security holders of another person in connection with
12 a merger, consolidation, exchange of securities, sale of assets or
13 other reorganization to which the issuer, or its parent or subsidiary,
14 and the other person, or its parent or subsidiary, are parties, if: . . .
15 (b) The securities to be distributed are not required to be registered
16 under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., written
notice of the transaction and a copy of the materials, if any, by
which approval of the transaction will be solicited, together with a
nonrefundable fee of \$300, are given to the Administrator at least
10 days before the consummation of the transaction and the
Administrator does not, by order, disallow the exemption within
the next 10 days.

17 Defendant Clary's basis for claiming this broader exemption is found in NRS 90.530(11)(a),
18 which allows an exemption if:

19 The transaction is part of an issue in which there are not more than
20 25 purchasers in this State, other than those designated in
subsection 10, during any 12 consecutive months;

21 Plaintiffs believe that this exemption was not properly claimed, and that sales of share exceeded
22 the limitation imposed by NRS 90.530(11)(a). Therefore, shareholder records are directly related
23 to both the claim of Plaintiffs and the defense of Mr. Clary. However, because Defendants have
24 refused to produce stock ledgers, stock certificates, and shareholder lists, among other
25 documents, it has been impossible for Plaintiffs to move forward with their case and present
26 evidence that the shares, both before and after the reorganization, failed to qualify under these
27 exemptions. Additionally, throughout the litigation, counsel for the Hahn Defendants has
28 claimed varying numbers of Kokoweef shareholders exist, without any evidentiary support. See,

1 e.g., Mot. 10:25-26 ("KOKOWEEF has at least Eight Hundred and Eighty (880) shareholders);
2 (Ex.1, 6:8, where Kokoweef is claimed to have five-hundred and eighty shareholders).
3 Additionally, review of the informally produced Kokoweef records indicate that the Kokoweef
4 shares do not fall within the exemption described above. (See Ex. 2, 2: 13-16). Plaintiffs,
5 however, are currently precluded from producing documents to support their opposition because
6 of Defendants' discovery delays. NRCP 56(f). See Declaration of Jennifer L. Taylor.
7 Accordingly, the Motion should be denied.

8
9 **IV. CONCLUSION**

10 Based on the foregoing, the Hahn Defendant's Motion for Summary Judgment should be
11 denied.

12
13 DATED this 16th day of March, 2010.

14
15 ROBERTSON & VICK, LLP

16
17 By: 

18 ALEXANDER ROBERTSON, IV
19 Bar No. 8642
20 JENNIFER L. TAYLOR
21 Bar No. 5798
22 401 N. Buffalo Drive, Suite 202
23 Las Vegas, Nevada 89145

24 *Attorneys for Plaintiffs*
25
26
27

1 **DECLARATION OF JENNIFER L. TAYLOR, ESQ.**
2 **IN SUPPORT OF REPLY TO OPPOSITION TO MOTION TO COMPEL**

3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss:

5 JENNIFER L. TAYLOR, ESQ., being first duly sworn, deposes and states that she is an
6 attorney licensed to practice in all courts in the State of Nevada, that she is counsel for Plaintiffs
7 that she has personal knowledge of the facts stated herein, except for those stated and made upon
8 information and belief, wherein so indicated.

9 1. I make this Declaration on behalf of Plaintiffs' Opposition the Motion for Partial
10 Summary Judgment (hereafter the "MPSJ") filed by Defendants Larry L. Hahn and Hahn's
11 World of Surplus (hereafter the "Hahn Defendants"). Further, I make this Declaration in
12 conjunction with NRCP 56(f).

13 2. As set out in great detail in Plaintiffs' Motion to Compel Responses to Requests
14 for Production and to Extend Discovery Deadlines (Second Request), Plaintiffs have been
15 attempting to obtain corporate records of Kokoweef since August 2009. This Declaration
16 incorporates Plaintiffs' Motion to Compel and all exhibits and affidavits thereto, along with
17 Plaintiffs' Reply to the Oppositions to Plaintiffs' Motion to Compel as if the same were fully set
18 forth herein.

19 3. The Defendants, including the Hahn Defendants, have failed to properly respond
20 to Plaintiffs' Requests for Production for these records. Counsel for Kokoweef has stated his
21 intention to delay any production of documents by asserting, in a December 2009 EDCR 2.34
22 conference, that should I file a Motion to Compel, I would not see any records "this month, next
23 month or the next month".

24 4. Additionally, I have been waiting for counsel for the Hahn Defendants to circulate
25 a Report and Recommendation (hereafter the "DCCR") on his April 2009 Motion to Quash
26 Certain Subpoenas, as ordered by the Discovery Commissioner in August 2009. When it became
27 clear that counsel for the Hahn Defendants was not going to ever prepare and circulate this
28 DCCR, I drafted one based on the language of Commissioner Bulla's minute order and submitted

1 it to her office for review. It was rejected because it was not prepared, as ordered, by counsel for
2 the Hahn Defendants. As a result of this delay, I have been unable to appeal Commissioner
3 Bulla's ruling which quashed subpoenas for certain bank records.

4 5. Plaintiffs' believe that these bank records will contain information to refute the
5 contention in Christina Hahn's affidavit that: "All funds received by HAHN'S WORLD from
6 KOKOWEEF and EIN were provided for the payment of goods and materials delivered to
7 KOKOWEEF and EIN. If any funds were recived by LARRY from KOKOWEEF or EIN, they
8 were for reimbursement of advances made by LARRY for KOKOWEEF. Neither LARRY nor
9 HAHN'S WORLD have received payment of any funds or transfer of any property, that was not
10 given for payment fort advances made, goods supplied or reimbursement." See Mot., Ex. B.,
11 Affidavit of Christina Hahn, 2:1-7. As a result of Plaintiffs' inability to even argue to obtain
12 these records, Plaintiffs cannot present by affidavit facts essential to their Opposition.

13 6. The Requests for Production, which are the subject of the Motion to Compel,
14 seek production of stock ledgers, stock certificates, shareholder lists, etc. Defendants have
15 refused to produce these documents, yet apparently rely on them in the Affidavit of Larry C.
16 Hahn and the argument of counsel for the Hahn Defendants.

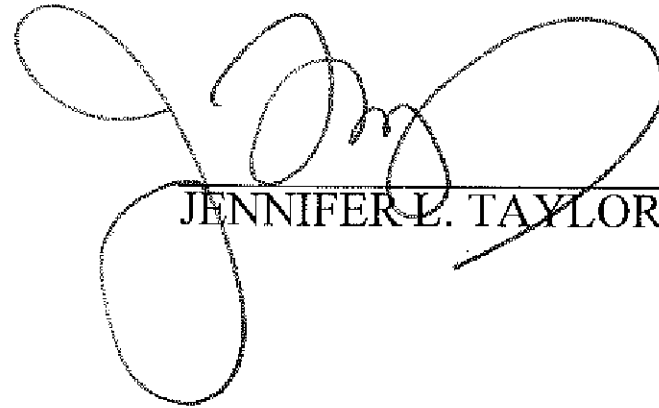
17 7. Mr. Clary contends that he reorganized Kokoweef's predecessor company,
18 Explorations Incorporated of Nevada, under a so-called exemption to the Nevada Revised
19 Statutes, found in NRS 90.530 (17)(b) and NRS 90.530(11)(a), which permitted the registration
20 of the new Kokoweef shares through the reorganization.

21 8. Plaintiffs believe that this exemption was not properly claimed, and that sales of
22 shares exceeded the limitation imposed by NRS 90.530(11)(a). Therefore, shareholder records
23 are directly related to both the claim of Plaintiffs and the defense of Mr. Clary. However,
24 because Defendants have refused to produce stock ledgers, stock certificates, and shareholder
25 lists, among other documents, it has been impossible for Plaintiffs to move forward with their
26 case and present evidence that the shares, both before and after the reorganization, failed to
27 qualify under these exemptions. A review of the informally produced Kokoweef records indicate

1 that the Kokoweef shares do not fall within this exemption (See Ex. 2, 2: 13-16), but actual
2 corporate records are needed to confirm this.

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

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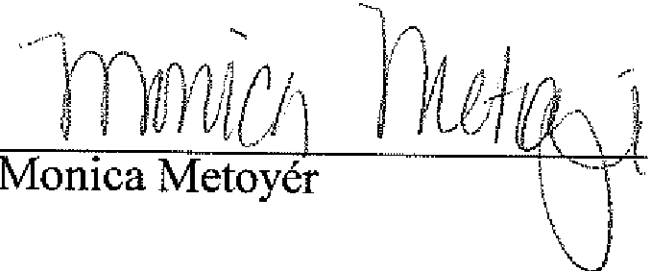
JENNIFER L. TAYLOR

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 16th day of March, 2010, I served a copy of the above and
3 foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT LARRY L. HAN and HAHN'S**
4 **WORLD OF SURPLUS, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT** by
5 depositing a copy thereof for mailing at Las Vegas, Nevada, postage prepaid, addressed to:

6 M. Nelson Segel, Chartered
7 M. Nelson Segel, Esq.
8 624 South 9th Street
9 Las Vegas, NV 89101
10 Telephone: (702) 385-6266
11 Facsimile: (702) 382-2967
12 **Attorneys for Larry Hahn and**
13 **Hahn's World of Surplus, Inc.**

Patrick C. Clary, Chartered
Patrick C. Clary, Esq.
7201 West Lake Mead Boulevard
Suite 410
Las Vegas, NV 89129
Telephone: (702) 382-0813
Facsimile: (702) 382-7277
Attorneys for Kokoweef, Inc.

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Monica Metoyer

Exhibit 1

ORIGINAL

FILED

ll

0056
M NELSON SEGEL, CHARTERED
M NELSON SEGEL, ESQUIRE
Nevada Bar No. 0530
624 South 9th Street
Las Vegas, Nevada 89101
Telephone: (702) 385-5266
Attorneys for Defendants Larry Hahn
and Hahn's World of Surplus, Inc.

2008 NOV -4 P 1:54

E. J. Smith
CLERK OF THE COURT

DISTRICT COURT OF NEVADA
COUNTY OF CLARK

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

CASE NO. A558629

DEPT. XIII

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; PATRICK C. CLARY, an
individual; DOES 1 through 100, inclusive;

Defendants,

and

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

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

Nominal Defendants.

**DEFENDANTS LARRY HAHN AND HAHN'S WORLD OF SURPLUS, INC.'S
MOTION TO DISMISS AMENDED VERIFIED DERIVATIVE COMPLAINT**

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

CLERK OF THE COURT

NOV 04 2008

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MC

1 move this Court for its order dismissing the present case on the basis that Plaintiffs have failed to
2 set forth a claim upon which relief can be granted. This Motion is made and based upon all of the
3 pleadings and papers on file and the points and authorities set forth herein.

4 DATED this 30th day of November, 2008.

5 M NELSON SEGEL, CHARTERED

6
7 By 

8 M NELSON SEGEL, ESQUIRE

9 Nevada Bar No. 0530

624 South 9th Street

10 Las Vegas, Nevada 89101

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

11
12 **NOTICE OF MOTION**

13 TO: PLAINTIFFS; and

14 TO: JENNIFER TAYLOR, ESQUIRE, their attorney.

15 NOTICE IS HEREBY GIVEN that the hearing on the above and foregoing DEFENDANTS
16 LARRY HAHN AND HAHN'S WORLD OF SURPLUS, INC.'S MOTION TO DISMISS
17 AMENDED VERIFIED DERIVATIVE COMPLAINT will be held in Dept. No. XIII of the above-
18 entitled Court, in the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Clark County, Nevada
19 on the 8th day of December, 2008, at the hour of 9:00 A. M., or as soon thereafter as counsel be
20 heard.

21 DATED this 30th day of November, 2008.

22 M NELSON SEGEL, CHARTERED

23
24 By 

25 M NELSON SEGEL, ESQUIRE

26 Nevada Bar No. 0530

624 South 9th Street

27 Las Vegas, Nevada 89101

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

MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACKGROUND

The original Verified Derivative Complaint ("ORIGINAL COMPLAINT") in this matter was filed by Plaintiff Ted Burke ("BURKE") and the other plaintiffs (BURKE and the other plaintiffs collectively referred to herein as "PLAINTIFFS") on or about the 7th day of March, 2008 as a derivative action pursuant to NRCP 23.1. After holding a lengthy evidentiary hearing on the detailed allegations of allegedly wrongful conduct by MOVING DEFENDANTS, this Court entered an order that found Kokoweef, Inc. ("KOKOWEEF") had met its burden under NRS §41.520(3) that "that there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against [KOKOWEEF] will benefit [KOKOWEEF] or its security holders." PLAINTIFFS had a very simple burden, present any fact that would support their detailed allegations of alleged wrongdoing by MOVING DEFENDANTS. They failed to carry their simple burden! As a result of the hearing, PLAINTIFFS were required to post security in the sum of Seventy Five Thousand Dollars (\$75,000)("SECURITY ORDER").

PLAINTIFFS terminated their attorney and retained new attorneys. Approximately ten (10) days after the Court entered the SECURITY ORDER, PLAINTIFFS filed the so-called Amended Verified Derivative Complaint ("AMENDED COMPLAINT") which **removed all factual allegations of specific misconduct** and added purported claims for violations of state and federal securities laws based upon generalized statements and parroting of various statutes. The AMENDED COMPLAINT also added KOKOWEEF, Inc.'s attorney, Patrick C. Clary, Esquire ("CLARY"), as a defendant.

The present motion has been brought on the basis that PLAINTIFFS have failed to satisfy the basic pleading requirements for the commencement of a derivative action or a securities action. More importantly, a securities claim is personal to the shareholder, or shareholders, who were defrauded and is against the corporation and the person, or persons, who acted in concert with the corporation to defraud the purchaser or seller of the security. By definition, Plaintiffs, who allege to have been defrauded in the purchase or sale of a security, cannot represent the interests of the shareholders in a derivative action. This is discussed below.

1 This Motion is made pursuant to Rule 12(b)(5) of the Nevada Rules of Civil Procedure
 2 ("NRCP") for Plaintiffs' "failure to state a claim upon which relief can be granted," which defense
 3 can be asserted by motion. NRCP 12(b)(5) provides:

4 (b) How Presented. Every defense, in law or fact, to a claim for relief in any
 5 pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be
 6 asserted in the responsive pleading thereto if one is required, except that the
 7 following defenses may at the option of the pleader be made by motion: . . . (5)
 8 failure to state a claim upon which relief can be granted, A motion making any
 9 of these defenses shall be made before pleading if a further pleading is permitted. No
 10 defense or objection is waived by being joined with one or more other defenses or
 11 objections in a responsive pleading or motion. . . . If, on a motion asserting the
 12 defense numbered (5) to dismiss for failure of the pleading to state a claim upon
 13 which relief can be granted, matters outside the pleading are presented to and not
 14 excluded by the court, the motion shall be treated as one for summary judgment and
 15 disposed of as provided in Rule 56, and all parties shall be given reasonable
 16 opportunity to present all material made pertinent to such a motion by Rule 56.

17 The Supreme Court has had long standing standards for dismissal of a complaint pursuant
 18 to NRCP 12(b)(5). In the case of *Hampe v. Foote* 118 Nev. 405, 47 P.3d 438 (2002), at page 408,
 19 the Court stated:

20 This court rigorously reviews a district court's dismissal of an action under NRCP
 21 12(b)(5) for failure to state a claim. [*Blackjack Bonding v. Las Vegas Mun. Ct.*, 116
 22 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000)]. All factual allegations in the complaint
 23 are regarded as true, and all inferences are drawn in favor of the non-moving party.
 24 [*Id.* (citing *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997))].
 25 A complaint should only be dismissed if it appears beyond a reasonable doubt that
 26 the plaintiff could prove no set of facts, which, if true, would entitle him to
 27 relief.[*Id.*]. **Dismissal is proper where the allegations are insufficient to establish**
 28 **the elements of a claim for relief.** [*Nevada Power Co. v. Haggerty*, 115 Nev. 353,
 358, 989 P.2d 870, 873 (1999)]. (Emphasis added).

29 The Supreme Court recently modified those standards. In *Buzz Stew, LLC v. City of North Las*
 30 *Vegas*, ___ Nev. ___, 2008 WL 1747877 (2008). The Court stated, at page 3 of the Opinion:

31 The City's motion to dismiss Buzz Stew's complaint under NRCP 12(b)(5) "is subject
 32 to a rigorous standard of review on appeal." Accordingly, this court will recognize
 33 all factual allegations in Buzz Stew's complaint as true and draw all inferences in its
 34 favor. Buzz Stew's complaint should be dismissed only if it appears beyond a doubt
 35 that it could prove no set of facts, which, if true, would entitle it to relief. [FN6].

36 Footnote 6 stated,

37 Our prior cases have not been completely consistent in applying the standard of
 38 review for failure to state a claim upon which relief can be granted. The appropriate
 39 standard requires a showing beyond a doubt. To the extent that these cases required
 40 a showing of proof beyond a reasonable doubt, they are disavowed.

1 The change was to remove the term "reasonable" as a modifier of "doubt." The Court did not
2 explain its intent. Whether the removal of "reasonable" created a lower or higher standard was not
3 set forth in the case. MOVING DEFENDANTS do not believe the change is meaningful for the
4 purposes of dealing with the present Motion.

5 Just as the Court could not find a probability that KOKOWEEF would have benefitted from
6 the allegations of the ORIGINAL COMPLAINT, the AMENDED COMPLAINT, without any
7 underlying facts and only conclusory statements, cannot support a claim for relief and should be
8 dismissed.

9 The ORIGINAL COMPLAINT purported to be a derivative action brought by concerned
10 shareholders against MOVING DEFENDANTS. The right to commence a derivative action is not
11 a common law right. It is provided for in rules of courts and statutes. Nevada has conferred this
12 right in NRS §41.520(2) and NRCP 23.1.

13 REQUIREMENTS FOR DERIVATIVE ACTION

14 The right to commence a derivative action is provided for in NRCP 23.1 which provides:

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

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

27 ...

28 ...

1 PLAINTIFFS DO NOT FAIRLY AND ADEQUATELY REPRESENT
2 THE INTERESTS OF THE SHAREHOLDERS

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

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

7 Based upon the allegations of the AMENDED COMPLAINT which must be taken as true
8 for the purpose of this Motion to Dismiss, KOKOWEEF has at least Five Hundred Eighty (580)
9 shareholders, with at least One Million Fifty Seven Thousand Five Hundred Sixty Five (1,057,565)
10 shares of common stock outstanding. Based upon the allegations set forth in paragraphs 19 through
11 32 of the AMENDED COMPLAINT, PLAINTIFFS hold Eighty Seven Thousand Five Hundred
12 Sixty Eight (87,568) shares of the issued and outstanding shares of common stock of KOKOWEEF.
13 PLAINTIFFS represent a small number of shareholders of KOKOWEEF. It should be noted that
14 the original solicitation of each of the PLAINTIFFS, with the exception of BURKE, was made by
15 BURKE and they were brought into KOKOWEEF by BURKE.

16 Utilizing the numbers set forth in the AMENDED COMPLAINT, the PLAINTIFFS hold
17 approximately Eight and Two Tenths percent (8.2%) of the outstanding shares of common stock of
18 KOKOWEEF. If this matter proceeds, KOKOWEEF will show the Court that BURKE only holds
19 Five Thousand (5,000) shares of the common stock of KOKOWEEF, not the Seventy Five Thousand
20 (75,000) shares that he alleges. In actuality, the PLAINTIFFS only hold Twelve Thousand Five
21 Hundred Sixty Eight (12,568) shares of the common stock of KOKOWEEF, or One and One Tenth
22 (1.1%) percent of the issued and outstanding shares of the common stock of KOKOWEEF!

23 PLAINTIFFS have failed to include **any** allegations in their Complaint which would show
24 that they fairly and adequately represent the interests of the shareholders as required by NRCP 23.1.
25 This aspect of NRCP 23.1 has not been addressed by the Supreme Court of Nevada. However, the
26 9th Circuit Court of Appeals addressed the similar federal rule in the case *Larson v. Dumke*, 900 F.2d
27 1363 (9th Cir. 1990) where it stated, at page 1367:

28 An adequate representative must have the capacity to vigorously and conscientiously

1 prosecute a derivative suit and be free from economic interests that are antagonistic
 2 to the interests of the class. *See e.g., Lewis v. Curtis*, 671 F.2d 779, 788-89 (3d
 3 Cir.), *cert. denied*, 459 U.S. 880, 103 S.Ct. 176, 74 L.Ed.2d 144 (1982); *Owen v.*
 4 *Modern Diversified Industries, Inc.*, 643 F.2d 441, 443-44 (6th Cir.1981) (no
 5 antagonistic interests); *GA Enterprises, Inc. v. Leisure Living Communities, Inc.*,
 6 66 F.R.D. 123, 125-27 (D.Mass.1974), *aff'd*, 517 F.2d 24, 26-27 (1st Cir.1975).
 7 Other courts have stated certain factors to determine adequacy of representation: "(1)
 8 indications that the plaintiff is not the true party in interest; (2) the plaintiff's
 9 unfamiliarity with the litigation and unwillingness to learn about the suit; (3) the
 10 degree of control exercised by the attorneys over the litigation; (4) the degree of
 11 support received by the plaintiff from other shareholders; ... (5) the lack of any
 12 personal commitment to the action on the part of the representative plaintiff";
 13 *Rothenberg v. Security Management Co.*, 667 F.2d 958, 961 (11th Cir.1982)
 14 (citations omitted), (6) the remedy sought by plaintiff in the derivative action; (7) the
 15 relative magnitude of plaintiff's personal interests as compared to his interest in the
 16 derivative action itself; and (8) plaintiff's vindictiveness toward the defendants.
 17 *Davis v. Comed, Inc.*, 619 F.2d 588, 593-94 (6th Cir.1980). These factors are
 18 "intertwined or interrelated, and it is frequently a combination of factors which leads
 19 a court to conclude that the plaintiff does not fulfill the requirements of 23.1." *Id.*
 20 at 593. We are satisfied that an evaluation of these factors is important in
 21 determining the adequacy of representation by a derivative plaintiff under Rule 23.

22 A review of the AMENDED COMPLAINT makes it clear that PLAINTIFFS' interests are different
 23 than the majority of the shareholders of KOKOWEEF. PLAINTIFFS spend most of their
 24 AMENDED COMPLAINT, eight of ten "causes of action", attempting to set forth a claim for relief
 25 that entitles them to rescission and damages. A review of the prayer of the AMENDED
 26 COMPLAINT shows that PLAINTIFFS are not representative of the shareholders of KOKOWEEF.

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

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

MOVING DEFENDANTS believe paragraphs 4 and 5 show the true basis of the present
 action. They provide:

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

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

It is the belief of MOVING DEFENDANTS that the true purpose of this litigation is to enable

1 BURKE to take control of KOKOWEEF for his benefit and to the detriment of the shareholders of
2 KOKOWEEF who are not plaintiffs herein.

3 A review of the factors set forth in *Larson* make it clear that PLAINTIFFS do not represent
4 the interests of the majority of the shareholders of KOKOWEEF and actually, have interests that are
5 contrary to the interests of the other shareholders. PLAINTIFFS may not maintain a derivative
6 action against MOVING DEFENDANTS and KOKOWEEF.

7 PLAINTIFFS MAY NOT PROCEED WITH A DERIVATIVE ACTION
8 DUE TO THE LACK OF ADEQUATE PARTICULARITY FOR
9 FAILING TO SEEK APPROVAL OF THE BOARD OF DIRECTORS

10 Rule 23.1 further provides, also in pertinent part, as follows:

11 The complaint shall also allege with particularity the efforts, if any, made by
12 the plaintiff to obtain the action the plaintiff desires from the directors or
comparable authority and, if necessary, from the shareholders or members,
and the reasons for the plaintiff's failure to obtain the action or for not
making the effort.

13 NRS §41.520(2) also contains language that addresses the obligations to seek action from the board
14 of directors and provides, in pertinent part:

15 The complaint must also set forth with particularity the efforts of the plaintiff to
16 secure from the board of directors or trustees and, if necessary, from the shareholders
such action as he desires, and the reasons for his failure to obtain such action or the
reasons for not making such effort.

17
18 PLAINTIFFS have set forth allegations that HAHN controlled the board of directors; therefore, it
19 would have been futile to seek its approval. Paragraph 42 of the AMENDED COMPLAINT
20 provides, in pertinent part:

21 As a result of the facts set forth herein, Plaintiffs have not made any demand on the
22 Kokoweef Board of Directors to institute this action against Hahn. Such demand
would be a futile and useless act because the Board is incapable of making an
independent and disinterested decision to institute and vigorously prosecute the
23 action for the following reasons:

24 a. Due to Hahn's position as President and Treasurer, and holding a majority of
25 the shares, he is in a position to and does control the Board and the company and its
operations. There are seven board members, two of which are controlled by Hahn.
26 However, a quorum of five is required to hold a board meeting.

27 A review of these allegations make it clear that PLAINTIFFS have not satisfied their obligations
28 under NRS §41.520(2). PLAINTIFFS state that the board consisted of seven (7) members. They

1 also stated that HAHN controlled two members of the board of directors. Since HAHN would have
2 been the subject of any board action, he would have been obligated to recuse himself from
3 consideration of the action, leaving a board of six (6) directors. What PLAINTIFFS have not
4 included in their complaints, but they have filed in other documents with the Court, Plaintiffs Burke
5 and Kehoe were directors at the time of the filing the ORIGINAL COMPLAINT herein.
6 Additionally, a third director, Richard Ducheck, was part of BURKE's group who sought the records
7 of Explorations Incorporated of Nevada, Inc. ("EIN ") and KOKOWEEF for the purpose of
8 conducting an audit, but never did so. Therefore, PLAINTIFFS had three of six directors prior to
9 making a request. Even if the allegations are taken as true, as must be done in a Motion to Dismiss,
10 there is one other director who could have sided with PLAINTIFFS and the Board could have
11 approved commencing an action.

12 The Nevada Supreme Court has recently revisited the demand area and published a definitive
13 decision in *Shoen v. SAC Holding Corporation et al*, 122 Nev. 621, 137 P.3d 1171 (2006).

14 The Court discussed two Delaware cases, *Aronson v. Lewis*, 473 A.2d 805, 812 (Del.1984),
15 *overruled in part on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del.2000) and *Rales v.*
16 *Blasband*, 634 A.2d 927 (Del. 1993). The *Aronson* case had set forth the requirements of making
17 a demand when the board of directors made a business decision that is to be challenged by the
18 dissident shareholders. *Rales* applied the test from *Aronson*, but modified it for situations where the
19 present board had not participated in the matter that is the subject of the action. There does not
20 appear to be a dispute that the alleged wrongful conduct, at least to the extent that purported
21 wrongful conduct was alleged in the original Verified Derivative Complaint ("ORIGINAL
22 COMPLAINT") filed herein,¹ was not approved by the board of directors.

23 The *Schoen* case addressed the requirement set forth in NCRP 23.1 to make a demand upon
24 the Board of Directors of a corporation prior to commencing an action under NRS §41.520. The

25
26 ¹ It is the interpretation of MOVING DEFENDANTS that the so-called Amended Verified Derivative
27 Complaint sets forth two distinct causes of action, which are mutually exclusive. "Causes of Action" Nine and Ten
28 appear to be drafted to support the derivative nature of Plaintiffs' Complaint. "Causes of Action" One through Eight
appear to be set forth the support allegations of securities fraud. These claims, by their nature, seek a recovery
AGAINST the corporation and are not proper "derivative" actions. This position is supported by the "wherefore clause"
which is seeking damages on behalf of the Plaintiffs and seeks rescission of their "purchase" of stock.

1 Court stated, commencing on page 1183:

2 Thus, as with the *Aronson* test, under the *Rales* test, directors' independence can be
3 implicated by particularly alleging that the directors' execution of their duties is
4 unduly influenced, manifesting "a direction of corporate conduct in such a way as to
5 comport with the wishes or interests of the [person] doing the controlling." A lack of
6 independence also can be indicated with facts that show that the majority is
7 "beholden to" directors who would be liable or for other reasons is unable to consider
8 a demand on its merits, for directors' discretion must be free from the influence of
9 other interested persons.

10 And again, to show interestedness, a shareholder must allege that a majority of the
11 board members would be "materially affected, either to [their] benefit or detriment,
12 by a decision of the board, in a manner not shared by the corporation and the
13 stockholders." Allegations of mere threats of liability through approval of the
14 wrongdoing or other participation, however, do not show sufficient interestedness to
15 excuse the demand requirement. Instead, as the Delaware courts have indicated,
16 interestedness because of potential liability can be shown only in those "rare case[s]
17 where defendants' actions were so egregious that a substantial likelihood of director
18 liability exists."

19 ...

20 The Delaware court's approach is a well-reasoned method for analyzing demand
21 futility and is highly applicable in the context of Nevada's corporations law. Hence,
22 we adopt the test described in *Aronson*, as modified by *Rales*, above. When
23 evaluating demand futility, Nevada courts must examine whether particularized facts
24 demonstrate: (1) in those cases in which the directors approved the challenged
25 transactions, a reasonable doubt that the directors were disinterested or that the
26 business judgment rule otherwise protects the challenged decisions; or (2) in those
27 cases in which the challenged transactions did not involve board action or the board
28 of directors has changed since the transactions, a reasonable doubt that the board can
impartially consider a demand. [62]

FN62. *Rales*, 634 A.2d at 933-34. We note that in practice, the *Aronson* and *Rales*
"disinterested and independent" tests often amount to the same analysis--i.e., whether
directorial interest in the challenged act or the outcome of any related litigation
negates impartiality to consider a demand. See, e.g., *Beam II*, 845 A.2d 1040; *Kohls*
v. Duthie, 791 A.2d 772, 780-81 (Del.Ch.2000). Additionally, we point out that, on
an even-numbered board, the vote of disinterested and independent directors may be
blocked by one-half of the board's total members. See *Beam II*, 845 A.2d at 1046 n.
8 (citing *Beneville v. York*, 769 A.2d 80, 85 n. 5 (Del.Ch.2000)). Thus, when
considering whether the "majority" of an even-numbered board is incapable of
impartially considering a demand under the tests for demand futility, the "majority"
equals at least one-half of that board.

24 Applying these factors to the present case, it is clear that PLAINTIFFS had a duty to make demand
25 upon the Board of Directors of KOKOWEEF and the failure to do so prohibits their pursuit of the
26 present matter as a derivative action. They have failed to satisfy the requirements of NRS
27 §41.520(2) and NRCP 23.1.

28 The allegations of the AMENDED COMPLAINT, as well as the statute and rule, show that

1 Plaintiffs have done little, if anything, other than parroting the rule. It is important to note that
2 PLAINTIFFS have not made any allegation regarding themselves as directors or the fact, based upon
3 their pleadings, one director existed who was not under the control of HAHN. Had PLAINTIFFS
4 sought to have a board meeting held to discuss the alleged claims against MOVING DEFENDANTS,
5 the sixth director could have voted in their favor and an action would have been commenced by
6 KOKOWEEF against HAHN. If HAHN refused to have a meeting, as alleged in the AMENDED
7 COMPLAINT, this fact could have been alleged to support the futility of consulting the board of
8 directors. The failure to seek approval of the board of directors is fatal to the continuation of the
9 present action as a derivative action under NRS §41.520(2) and NRCP 23.1.

10 **THE CLAIMS ALLEGING SECURITIES FRAUD MUST BE DISMISSED**

11 **NO PRIVATE RIGHT OF ACTION EXISTS UNDER NRS §90.460**

12 While the allegations of facts in the AMENDED COMPLAINT are few and far between,
13 MOVING DEFENDANTS believe the first eight "causes of action" are based upon an alleged
14 violation of Chapter 90 of Nevada Revised Statutes. It appears that the bases for the claims are
15 alleged violations of NRS §90.460 and §90.570.

16 A review of NRS §90.460 makes it clear that this statute is to be enforced by the
17 "Administrator" and is not a private right of action. Therefore, PLAINTIFFS cannot support a claim
18 for relief based upon a violation of this statute.

19 **PLAINTIFFS HAVE FAILED TO PLEAD WITH ADEQUATE SPECIFICITY**

20 The AMENDED COMPLAINT appears to be seeking a recovery based upon a violation of
21 NRS §90.570. Said statute provides:

22 NRS §90.570 Offer, sale and purchase.

23 In connection with the offer to sell, sale, offer to purchase or purchase of a security,
24 a person shall not, directly or indirectly:

- 25 1. Employ any device, scheme or artifice to defraud;
- 26 2. Make an untrue statement of a material fact or omit to state a material fact
27 necessary in order to make the statements made not misleading in the light of the
28 circumstances under which they are made; or
3. Engage in an act, practice or course of business which operates or would operate

1 as a fraud or deceit upon a person.

2 To set forth a claim for relief under NRS §90.570, a party must affirmatively show that the elements
3 of NRS §90.570 are present. This includes one of the three (3) subsections.

4 In the case of *G.K. Las Vegas Limited Partnership v. Simon Property Group, Inc.* 460 F.
5 Supp 2d 1246 (2006), the United States District Court, interpreting the application of NRS §90.570
6 stated:

7 Plaintiff asserts that the above-referenced omissions and misrepresentations
8 constituted a violation of Section 906.70. [sic]. (The Court quoted NRS §90.570
9 above this language and it is clear that it is interpreting the application of said
statute.)

10 Plaintiff incorporates its allegations for this predicate by reference to Count 8 of the
11 SAC. As with its false pretenses predicate, Plaintiff has failed to allege any act by
12 Melvin or Herbert Simon. Though the complaint is rife with allegations against
13 "Defendants" generally, Count 8 does not contain a single mention of either Herbert
14 or Melvin Simon by either alleging any individual or directorial action. As discussed
above, the threshold required by Rule 9(b) that "in all averments of fraud or mistake,
the circumstances constituting fraud or mistake shall be stated with particularity."
Plaintiff has failed to do so.

15 Two issues arise from this case. First, the reference to "Rule 9(b)" is from the Federal Rules of Civil
16 Procedure. However, the text of NRCP 9(b) is identical to FRCP 9(b). Therefore, the Court's
17 finding that the allegations in said case were not adequate would apply herein.

18 NRCP 9(b) states:

19 Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the
20 circumstances constituting fraud or mistake shall be stated with particularity. Malice,
intent, knowledge, and other condition of mind of a person may be averred generally.

21 The pleading requirements of NRCP 9(b) were set forth long ago. The Supreme Court of Nevada
22 stated in *Brown v. Kellar*, 97 Nev. 582, 636 P.2d 874 (1981), at page 584:

23 In actions involving fraud, the circumstances of the fraud are required by NRCP 9(b)
24 to be stated with particularity. The circumstances that must be detailed include
25 averments to the time, the place, the identity of the parties involved, and the nature
of the fraud or mistake.

26 A review of the AMENDED COMPLAINT is confusing. In paragraph 49, PLAINTIFFS allege:

27 Defendants, through the sale of unregistered securities, have employed a device,
28 scheme or artifice to defraud members of the public described in specificity in
paragraphs I through 38 above.

1 First, MOVING DEFENDANTS cannot tell whether PLAINTIFFS are alleging that the "members
2 of the public" are described above, or the "device, scheme or artifice to defraud" has been described
3 "in specificity." If PLAINTIFFS are stating that they have specified the wrongful conduct, this is
4 not true! It is impossible to tell what, when, where or to whom wrongful action took place.

5 The second issue is whether this reference to "members of the public" is an assertion of a
6 class action case. If so, the rigorous pleading requirements of the Private Securities Litigation
7 Reform Act, 15 U.S.C.A. § 78u-4(b)(2), would come into play. Even if we interpret the AMENDED
8 COMPLAINT to be a claim by on behalf of the named PLAINTIFFS only, they have failed to carry
9 their burden under NRCP 9(b).

10 NO PURCHASE OR SALE OF A SECURITY OCCURRED

11 The key to PLAINTIFFS' claims arise under NRS §90.660 which provides "civil liabilities"
12 for the enumerated acts. One is subsection (1)(d) that provides a cause of action for a violation of
13 NRS §90.570(2).

14 An essential element of an action under NRS §90.570 is the purchase or sale of a security.
15 While the language of NRS §90.570 should be sufficient, the Court in *G.K. Las Vegas Limited*
16 *Partnership* addressed the issue and stated, at page 1260:

17 Nevada Securities Fraud (Count 8)

18 For the same reasons set forth in Section I(E) of this Order discussing Plaintiff's
19 claims for violations of Nevada securities laws, the Court holds that Plaintiff has
failed to state a claim.^{FN8}

20 FN8. Notwithstanding the discussion in Section I(E), the Court also
21 finds that Plaintiff lacks standing to enforce civil liability for the
22 alleged violations of Section 90.570 of the Nevada Revised Statutes.
23 Civil liability for violations of Nevada securities laws are set forth in
Section 90.660 of the Nevada Revised Statutes. This statute expressly
limits recovery to parties who purchase a security in violation of
Section 90.570 and other provisions.

24 There is no allegation in the AMENDED COMPLAINT that a purchase or sale of a security
25 occurred. While MOVING DEFENDANTS are not certain of the basis of the present action, it
26 appears that PLAINTIFFS believe they have an action based upon the reorganization involving EIN
27 and KOKOWEEF. Paragraphs 21 through 32 of the AMENDED COMPLAINT contain the
28 following allegation:

1 ... were issued ... shares of EIN stock, which were exchanged for KOKOWEEF
2 shares of stock by the Plan of Reorganization dated August 31, 2006.

3 Paragraphs 19 and 20 relating to Plaintiff Burke and Plaintiff Kehoe, who were directors of
4 KOKOWEEF, state, ... were issued ... shares of KOKOWEEF stock. ...” Since PLAINTIFFS have
5 failed to allege any purchase or sale of a security, they do not have standing to allege a violation of
6 NRS §90.570.

7 The exchange of shares of the common stock of EIN for shares of the common stock of
8 KOKOWEEF was not a “purchase or sale” that would satisfy the requirements of NRS §90.570.
9 While no Nevada case has addressed this issue, the federal courts have dealt with the “purchase or
10 sale” issues as set forth in 15 U.S.C. 78j(b), commonly known as Section 10(b) of the Securities
11 Exchange Act. The Court, in *Gelles v. TDA Industries, Inc.* 44 F.3d 102 (2nd Cir 1994), stated at
12 page 104:

13 A transaction need not involve cash to constitute a purchase or sale under Rule
14 10b-5. The Supreme Court has held that the simple exchange of shares in a merger
15 qualifies as a purchase or sale when shareholders become “shareholders in a new
16 company” as a result of “an alleged deception [that] has affected shareholders’
17 decisions in a way not at all unlike that involved in a typical cash sale or share
18 exchange.” *Securities and Exchange Comm’n v. National Securities, Inc.*, 393 U.S.
19 453, 467, 89 S.Ct. 564, 572, 21 L.Ed.2d 668 (1969). In determining whether changes
20 in the rights of a security holder involve a purchase or sale, courts must decide
21 whether there has occurred “such significant change in the nature of the investment
22 or in the investment risks as to amount to a new investment.” *Abrahamson v.*
23 *Fleschner*, 568 F.2d 862, 868 (2d Cir.), *cert. denied* 436 U.S. 905, 913, 98 S.Ct.
24 2236, 2253, 56 L.Ed.2d 403, 414 (1978). A distinction is drawn between an “
25 ‘internal corporate management’ decision which only incidentally involve[s] an
26 exchange of shares ... [and] a major corporate restructuring requiring the same kind
27 of investment decision by the shareholders as would a proposed merger with a
28 separate existing corporation.” *In re Penn Central Sec. Litig.*, 494 F.2d 528, 534
 (3d Cir.1974). Only the latter constitutes a purchase or sale for purposes of Rule
 10b-5.

23 The action that occurred in this matter fits into the category of “internal corporate management
24 decision which only incidentally involves an exchange of shares.” In this matter, each shareholder
25 of EIN received the same number of shares in KOKOWEEF that they had in EIN. Nothing changed
26 other than the creation of a new entity. Therefore, no purchase or sale of a security occurred and
27 PLAINTIFFS have no cause of action under NRS §90.570.

28 ...

1 PLAINTIFFS DO NOT HAVE INJUNCTIVE RIGHTS

2 Plaintiffs have alleged in paragraph 47 and 56 of the AMENDED COMPLAINT as follows:

3 Plaintiffs are also entitled to all remedies available under NRS §90.640, including a
4 temporary restraining order, permanent or temporary prohibitory or mandatory
 injunction or a writ of prohibition or mandamus; . . .

5 The entire text of NRS §90.640 has been attached hereto as Exhibit "A". Paragraph 1 of NRS
6 §90.640 provides, in pertinent part:

7 1. Upon a showing by the Administrator that a person has violated or is about to
8 violate this chapter, or a regulation or order of the Administrator under this chapter,
9 the appropriate district court may grant or impose one or more of the following
 appropriate legal or equitable remedies

10 The plain language of this section makes it clear that the remedies set forth are those of the
11 "Administrator", which is defined in NRS §90.215 as the Administrator of the Division and
12 "Division" is defined in NRS §90.230 as the Securities Division of the Office of the Secretary of
13 State. A review of the entire text of NRS §90.640 makes it clear that the purpose of the statute is
14 to provide the Administrator with the authority to obtain relief in court, in addition to the
15 administrative remedies available. There is no provision in the statute for a "private right of action."
16 Therefore, any claim alleged in the AMENDED COMPLAINT under NRS §90.640 should be
17 stricken, along with paragraphs 3, 11 and 12 of the prayer that seeks relief thereunder.

18 SECURITIES CLAIMS MUST BE DISMISSED FOR
19 FAILURE TO NAME NECESSARY PARTIES

20 In addition to the problems with the pleading as set forth above, the Complaint must be
21 dismissed based upon the failure of Plaintiffs to name necessary parties. MOVING DEFENDANTS
22 are somewhat confused by the AMENDED COMPLAINT. The ORIGINAL COMPLAINT
23 purported to be a derivative action. Plaintiffs named KOKOWEEF as a "nominal defendant" in that
24 document.

25 In the AMENDED COMPLAINT, KOKOWEEF is still named as a "nominal defendant."
26 However, the bulk of the claims set forth in the AMENDED COMPLAINT are for the benefit of the
27 PLAINTIFFS, not KOKOWEEF and are purportedly based upon illegal sales of securities. What
28 PLAINTIFFS fail to set forth is that KOKOWEEF is the only party that can be considered an

1 "issuer" under NRS §90.255 which provides in pertinent part, "'Issuer' means a person who issues
2 or proposes to issue a security."

3 NRCP 19(a) discusses necessary parties and provides:

4 Persons to Be Joined if Feasible. A person who is subject to service of process and
5 whose joinder will not deprive the court of jurisdiction over the subject matter of the
6 action shall be joined as a party in the action if (1) in the person's absence complete
7 relief cannot be accorded among those already parties, or (2) the person claims an
8 interest relating to the subject of the action and is so situated that the disposition of
9 the action in the person's absence may (i) as a practical matter impair or impede the
10 person's ability to protect that interest or (ii) leave any of the persons already parties
subject to a substantial risk of incurring double, multiple, or otherwise inconsistent
obligations by reason of the claimed interest. If the person has not been so joined, the
court shall order that the person be made a party. If the person should join as a
plaintiff but refuses to do so, the person may be made a defendant, or, in a proper
case, an involuntary plaintiff.

11 While KOKOWEEF is named as a "nominal" defendant in this matter, it has not been named as a
12 defendant in any of the "causes of action." As the issuer, it would be liable to the PLAINTIFFS if
13 they were able to prove a cause of action for the violation of NRS §90.570. Without KOKOWEEF,
14 complete adjudication of the PLAINTIFFS' claims cannot take place.

15 BURKE IS LIABLE TO PLAINTIFFS BASED UPON HIS SALES OF THE SECURITIES

16 Many, if not all, of the PLAINTIFFS in this case were solicited by BURKE to purchase
17 shares of stock in EIN or KOKOWEEF. NRS §90.660 provides, in pertinent part:

18 A person who offers or sells a security in violation of any of the following
19 provisions:

20 ...

21 (d) Subsection 2 of NRS §90.570;

22 is liable to the person purchasing the security.

23 As set forth above, the PLAINTIFFS obtained their shares of stock in EIN or KOKOWEEF through
24 solicitations by BURKE. Additionally, BURKE was a member of the board of directors of
25 KOKOWEEF when the reorganization with EIN was conducted. If KOKOWEEF engaged in the
26 sale of unregistered securities, BURKE would be liable, along with KOKOWEEF, for the injuries,
if any, to PLAINTIFFS, including himself.

27 BURKE is a necessary defendant in this matter. The case must be dismissed unless BURKE
28 is made a defendant herein.

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<p>Jennifer Taylor, Esquire ROBERTSON & VICK, LLP. 401 North Buffalo Drive, Suite 202 Las Vegas, Nevada 89145 <i>Facsimile Number (702) 247-6227</i></p>	<p>Patrick Clary, Esquire 7201 West Lake Mead Drive, Suite 410 Las Vegas, Nevada 89128 <i>Facsimile Number (702) 382-7277</i></p>
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By Wang H. Lee
An employee of M NELSON SEGEL, CHARTERED

* * * Memory TX Result Report (Nov. 3. 2008 6:54PM) * * *

1)
2)

Date/Time: Nov. 3. 2008 6:42PM

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Reason for error

m. 1) Hang up or line fail

m. 3) No answer

m. 5) Exceeded max. E-mail size

E. 2) Busy

E. 4) No facsimile connection

1 8056
2 M NELSON SEGEL, CHARTERED
3 M NELSON SEGEL, ESQUIRE
4 Nevada Bar No. 0330
5 624 South 9th Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 345-5266
8 Attorneys for Defendants Larry Hahn
9 and Hahn's World of Surplus, Inc.
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DISTRICT COURT OF NEVADA
COUNTY OF CLARK

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

Plaintiffs,

vs.

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

Defendants,

and

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

KOKOWEE, INC., a Nevada corporation;
EXPLORATIONS INCORPORATED OF NEVADA,
a dissolved Nevada corporation;

Nominal Defendants.

**DEFENDANTS LARRY HAHN AND HAHN'S WORLD OF SURPLUS, INC.'S
MOTION TO DISMISS AMENDED VERIFIED DERIVATIVE COMPLAINT**

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

EXHIBIT "A"

§90.640. Power of court to grant relief

1. Upon a showing by the Administrator that a person has violated or is about to violate this chapter, or a regulation or order of the Administrator under this chapter, the appropriate district court may grant or impose one or more of the following appropriate legal or equitable remedies:

(a) Upon a showing that a person has violated this chapter, or a regulation or order of the Administrator under this chapter, the court may singly or in combination:

(1) Issue a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;

(2) Impose a civil penalty of not more than \$2,500 for a single violation or \$100,000 for multiple violations in a single proceeding or a series of related proceedings;

(3) Issue a declaratory judgment;

(4) Order restitution to investors;

(5) Provide for the appointment of a receiver or conservator for the defendant or the defendant's assets;

(6) Order payment of the Division's investigative costs; or

(7) Order such other relief as the court deems just.

(b) Upon a showing that a person is about to violate this chapter, or a regulation or order of the Administrator under this chapter, a court may issue:

(1) A temporary restraining order;

(2) A temporary or permanent injunction; or

(3) A writ of prohibition or mandamus.

2. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the Administrator under NRS 90.630 in connection with the transactions constituting violations of this chapter or a regulation or order of the Administrator under this chapter. If a remedial action is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the Administrator.

3. The court shall not require the Administrator to post a bond in an action under this section.

4. Upon a showing by the administrator or securities agency of another state that a person has violated the securities act of that state or a regulation or order of the administrator or securities agency of that state, the appropriate district court may grant, in addition to any other legal or equitable remedies, one or more of the following remedies:

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(a) Appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this State; or

(b) Other relief as the court deems just.

Exhibit 2

1 STATE OF NEVADA)
)SS
2 COUNTY OF CLARK)

3 **AFFIDAVIT OF LAURETTA L. KEHOE**

4 I, LAURETTA L. KEHOE, being first duly sworn on oath, depose and state as follows.

5 1. That I am a Plaintiff in the case of Ted Burke et al v. Larry Hahn et al, Case No.
6 08 D 558629.

7
8 2. That in her affidavit attached to Larry Hahn and Hahn's World of Surplus Motion
9 for Partial Summary Judgment, Christina Hahn testified that "not one of the plaintiffs
10 participates in the exploration operations of Kokoweef."

11 3. That I participated in the exploration work of Kokoweef during 2007, spending
12 several hours assisting in the preparation of a plan of exploration to be submitted to the Bureau
13 of Land Management for licensing purposes, including telephone calls with the Needles
14 California BLM office, that I assisted Mike Randolph with mapping out Kokoweef claims and
15 computer work to prepare the shareholder data base to print stock certificates.

16
17 4. That Mr. Hahn and Christina Hahn both state in their affidavits that all funds
18 received by Mr. Hahn and/or Hahn's World of Surplus from Kokoweef and EIN were for goods
19 and materials supplied or reimbursement. However, I have reviewed the checks and receipts
20 provided by Defendants for the years 1999 through 2008. During my review, I found many
21 checks for items not related to the mine, checks with no receipts or receipts that do not match,
22 receipts for personal purchases, i.e., groceries, dental work, beer, dvds, cell phones, comic books,
23 traffic tickets, golf memberships, vet bills, food for various animals from birds to horses, checks
24 simply written for "cash," and large cash advances with no explanation or supporting
25 documentation.

26
27 5. That several of the receipts were for goods sold to Hahn's World of Surplus.
28

6. That Christine Hahn states in her affidavit that volunteers worked at Kokoweef for "NO PAY!"

7. That when I added up the checks based on the type of service/good paid for from 2002 to 2009, that 12% of the total or approximately \$150,000 was paid for labor expenses of some type.

8. That several checks were paid to Larry Butler and others marked as "1099" checks.

9. That several checks were paid to George Owens and Cliff Lee marked "Advance on Drilling."

10. That several checks were written to various individuals, including the Hahn's son Greg Hahn marked as "casual labor."

11. That in my review of cancelled checks, I analyzed the number of shares purchased during the time period of 2002 to 2009. From my review, it appears hundreds of shareholders bought stock within every 12-month period.

12. Further affiant sayeth naught.

DATED this 16 day of March, 2010.

Gavetta A. Kehoe

SUBSCRIBED and SWORN to before
me this 16 day of MARCH, 2010.

NOTARY PUBLIC

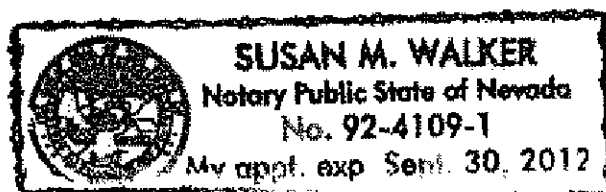


Exhibit 3

1 STATE OF NEVADA)
2 COUNTY OF CLARK)SS
3)

4 **AFFIDAVIT OF MICHAEL R. KEHOE**

5 I, MICHAEL R. KEHOE, being first duly sworn on oath, depose and state as follows.

6 1. That I am a Plaintiff in the case of Ted Burke et al v. Larry Hahn et al, Case No.
7 08 D 558629.

8 2. That in her affidavit attached to Larry Hahn and Hahn's World of Surplus Motion
9 for Partial Summary Judgment, Christina Hahn testified that "not one of the plaintiffs participates
10 in the exploration operations of Kokoweef."

11 3. That I have actively participated in the exploration operations of Kokoweef for a
12 period from approximately mid 2006 until March of 2008 when we filed the lawsuit and I was
13 prevented by Larry Hahn from further participation. In fact, prior to 2008, Larry Hahn aided in
14 my participation in exploration activities by providing me with equipment, lodging, and
15 transportation.
16

17 4. That for a period of several months during 2006 and 2007, I spent numerous
18 weekends on both the patented and unpatented claims at Kokoweef assisting in the electronic
19 surveying being conducted by Geologist Van Gary Hewitt, which consisted of walking along a
20 designated line, placing stakes, water and aluminum foil in the ground every ten feet, and running
21 miles and miles of wire. I also assisted Mr. Hewitt with the actual testing where I and others
22 were guided via walkie-talkie to hook up and disconnect the equipment along the line so
23 electricity could be sent through the staked areas, electronically mapping out the ore body
24 containing the gold-bearing sulfides.
25

26 5. In addition to the testing with Mr. Hewitt, I spent several weekends in 2007
27 assisting driller, Pat Muncy, working and repairing the core drill rig which was purchased by Ted
28 Burke. I completely rebuilt the Bean water pump on the rig under Mr. Muncy's guidance.

1 6. That starting in early March of 2007 until August of 2007, I also spent nearly
2 every weekend at Kokoweef digging out an air hole discovered by Mr. Hewitt, including taking
3 my entire two week's vacation to live up at Kokoweef at Larry Hahn's house with my son,
4 Michael ("Mikey") so that we could work on the dig full time. When I started the dig the air hole
5 measured approximately six inches wide and I could only insert my arm up to my elbow. With
6 the use of hand tools, coffee cans, buckets, and sledge hammers I dug the hole down to a depth of
7 approximately 19 feet deep and six feet by four feet wide, often chipping away at solid rock with
8 a small sledge hammer and chisel.
9

10 7. That I also assisted Larry in the drilling of a long, narrow hole several hundreds of
11 feet in length that breathed air.

12 8. That I traveled with Ted Burke to the Bureau of Land Management office in
13 Needles, California to conduct research on mapping out Kokoweef's claim areas.
14

15 9. That attached hereto are several photographs showing me performing these
16 various tasks.

17 10. That from July 2007 until April of 2008 I served as a member of the Board of
18 Directors of Kokoweef, Inc.

19 11. That at the same July 11, 2007 meeting of the Board of Directors when I was
20 voted on to the Board, the Board awarded me 1000 additional shares of stock as compensation for
21 my hard work. Those 1000 shares of stock were in addition to the 100 shares that my wife and I
22 purchased back in October of 2006. To this day have never received our stock certificate for the
23 100 purchased shares. The Board agreed I should be compensated for my services rendered.
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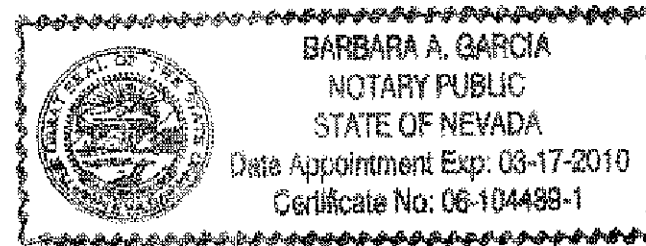
12. Further affiant sayeth naught.

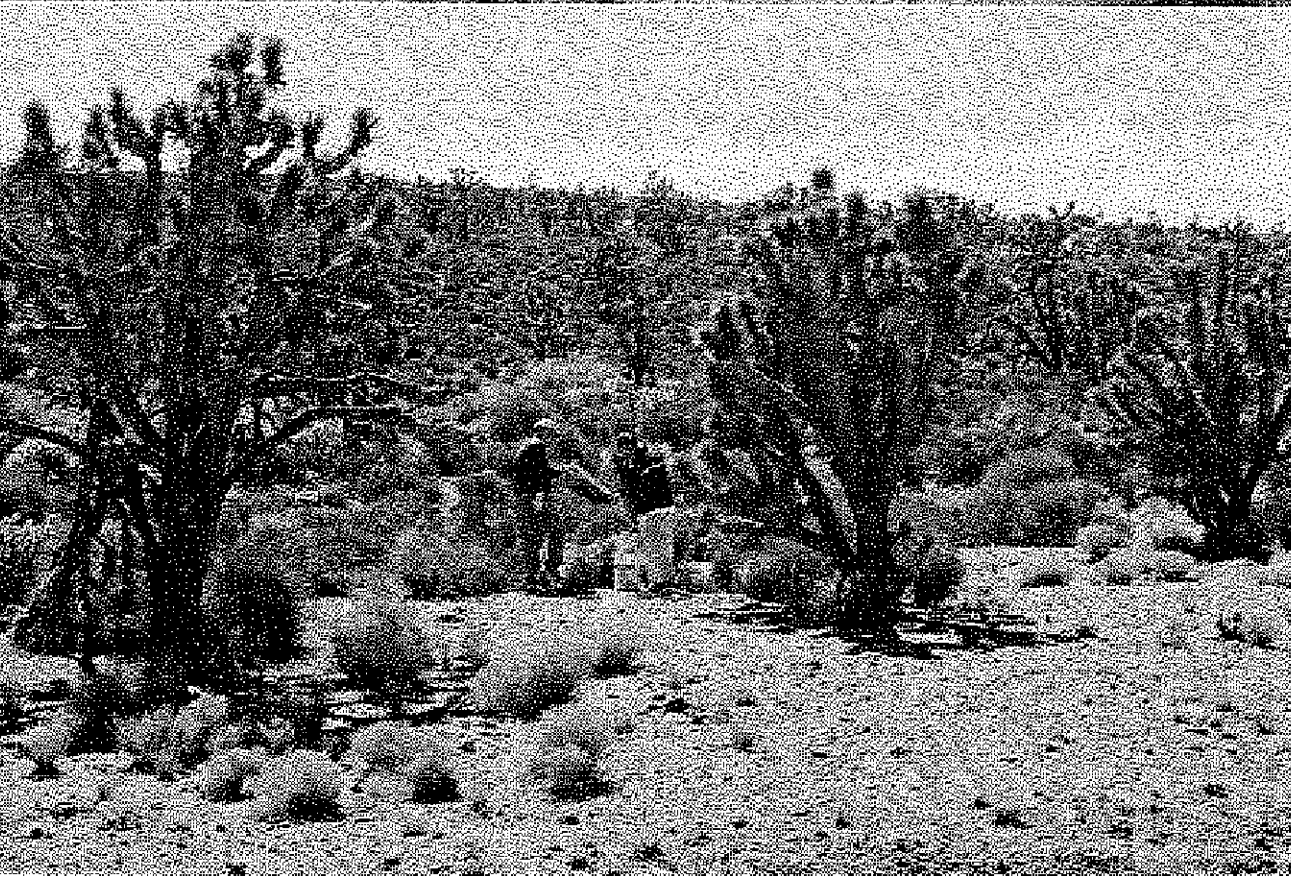
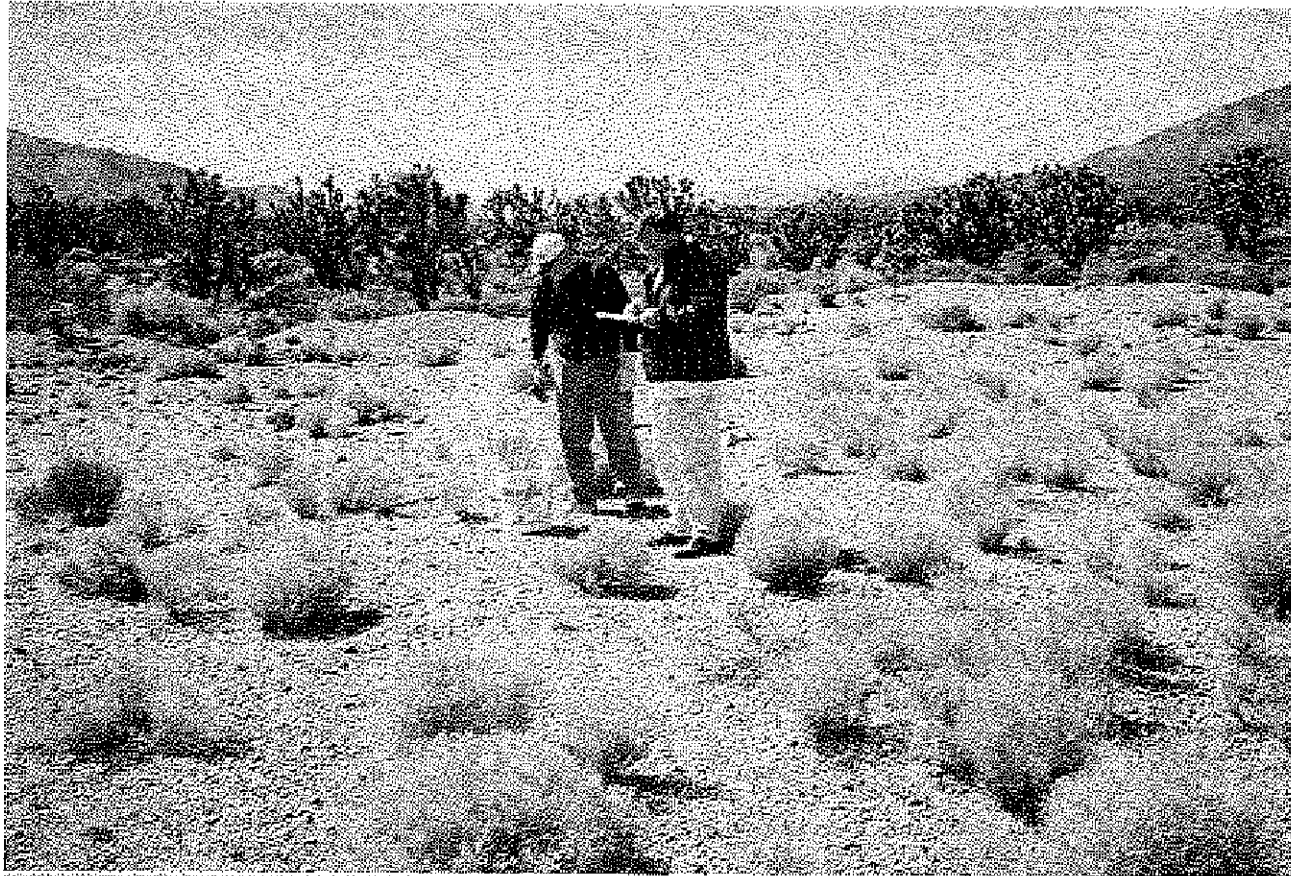
DATED this 16 day of MARCH, 2010.

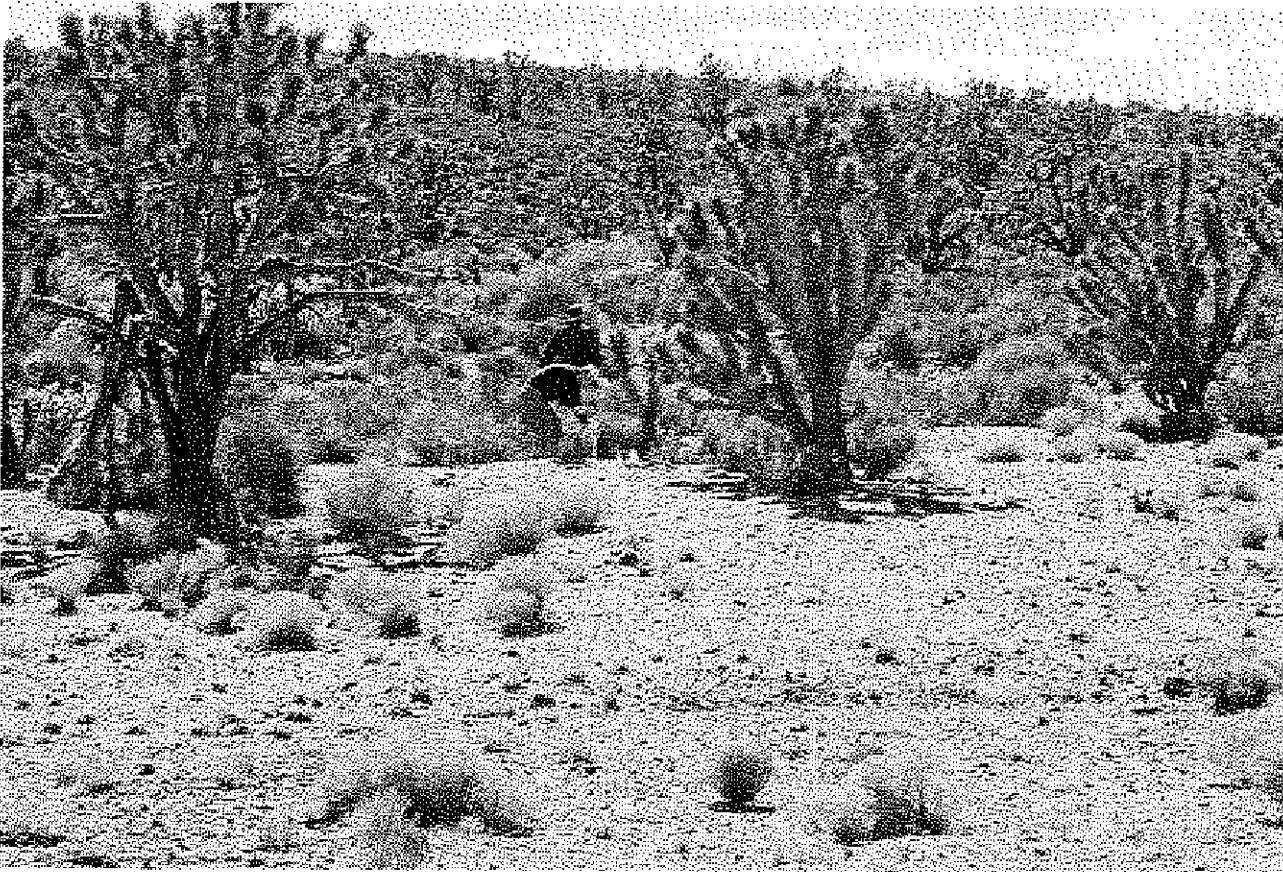
Michael R. Kibbe

SUBSCRIBED and SWORN to before
me this 16 day of March, 2010.

Barbara A. Garcia
NOTARY PUBLIC

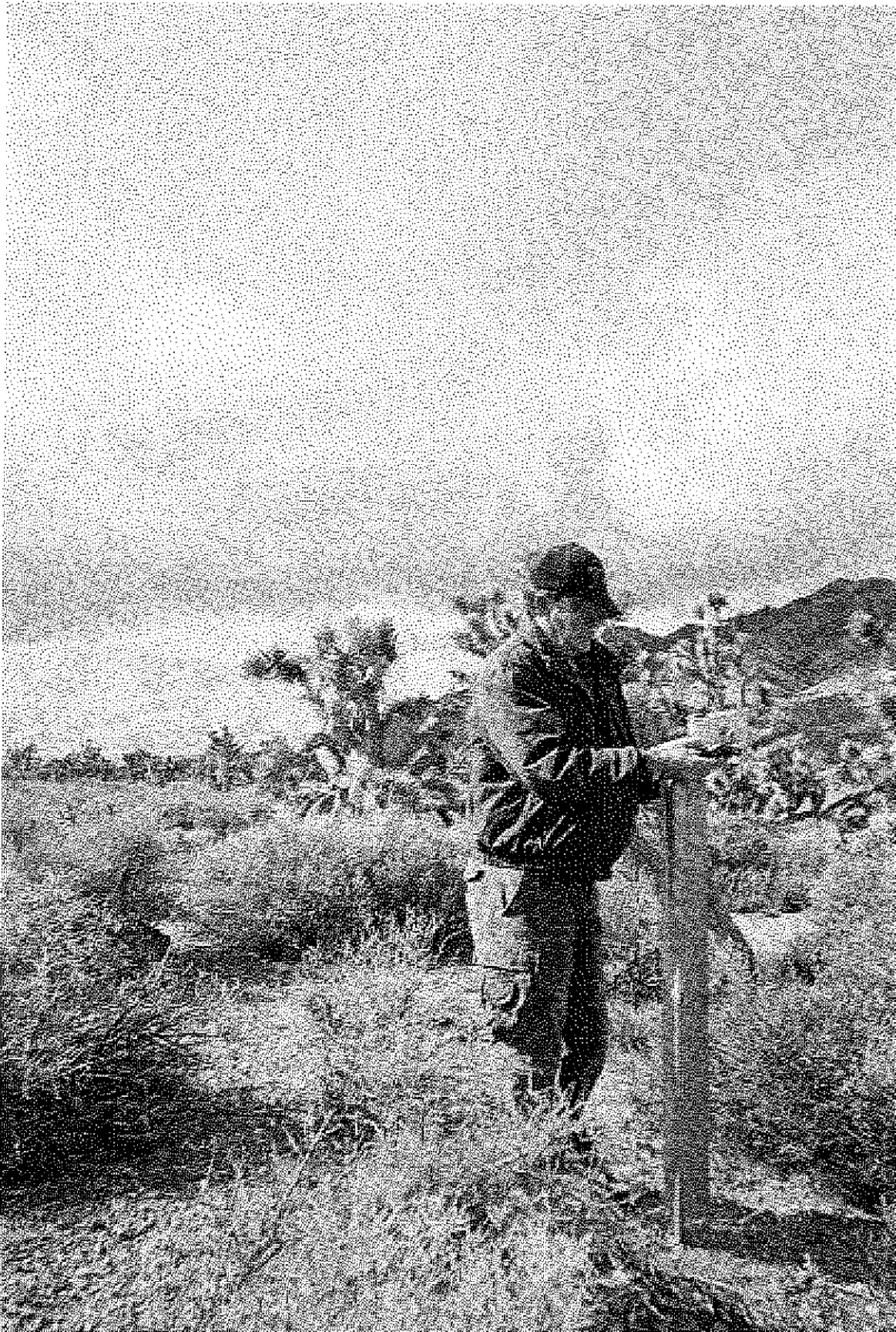




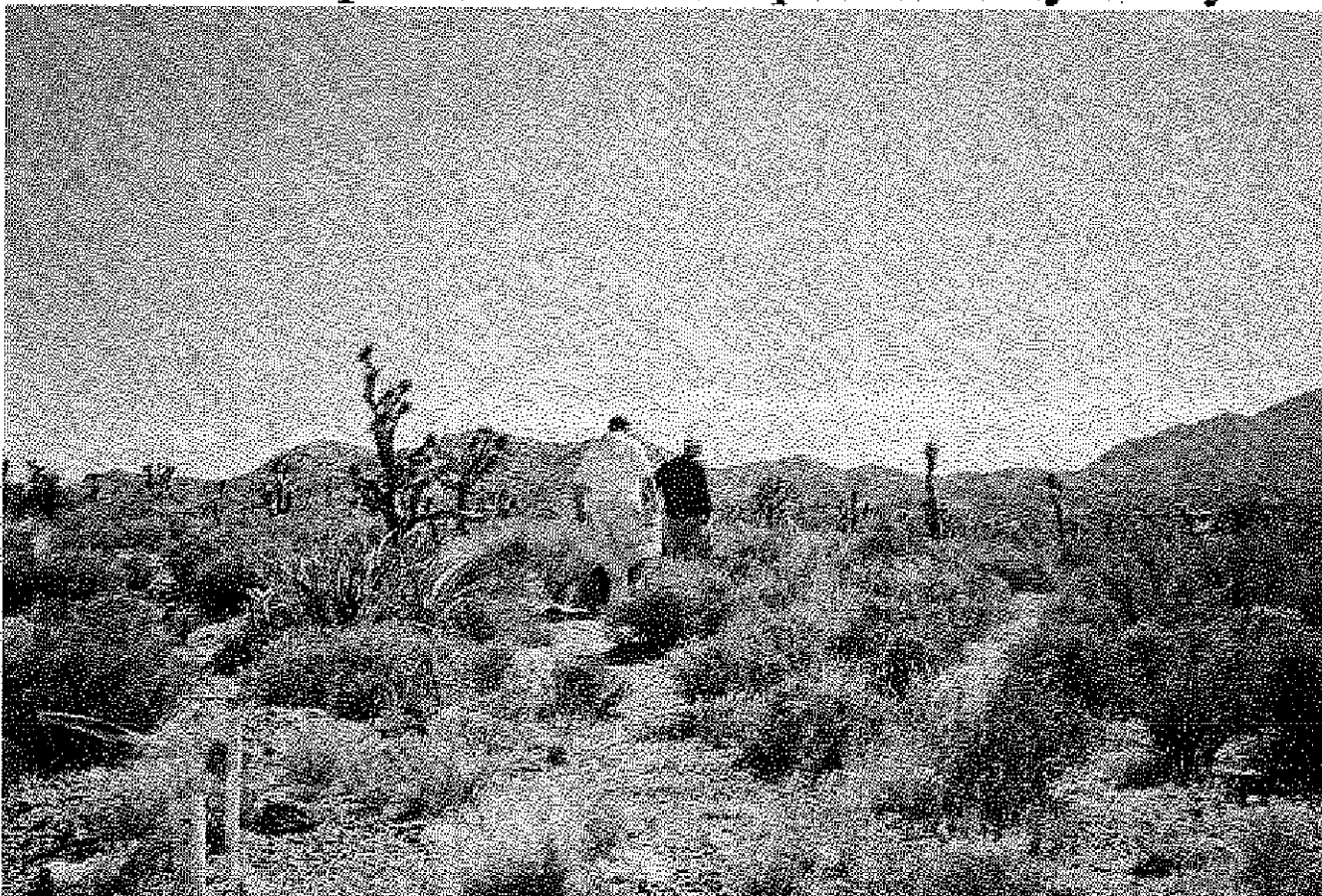


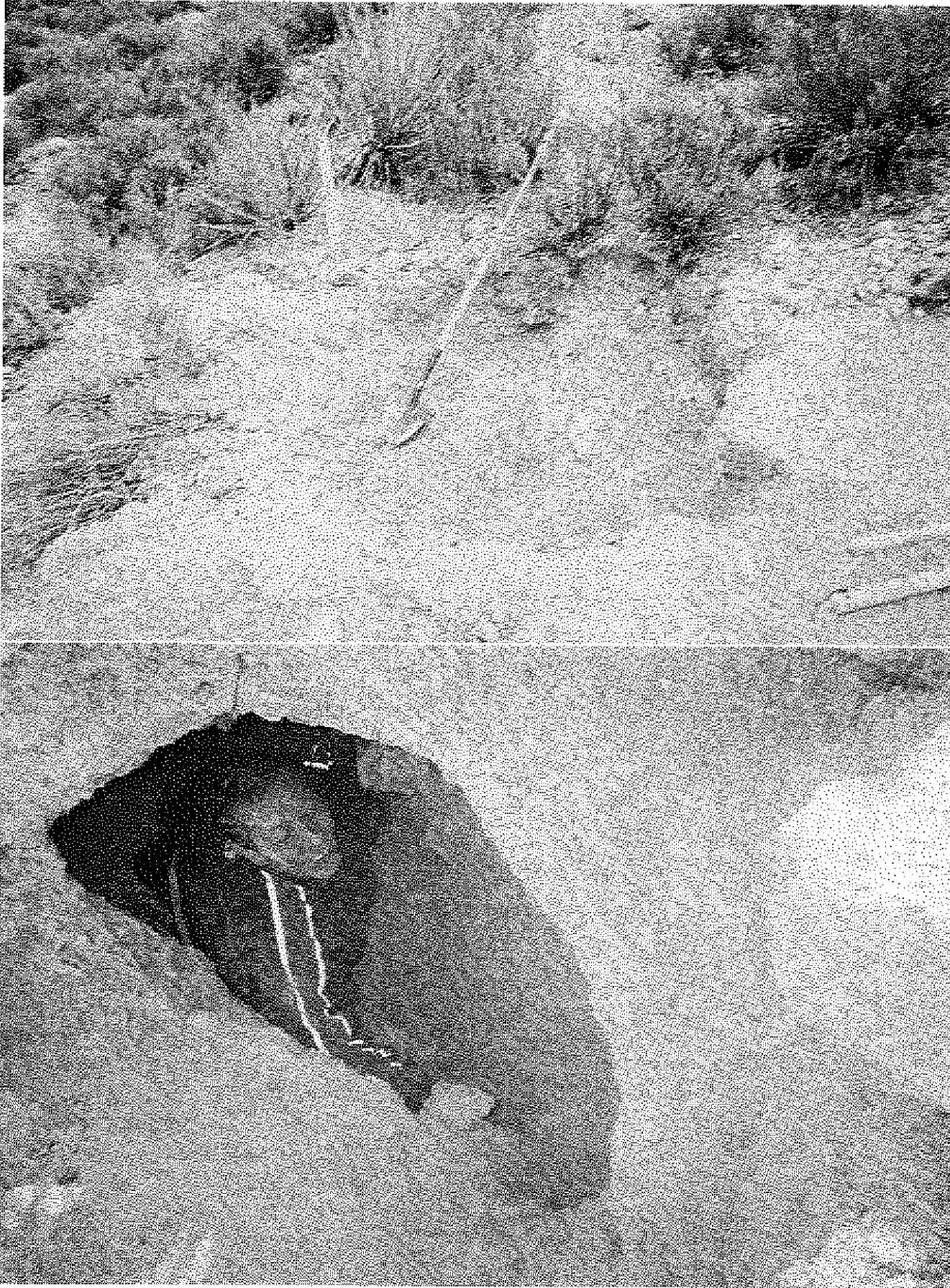
Ted Burke and Mike Kehoe stake out the resistivity lines.



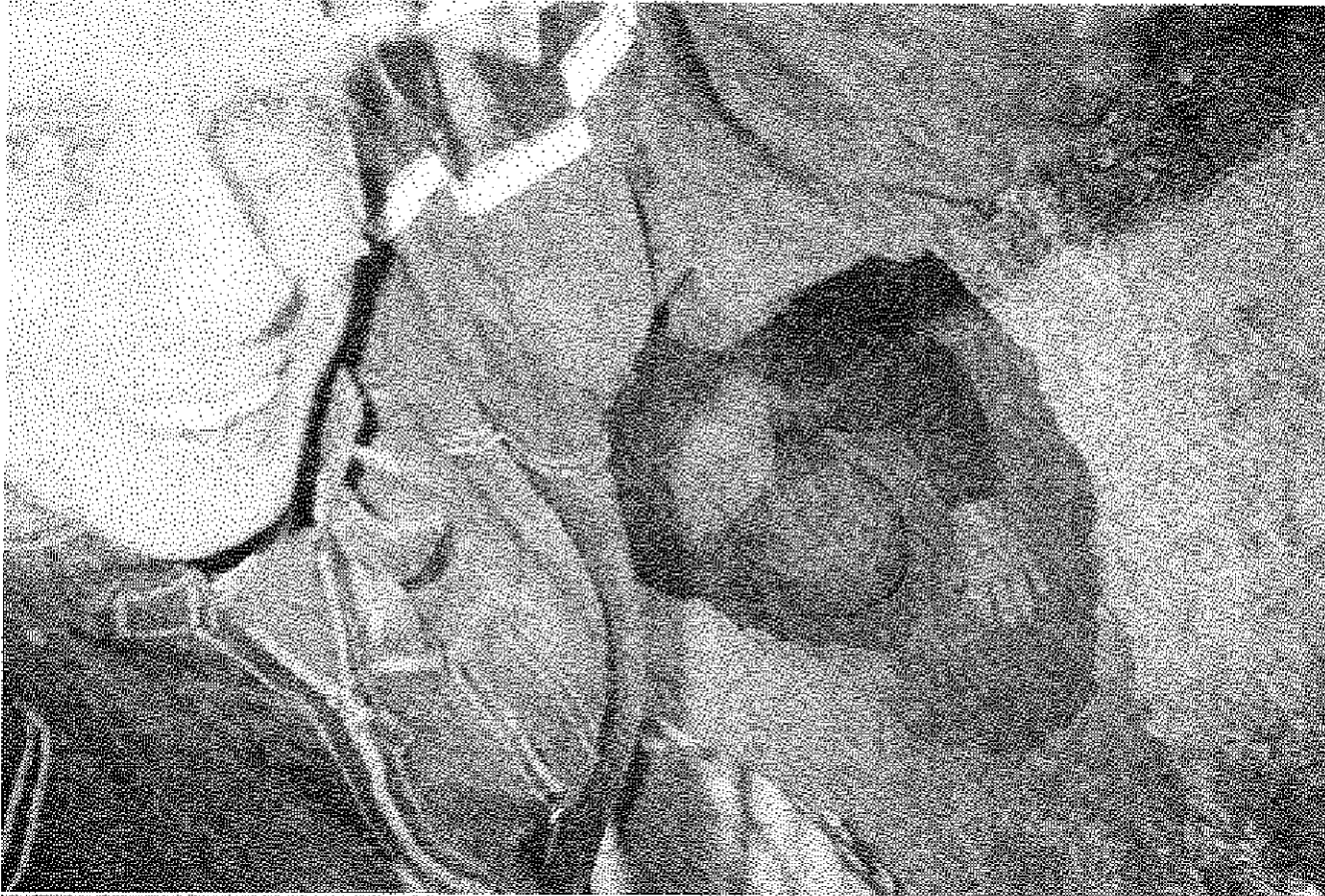


Mike Randolph uses the GPS provided by Larry Hahn to map out claims.

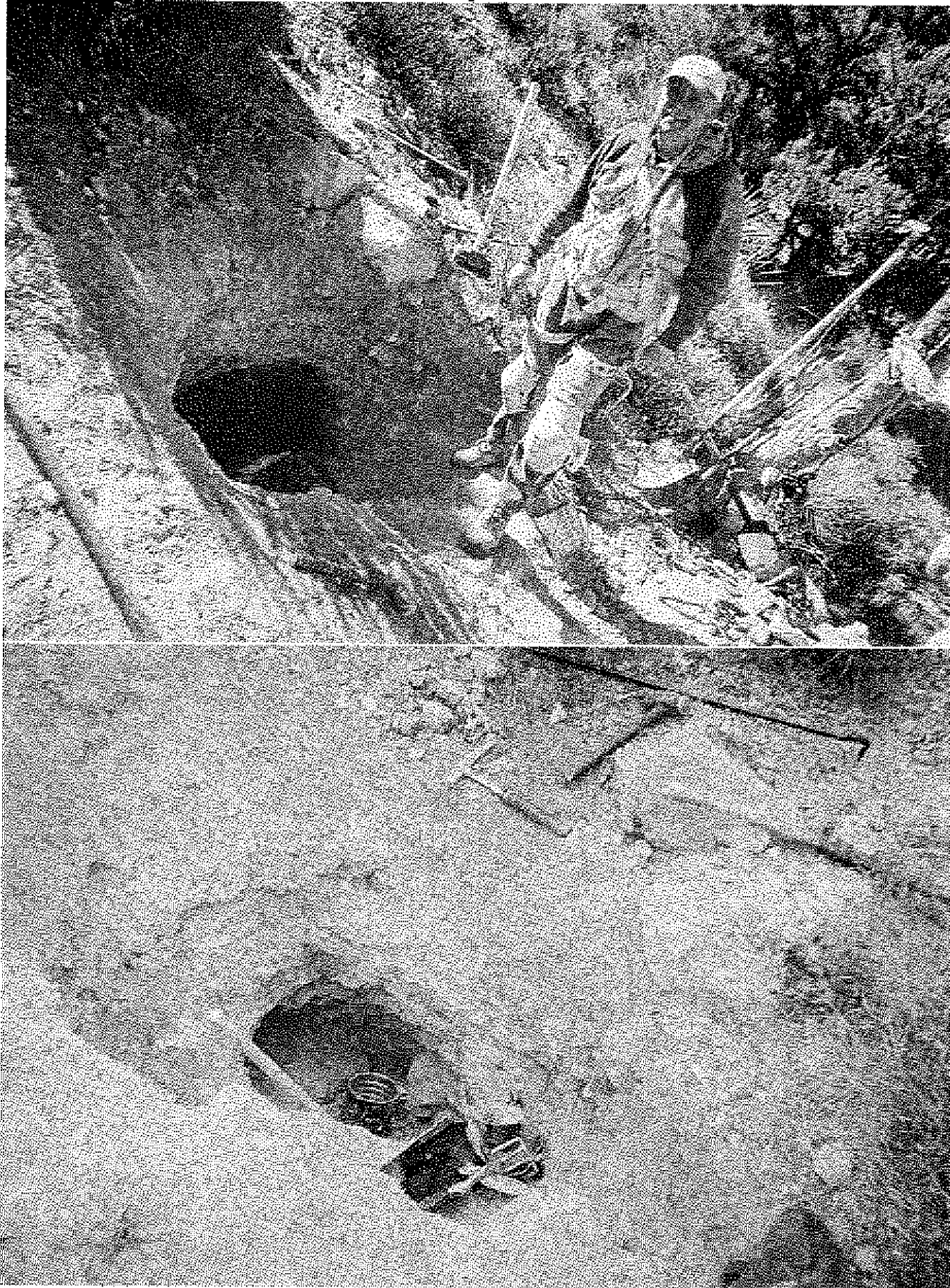




1) More line work. 2) Starting to dig out the air hole. 3) The bucket in the hole. 4) Carlos Quesada assists with the digging.



Digging the air hole using buckets and hand tools.





DAY 1.





Day 2

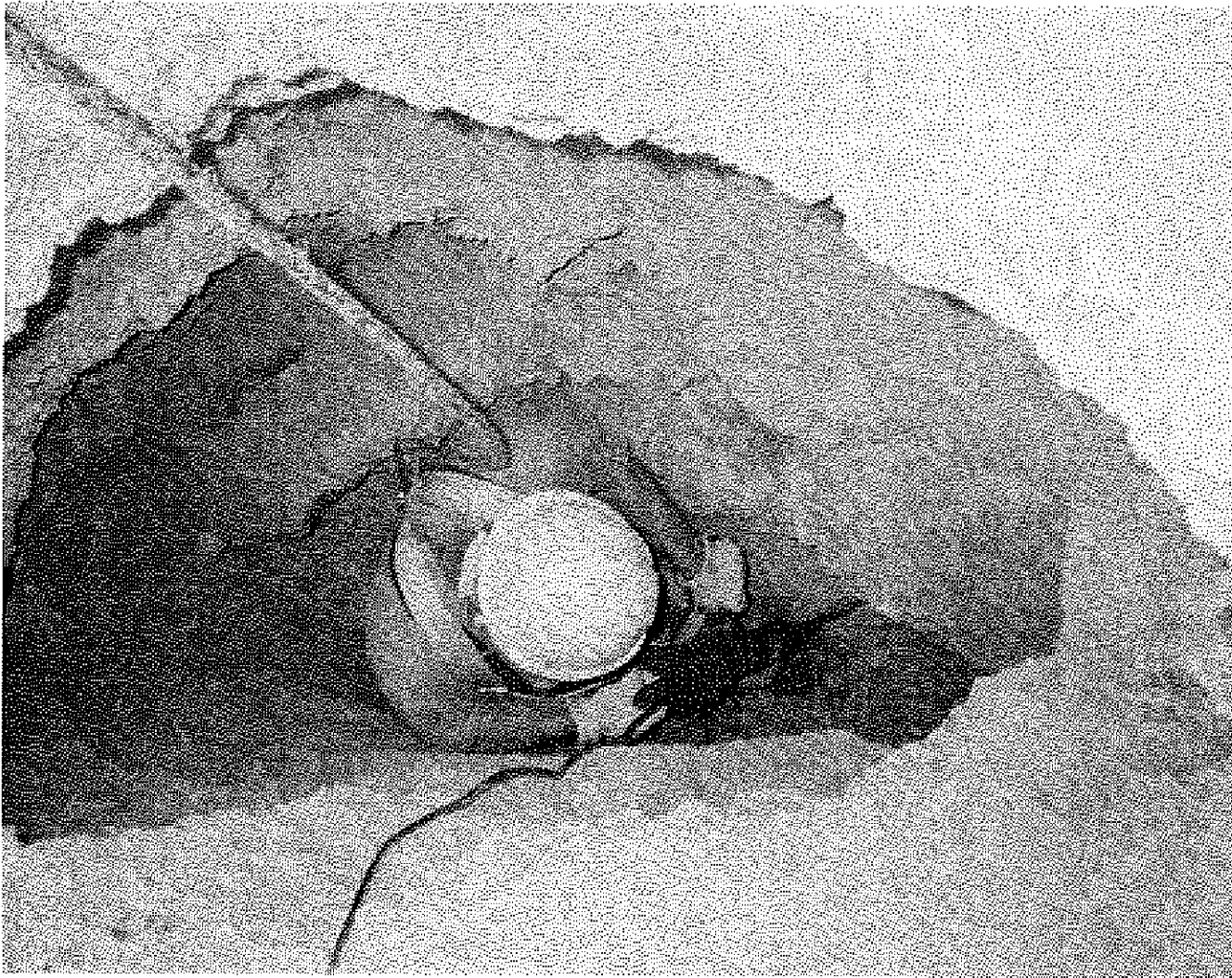




Day 3



Mikey helps out with the dig.





Mike had to be tied down
to avoid a potential cave-in.

Exhibit 4

STATE OF NEVADA)
)
COUNTY OF CLARK)

AFFIDAVIT OF TED R. BURKE

I, TED R. BURKE, being first duly sworn upon oath, depose and state as follows:

1. In March of 1991, I met with Larry Hahn of Hahn's World of Surplus at his store and invested \$600.00 initially to become an investor of Explorations of Nevada Inc. headquartered at 2908 E. Lake Mead Blvd, North Las Vegas, NV 89030. During the years to follow, I increased my investment paid directly to Larry Hahn either in cash, checks, services, or materials purchased and valued in excess of \$500,000 to be used for Kokoweef mining project advancement.

2. In 1992, I was approached by Larry Hahn and asked if I would construct a large building at the work site on Kokoweef mountain to shelter the miners during cold winter days and to act as a shareholder's meeting and supply facility. At that time I was a licensed general contractor and had the means, equipment and resources to accomplish the task. Larry said the company had only \$7,000 in the bank with which to pay me initially and a small amount of stock with the understanding that he would pay me as more monies became available. At this time, I had already purchased approximately \$900 in Kokoweef stock. After the building was completed, I received 5000 shares of EIN stock, which included the \$900 of stock that I had purchased already, netting me a sum total of 4850 shares of additional stock.

3. The building provided meeting space to seat approximately 250 people as well as a kitchen, restroom, laundry room, first aid room, equipment and supply room and 3 separate sleeping quarters. I offered Larry a contract agreement for services performed.

Larry rejected the written agreement saying he preferred to give me a check for the initial \$7,000 and additional monies from time to time followed by a handshake. I agreed to the terms, as I believed at that time that we were a mining project operating on shoestring funding with no real prospects of an immediate discovery of the supposed underground cavern or minerals.

4. My construction company transported large truckloads of materials for the next several weeks to the job site. Just the first delivery of lumber alone was valued at in excess of \$68,000. The total value of materials, labor and job cost was valued in excess of \$190,000. My construction crew completed the work in 9 weeks. I then received a \$7,000 check from Larry with a promise of more to come. In the months and years to follow, I was told that there was never enough left over after operating expenses to pay me but he would make it up to me when we found the river of gold.

5. Before the building was constructed, I took an 8-1/2 month leave of absence from my business to personally work on a drift tunnel mining crew at Kokoweef Mountain. The crewmembers that I worked with were mining foreman Joe Kelly, Richard Billbe and from time to time Mr. Ralph Lewis. The value of my time during this 8.5-month period was valued in excess of \$92,000. This estimate was based on supporting documents of tax returns running from one year prior to this period to one year after. Larry advised all of those who performed labor in the mine on a regular basis that they would be awarded a stock award for the sweat equity. Our work day started at 8:00 am and ended at 6:00 pm for 8 ½ months. Supporting documents are available.

6. After this period Larry called from time to time and asked if I knew anyone who wanted to invest in the project as he said he was in need of more money and asked if I would solicit them for large contributions. Larry called these investors “whales,” or someone whom he considered had the ability to invest four to five digit money at any one time. An example is when my friend Alfonso Peña on his first investment contributed the sum total of \$30,000. I continued to invite new investors whenever I received a call from Larry over the coming years.

7. In 2003, I was elected to the Board of Directors of Explorations of Nevada Incorporated. I attended board meetings from time to time when called upon and also shareholder meetings once a year.

8. In January 2004, I advised Larry that it was my opinion that the board members needed a separate room for mining affairs and away from his surplus store activities where we could hold board meetings. I advised Larry that if he would provide that room for us to work out of, that I would make available to the company all the office equipment, furniture, computers, commercial printers and a mailing machine for mail outs to our shareholders with a value of \$75,000. Larry thought it was a great offer and accepted. Larry said he would clear out a large meeting room in the back of his store and that he would advise me when to install the equipment and furniture. I advised Larry that I had already purchased the equipment and furnishings and that I would place all of it in storage until he called for it. Larry said to keep track of the storage rental fees and he would reimburse me for that. To this date he has never cleared the room for use and I have never been reimbursed for the care and storage of the equipment.


9. On August 31, 2006 the shareholders were notified by mail that the reorganization of the company was complete and that the company would from now on be operating under the name of Kokoweef Inc. I was advised to turn in my EIN stock certificate for 5000 shares of EIN stock to Larry and that I would receive a new stock certificate from the new company for 5000 shares. I delivered the stock certificate to Larry Hahn and I have yet to receive a replacement stock certificate from Kokoweef Inc.

10. Around the beginning of 2007, Larry met with me and asked for a whale. At this particular time the company was in need of a large inventory of core drilling steel in order to start a core-drilling project to retrieve ore samples from a large ore deposit located on our claims. This would require funds in excess of \$250,000 to purchase the needed equipment. I suggested that we start a campaign by all of our investors who wished to participate and talk to their friends who were accredited investors with a goal to sell enough shares that would fund a core drilling project exclusively. Larry asked if I would head up the project full time until the goal was reached. I told him that in my opinion that this would take many months to accomplish depending upon the number of investors that participated in the contacts. I also said that if I were to take a leave of absence from my business that I would have to be compensated for my time plus expenses after completing the job. Larry agreed to this and I wrote a 3-page contract which Larry rejected, saying that he preferred a simple one paragraph agreement, or better yet, just a hand shake. I had been through the handshake method with Larry before so I prepared a one-paragraph agreement and went to work in January 2007. In March 2007 we were just getting this project off the ground when I met with Larry and requested compensation for all the services, money, equipment and the construction of

the shareholders meeting room building provided prior to the start of this new campaign agreement for new investors. Larry agreed to provide a stock award for consideration of this services and equipment described above in lieu of cash. A stock certificate was issued to me in the amount of 75,000 shares of Kokoweef stock. This stock award was approved by the board of directors on the next board of directors meeting.

11. During this period of time I had been working full time either on the stock campaign or working at the mine with Mr. Michael Kehoe on a hand excavation project at a recently discovered air hole on a claim. We also acquired laborers to assist in this project as well as the start up of a core-drilling project. I acquired the assistance of an expert core driller by the name of Patrick Muncy and contracted him to do consulting work for the company on two consecutive occasions. Mr. Muncy was offered a contract agreement to assist the company as a drilling director, which he accepted. The contract provided that Mr. Muncy assist Kokoweef in reaching their goals of extracting core samples from the discovered load ore body found on our claims. He was to be compensated with an award of 5000 shares of Kokoweef stock upon completion of his contract. I prepared 3 page contracts for Mr. Muncy's two consultation agreements and a 3rd agreement for his stock award. I paid for Mr. Muncy's first two consultation contracts plus expenses and was reimbursed by Mr. Hahn.

12. Further affiant sayeth naught.


TED R. BURKE

Subscribed and Sworn to before me
This 16th day of March, 2010


NOTARY PUBLIC

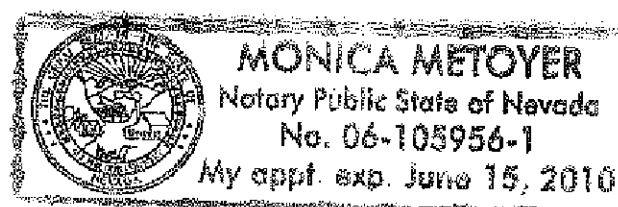


Exhibit 5

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Location : District Court Civil Help

REGISTER OF ACTIONS

CASE No. 08A558629

Ted Burke, Michael Kehoe, et al vs Larry Hahn, Hahn's World Of
Surplus Inc, et al

§
§
§
§
§
§

Case Type: **Business Court**
 Subtype: **Other Business Court**
 Date Filed: **03/07/2008**
 Location: **Department 11**
 Conversion Case Number: **A558629**

PARTY INFORMATION

Conversion ENo Convert Value @ 08A558629
 Removed: 04/24/2009
 Converted From Blackstone

Lead Attorneys

Defendant Clary, Patrick C

Clary, Patrick Charles

Retained

Defendant Hahn's World Of Surplus Inc

Segel, M. Nelson

Retained

Defendant Hahn, Larry

Segel, M. Nelson

Retained

Defendant Hahn, Larry L

Segel, M. Nelson

Retained

Other DefendExplorations Incorporated Of Nevada

Other DefendKokoweef Inc

Clary, Patrick Charles

Retained

Plaintiff Barnard, Paul

Robertson IV, Alexander

Retained

Plaintiff Barnard, Paula M

Robertson IV, Alexander

Retained

Plaintiff Bertoldo, John

Robertson IV, Alexander

Retained

Plaintiff Billbe, Gerda F

Robertson IV, Alexander

Retained

Plaintiff Burke, Ted R

Robertson IV, Alexander

Retained

Plaintiff	Franks, Steven	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Freeman, Lisa A	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Freeman, Peter T	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Golden, Leon	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Kehoe, Laurretta L	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Kehoe, Michael R	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Kravetz, Eddy	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Kravetz, Fred	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Kravetz, Jackie	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Murff, C A	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Randolph, Michael	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Treska, Bob	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Treska, Robyn	Robertson IV, Alexander <i>Retained</i>
Plaintiff	Willis, Frederick	Robertson IV, Alexander <i>Retained</i>

EVENTS & ORDERS OF THE COURT

08/14/2009 | All Pending Motions (9:30 AM) (Judicial Officer Bulla, Bonnie)

Minutes

08/14/2009 9:30 AM

- Arguments by counsel. Colloquy re: violation with subpoenas. COMMISSIONER RECOMMENDED, Motion and Joinder are GRANTED; Nevada State Bank and U.S. Bank SUBPOENAS are QUASHED; not enough factual support to modify subpoenas; Ms. Taylor must return documents to Mr. Segel; counsel to prepare recommendation, and Ms. Taylor to approve form and content.

Parties Present

Return to Register of Actions

Exhibit 6

1 **ACOM**
ALEXANDER ROBERTSON, IV
2 State Bar No. 8642
JONATHAN S. VICK
3 State Bar No. 8707
JENNIFER L. TAYLOR
4 State Bar No. 5798
ROBERTSON & VICK, LLP
401 N. Buffalo Drive, Suite 202
5 Las Vegas, Nevada 89145
Telephone: (702) 247-4661
6 Facsimile: (702) 247-6227

7 Attorneys for Plaintiffs

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10

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

16 Plaintiffs,

17 vs.

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

22 Defendants,

23 and

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

26 Nominal Defendants.

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CLERK OF THE COURT

) CASE NO. A558629
) Dept. XIII
)
) **VERIFIED DERIVATIVE FIRST**
) **AMENDED COMPLAINT**
)
) (1) VIOLATION OF NRS. 90.460 (Unlawful
) Sale of Securities);
) (2) VIOLATION OF NRS. 90.570 (Unlawful
) Sale of Securities by Means of Scheme to
) Defraud);
) (3) FRAUDULENT
) MISREPRESENTATIONS;
) (4) NEGLIGENT
) MIREPRESENTATIONS;
) (5) FRAUD IN THE INDUCEMENT;
) (6) FRAUDULENT CONCEALMENT;
) (7) BREACH OF FIDUCIARY DUTY;
) (8) UNJUST ENRICHMENT;
) (9) CONSTRUCTIVE FRAUD;
) (10) CORPORATE WASTE.

) **Exempt from Arbitration**
) (Shareholders Derivative Action - Equitable
) Relief)

28

1 COMES NOW, Plaintiffs, TED R. BURKE, MICHAEL R. and LAURETTA L. KEHOE,
2 JOHN BERTOLDO, PAUL BARNARD, EDDY KRAVETZ, STEVE FRANKS, PAULA
3 MARIA BARNARD, LEON GOLDEN, C.A. MURFF, GERDA FERN BILLBE, BOB and
4 ROBYN TRESKA,; MICHAEL RANDOLPH, and FREDERICK WILLIS (collectively
5 hereinafter referred to as the "Plaintiffs"), who bring this group action against Defendants,
6 LARRY H. HAHN, in his individual capacity and as President and Treasurer of Kokoweef, Inc.,
7 and former President and Treasurer of Explorations Incorporated of Nevada,; HAHN'S WORLD
8 OF SURPLUS, INC., a Nevada corporation; PATRICK C. CLARY, an individual; and DOES 1
9 thought 100, inclusive (hereinafter collectively referred to as "Defendants"), and allege, based
10 upon information and belief, except as otherwise stated, as follows:

11 **NATURE OF THE ACTION AND FACTUAL ALLEGATIONS**

12 1. This lawsuit involves a scheme among the Defendants through which Plaintiffs
13 were fraudulently induced into purchasing shares of corporate stock in a gold mine investment
14 managed by Defendant, LARRY L. HAHN. The mine is located approximately eleven miles
15 south of state line in San Bernardino County, California. Over the past twenty-five (25) years,
16 Defendant, LARRY L. HAHN (hereinafter "HAHN") has solicited and sold investments in this
17 gold mine to over twelve hundred (1,200) investors throughout the country.

18 2. EXPLORATIONS INCORPORATED OF NEVADA (hereinafter "EIN") was
19 incorporated on October 24, 1984, for the purpose of exploration and continuing the search for
20 gold in underground caverns. During EIN's corporate existence, Defendant, LARRY L. HAHN,
21 issued an undetermined number of shares to literally hundreds of investors in the gold mine for a
22 sale price of \$6 per share. The issuance of these shares of stock in EIN violated both federal and
23 state securities laws as more fully alleged herein.

24 3. Defendant, PATRICK C. CLARY, ESQ., was the corporate counsel to EIN, and at
25 all times relevant herein, was and is the corporate counsel to KOKOWEEF, INC. (hereinafter
26 referred to as "KOKOWEEF"). On or about November 10, 2005, EIN entered into an
27 "Agreement and Plan of Reorganization" with KOKOWEEF, whereby EIN agreed to sell and
28 assign to KOKOWEEF all of EIN's assets and KOKOWEEF agreed to assume all of the

1 liabilities of EIN, "excepting liability to the Old Company's [EIN] stockholders", in exchange for
2 voting shares of KOKOWEEF's common stock. KOKOWEEF was incorporated by Defendant
3 HAHN on or about May 25, 2004. Defendant CLARY acted as both corporate counsel for EIN
4 and the surviving corporation, KOKOWEEF.

5 4. On or about October 12, 2006, Defendant CLARY sent a written notice to the
6 stockholders of EIN informing them that he was corporate counsel to both EIN and
7 KOKOWEEF and that on November 10, 2005, EIN and KOKOWEEF entered into a "Agreement
8 and Plan of Reorganization", whereby EIN agreed to sell and assign to KOKOWEEF all of EIN's
9 assets in exchange for the voting shares of KOKOWEEF's common stock. Defendant CLARY's
10 letter instructed each stockholder of EIN to return his or her stock certificates to KOKOWEEF in
11 exchange for a new KOKOWEEF stock certificate.

12 5. Plaintiffs are informed and believe, and thereon allege, that Defendants failed to
13 keep records of the identities of the approximately 1,200 investors in EIN and KOKOWEEF, the
14 amount of consideration paid by each investor for their stock, and the number of shares issued by
15 Defendants to each investor. Further, Plaintiffs are informed and believe, and thereon allege, that
16 Defendants failed to maintain financial statements and follow generally accepted accounting
17 principals for both EIN and KOKOWEEF.

18 6. Plaintiffs are further informed and believe, and thereon allege, that the "Plan of
19 Reorganization" between EIN and KOKOWEEF was a scheme concocted by Defendants HAHN
20 and CLARY to conceal from the stockholders the Defendants' sale of unregistered and non-
21 exempt securities in violation of NRS 90.460.

22 7. Plaintiffs are informed and believe, and thereon allege, that over the past twenty-
23 five (25) years, Defendants, HAHN and DOES 1 through 50, inclusive, solicited the sale of
24 securities in EIN and KOKOWEEF as part of a scheme to defraud Plaintiffs and other investors,
25 whereby Defendants used the sale of unregistered securities to finance the construction of a
26 private compound used solely for the personal use of Defendants at the mine location. Plaintiffs
27 are further informed and believe that in furtherance of this scheme to defraud the Plaintiffs and
28 other investors, Defendants, HAHN and DOES 1 through 50, inclusive, prohibited any

1 unannounced visits to the mine site and would only allow access to the mine and the Defendants'
2 private compound on special occasions, when Defendants would give a tour of the mine, mining
3 equipment and promote the progress of the mining operation, although in fact no serious mining
4 operations were regularly conducted by the Defendants. Plaintiffs are informed and believe, and
5 thereon alleged, that Defendants HAHN and DOES 1 through 50, inclusive, used the proceeds of
6 the sale of unregistered securities to finance their own lifestyle, construction of their compound
7 and living expenses and not in furtherance of a commercial mining operation as represented by
8 the Defendants to the Plaintiffs.

9 8. On or about September 16, 2006, an assayer retained by EIN presented Defendant
10 HAHN with an analytical report, which indicated the presence of gold and silver and other
11 valuable mineral at depth in the mine.

12 9. In the Spring of 2007, the President of Mayan Gold, Inc. met with HAHN and
13 Plaintiff BURKE regarding a proposal of Four Million Dollars (\$4,000,000) in investment capital
14 to recover gold, silver and other valuable minerals in the mine in a joint venture with
15 KOKOWEEF. At this meeting, the President of Mayan Gold, Inc. made a standard request to
16 review the books and financial records of KOKOWEEF as part of his due diligence
17 investigation. In response to this request, Defendant HAHN abruptly terminated the meeting and
18 rejected Mayan Gold's \$4 million investment offer.

19 10. On or about June of 2007, Plaintiff BURKE and several other shareholders
20 discovered the existence of the Bylaws of KOKOWEEF, and upon reviewing those Bylaws, had
21 reason to suspect that KOKOWEEF's business practices were in conflict with the Bylaws.
22 Plaintiff BURKE asked Defendant HAHN whether or not an annual audit of KOKOWEEF's
23 financial records had ever been performed. Defendant HAHN informed BURKE that no such
24 audit have ever been performed and refused to make KOKOWEEF's books and financial records
25 available to BURKE, despite the fact that BURKE was a Director and Secretary of
26 KOKOWEEF.

27 11. BURKE then informed HAHN that he was going to request a board meeting to
28 address his concerns and to request a formal audit be conducted of KOKOWEEF's books.

1 BURKE also discussed his request for an audit with Defendant CLARY, who informed BURKE
2 that the board meeting could be held on August 28, 2007, at CLARY's office.

3 12. Upon learning that BURKE had requested a meeting of the board of directors of
4 KOKOWEEF to be scheduled on August 28, 2007, HAHN then noticed a "Special Meeting" of
5 all shareholders to be held on the same date to vote on new Board members. Defendant HAHN
6 failed to give proper notice of the "Special Meeting" pursuant to the Bylaws. HAHN noticed the
7 location for this "Shareholder Meeting" to be held at the mine location, which was approximately
8 seventy (70) miles from the location of the Board meeting in Las Vegas making it impossible to
9 attend both meetings. As a result, the Board meeting was never held and BURKE and other
10 Plaintiffs attended the shareholder meeting on August 28, 2007. At the shareholder meeting,
11 HAHN nominated five (5) individuals for the Board of Directors without any prior notice to the
12 shareholders or the existing Board of Directors, again in violation of the Bylaws. HAHN also
13 announced at the shareholder meeting that he would consent to an audit of KOKOWEEF's books
14 and financial records. However, the subsequent audit directed by BURKE was only performed
15 on the financial records of KOKOWEEF for a period of the preceding eight (8) months and no
16 review of the financial records of the predecessor entity, EIN, was allowed by HAHN.

17 13. On or about September 18, 2007, BURKE was invited to attend a meeting with
18 Defendants HAHN and CLARY. At that meeting, BURKE asked Defendant CLARY what his
19 personal liability was as a Director of KOKOWEEF for what BURKE perceived to be
20 KOKOWEEF's violation of the Bylaws and for what he believed to be HAHN's
21 misappropriation of corporate funds to pay for his personal expenses. At this meeting, Defendant
22 CLARY informed BURKE that the reason KOKOWEEF was formed was an attempt to "clean
23 up" the multiple securities violations of EIN. Defendant CLARY further informed BURKE that
24 ninety percent (90%) of EIN's stock sales by Defendant HAHN were unlawful. When BURKE
25 stated his intent to report these unlawful activities to the Securities and Exchange Commission
26 ("SEC"), Defendant CLARY told BURKE going to the SEC was "insane", that the SEC was "the
27 big bad wolf", that the SEC were "assholes", and that "they destroy companies and they destroy
28 people." Further, Defendant CLARY told BURKE, "I just don't want you to do anything stupid,

1 I mean, the idea of going to talk to the SEC is about as insane as anything you could personally
2 do. I mean, if you want to just stick a knife in yourself, it'd be a shorter way to solve the
3 problem."

4 14. Defendant CLARY further advised BURKE that although "99% probably of the
5 securities transactions weren't conducted lawfully. The statute of limitations has run."
6 However, Defendant CLARY did not tell BURKE that Defendants HAHN and DOES 1 through
7 50, inclusive, issued approximately 1,057,565 shares of unregistered securities in KOKOWEEF
8 during 2007 to approximately 580 investors at a price of \$6 per share, which is well within the
9 applicable statute of limitations provided by NRS §960.670.

10 15. Defendant CLARY admitted to BURKE at this meeting that he had concocted the
11 scheme to "reorganize" EIN to exchange EIN's shares for KOKOWEEF shares in order to
12 conceal the illegality of the sale of EIN securities and to conceal these illegal transactions from
13 the shareholders until hopefully the statute of limitations has lapsed before the shareholders
14 discovered this securities fraud.

15 16. During the September 18, 2007 meeting, BURKE asked Defendant CLARY the
16 direct question, "You are general counsel for KOKOWEEF, Inc., right?" Mr. CLARY responded
17 that in fact he was general counsel for the corporation and was not acting as general counsel for
18 Defendant HAHN. However, at that same meeting, BURKE expressed his concerns over
19 improprieties in the issuance of securities for EIN and KOKOWEEF, as well as the corporation's
20 failure to maintain adequate financial records and comply with the Bylaws. In response, attorney
21 CLARY stated that if something went wrong he would correct it or "make it go away." Also,
22 during this meeting, Defendant CLARY informed BURKE that the issuance of 70,000 shares of
23 stock in KOKOWEEF to BURKE was illegal and created a tax liability for BURKE and all other
24 shareholders who had been given shares of stock in exchange for alleged services contributed to
25 the corporation. Defendant CLARY stated that he would inform all of the shareholders that they
26 needed to file amended tax returns, but the Plaintiffs are informed and believe, and thereon
27 allege, that as of the date of filing this action, Defendant CLARY has failed to give notice to the
28 shareholders of this tax liability.

1 17. Plaintiffs are informed and believe, and thereon allege, that commencing in 2003
2 to the present, Defendant HAHN has written checks from the KOKOWEEF and EIN bank
3 accounts to himself and his separately owned company, HAHN'S WORLD OF SURPLUS, INC.,
4 (hereinafter "HAHN'S WORLD") for personal use. Defendant HAHN has wasted corporate
5 assets and converted corporate assets for his own personal benefit and use, thereby breaching his
6 fiduciary duty owed to the Plaintiffs as a director.

7 18. During the September 18, 2007 meeting, Defendant CLARY also advised
8 BURKE that the sales of securities in EIN and KOKOWEEF did not need to be registered with
9 the SEC, because they fell within an exemption provided by Rule 504 of Regulation D.
10 However, Plaintiffs are informed and believe, and thereon allege, that the sale of securities in
11 EIN and KOKOWEEF were not eligible for the exemption provided by Rule 504 of Regulation
12 D of the SEC because neither EIN or KOKOWEEF registered the offering of shares with the
13 State of Nevada or filed a Registration Statement with the State of Nevada or delivered
14 substantive disclosure documents as required to investors such as Plaintiffs. Further, neither EIN
15 nor KOKOWEEF filed a Form D after they first sold their securities, which is a requirement
16 under Rule 504 of Regulation D. Additionally, Defendant CLARY advised BURKE that the sale
17 of securities of EIN and KOKOWEEF were also exempt under Nevada securities laws.
18 However, Plaintiffs are informed and believe, and thereon allege, that these representations were
19 also false in that none of the transactions complied with the exemptions provided by NRS §9.520
20 or NRS §9.530.

21 19. Plaintiff, TED R. BURKE (hereinafter "BURKE"), was and is a resident of Clark
22 County, Nevada, and was at all relevant times until approximately March 26, 2008, was a
23 director and corporate secretary of KOKOWEEF. On or about May 1, 2007, Defendant HAHN
24 issued 75,000 shares of KOKOWEEF stock to BURKE.

25 20. Plaintiffs, MICHAEL R. KEHOE and LAURETTA L. KEHOE (collectively
26 referred to herein as "KEHOES"), were and are residents of Clark County, Nevada. During all
27 relevant times herein, the KEHOES were issued 1,100 shares of KOKOWEEF shares of stock on
28 or about October 4, 2006.

1 21. Plaintiff, JOHN BERTOLDO (hereinafter "BERTOLDO"), was and is a resident
2 of Clark County, Nevada. During all times relevant herein, BERTOLDO was issued 5,000
3 shares of EIN stock, which were exchanged for KOKOWEEF shares on or about October 4,
4 2006.

5 22. Plaintiff, PAUL BERNARD (hereinafter "BERNARD"), was and is a resident of
6 Clark County, Nevada. During all times relevant herein, BERNARD was issued 2,000 shares of
7 EIN stock, which were exchanged for KOKOWEEF shares on or about March 6, 2007.

8 23. Plaintiff, EDDY KRAVETZ (hereinafter "KRAVETZ"), was and is a resident of
9 Clark County, Nevada. During all relevant times herein, KRAVETZ was issued 834 shares of
10 EIN stock, which were exchanged for KOKOWEEF shares on or about March 13, 2007.

11 24. Plaintiffs, JACKIE and FRED KRAVETZ (collectively referred to herein as
12 "KRAVETZ"), were and are residents of Clark County, Nevada. During all times relevant
13 herein, the KRAVETZ were issued 500 shares of EIN stock, which were exchanged for
14 KOKOWEEF shares of stock on or about March 6, 2007.

15 25. Plaintiff, STEVEN FRANKS (hereinafter "FRANKS"), was and is a resident of
16 Clark County, Nevada. During all times relevant herein, FRANKS was issued 400 shares of EIN
17 stock, which were exchanged for KOKOWEEF shares of stock on or about March 2007.

18 26. Plaintiff, PAUL MARIA BARNARD (hereinafter "BARNARD"), was and is a
19 resident of Clark County, Nevada. During all times relevant herein, BARNARD was issued 100
20 shares of EIN stock, which were exchanged for KOKOWEEF shares of stock on or about March
21 18, 2007.

22 27. Plaintiff, LEON GOLDEN (hereinafter "GOLDEN"), was and is a resident of
23 Clark County, Nevada. During all times relevant herein, GOLDEN was issued 100 shares of EIN
24 stock, which were exchanged for KOKOWEEF shares of stock on or about March 1, 2007.

25 28. Plaintiff, C.A. MURFF (hereinafter "MURFF"), was and is a resident of Clark
26 County, Nevada. During all times relevant herein, MURFF was issued 100 shares of EIN stock,
27 which were exchanged for KOKOWEEF shares of stock on or about March 2007.

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1 29. Plaintiff, GERDA FERN BILLBE (hereinafter "BILLBE"), was and is a resident
2 of Clark County, Nevada. During all times herein, BILLBE was issued 1,234 shares of EIN
3 stock, which were exchanged for KOKOWEEF shares on or about March 28, 2007.

4 30. Plaintiffs, BOB and ROBYN TRESKA (hereinafter "TRESKAS"), were and are
5 residents of Clark County, Nevada. During all times relevant herein, the TRESKAS were issued
6 100 shares of EIN stock, which were exchanged for KOKOWEEF shares of stock by the Plan of
7 Reorganization dated August 31, 2006.

8 31. Plaintiff, MICHAEL RANDOLPH (hereinafter "RANDOLPH"), was and is a
9 resident of Clark County, Nevada. During all times relevant herein, RANDOLPH was issued
10 1,000 shares of EIN stock, which were exchanged for KOKOWEEF shares of stock by the Plan
11 of Reorganization dated August 31, 2006.

12 32. Plaintiff, FREDERICK WILLIS (hereinafter "WILLIS"), was and is a resident of
13 Clark County, Nevada. During all times relevant herein, WILLIS was issued 100 shares of EIN
14 stock, which were exchanged for KOKOWEEF shares of stock by the Plan of Reorganization
15 dated August 31, 2006.

16 33. Defendant, LARRY L. HAHN, is and was a resident of Clark County, Nevada,
17 and is and has been the President and Treasurer of Kokoweef since its incorporation in 2004, and
18 was the President and Treasurer of EIN since its incorporation in 1984.

19 34. Nominal Defendant, EIN, a Nevada corporation, was incorporated on October 24,
20 1984 and was dissolved on November 15, 2007.

21 35. Nominal Defendant, KOKOWEEF, is a fully organized Nevada corporation in
22 good standing that was incorporated on May 25, 2004.

23 36. Defendant, HAHN'S WORLD OF SURPLUS, INC. (hereinafter referred to as
24 HAHN'S WORLD") is a Nevada corporation doing business in North Las Vegas, Clark County,
25 Nevada, and is located at 2908 East lake Mead Boulevard, North Las Vegas, Nevada. HAHN'S
26 WORLD was incorporated in 1977 and HAHN was the President of that corporation until the
27 time that he transferred that office to his family members, although HAHN still maintains control
28 of that corporation.

1 37. Plaintiffs are ignorant of the true names of the Defendants sued as DOES 1
2 through 100, inclusive, and therefore Plaintiffs sue these Defendants by such fictitious names.
3 Following further investigation and discovery, Plaintiffs will seek leave of the Court to amend
4 this Complaint to allege their true names and capacities when ascertained. These fictitiously
5 named Defendants may be KOKOWEEF's shareholders, officers, directors, and other members
6 of management, consultants and other entities, who were involved in the wrongdoing detailed
7 herein. These Defendants aided and abetted, participated with and/or conspired with the named
8 Defendants in the wrongful acts and course of conduct or otherwise caused damages and injuries
9 claimed herein and are responsible in some manner for the acts, occurrences and events alleged
10 in this Complaint.

11 38. Plaintiffs are informed and believe, and thereon allege, that KOKOWEEF,
12 HAHN, HAHN'S WORLD and DOES 1 through 100, inclusive, are, and at all times mentioned
13 herein were, the alter-ego of each other, in that there now exists, and at all times mentioned
14 herein there existed, such unity of interest in ownership between these Defendants, and each of
15 them, such that any individuality and separateness has ceased in that each of the Defendants is,
16 and at all times mentioned herein was, a mere shell, instrumentality and conduit through which
17 each of the other Defendants carry on their business in the corporate name, exercising such
18 control and dominance of each of the other Defendants to such an extent that any individuality of
19 separateness of a Defendant did not and does not exist. Any further adherence to the fiction of a
20 separate existence of these several Defendants as entities distinct from each of the other
21 Defendants would permit an abuse of the corporate privilege and would sanction a fraud on
22 Plaintiffs. Plaintiffs are further informed and believe that said Defendants managed and operated
23 the corporate and affiliated entities and intermingled the assets of each to suit their convenience
24 by placing and conveying assets fraudulently among the Defendants in order to evade payment of
25 obligations and to render other Defendants insolvent and unable to meet their obligations to
26 Plaintiffs.

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DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS

39. Plaintiffs bring this derivative action for the benefit of Kokoweef and EIN to redress injuries suffered and to be suffered by Kokoweef and EIN as a result of the breaches of fiduciary duty and unjust enrichment of Hahn and other Defendants.

40. Plaintiffs will adequately and fairly represent the interest of Kokoweef and EIN and its shareholders in enforcing and prosecuting its rights.

41. At all times relevant to this action, Plaintiffs are shareholders of Kokoweef stock and were owners of EIN stock until EIN stock was exchanged for Kokoweef stock in August of 2006.

42. As a result of the facts set forth herein, Plaintiffs have not made any demand on the Kokoweef Board of Directors to institute this action against Hahn. Such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action for the following reasons:

a. Due to Hahn's positions as President and Treasurer, and holding almost a majority of the shares, he is in a position to and does control the Board, the company and its operations. There are seven board members, two of which are controlled by Hahn. However, a quorum of five is required to hold a board meeting.

b. Hahn will not permit a board meeting to occur unless he institutes it for matters he wants to discuss. This was evident when Burke scheduled a board meeting for August 28, 2007, to discuss an audit and also to request Hahn to step down. Hahn then scheduled a shareholders meeting for that same date to be held 70 miles from the place of the board meeting and it was impossible to attend both meetings.

c. Based on the summary of the September 19, 2007, meeting provided above and the attached Transcript of the meeting among Burke, Hahn, Clary, and other officers, it is obvious Hahn controls Kokoweef, and that he would find ways to obstruct a board meeting regarding the filing of a shareholders' derivative complaint.

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FIRST CAUSE OF ACTION

(Violation of NRS § 90.460 for the Unlawful Sale of

Unregistered Securities against Defendants HAHN, CLARY and DOES 1-50, Inclusive)

43. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 38 above as though fully set forth herein.

44. Defendants, and each of them, was an "issuer", "promoter" and/or "control person" as defined by NRS §§ 90.255, 90.275, 90.275 and 90.660(4).

45. Defendants issued securities, which were not exempt from registration, to Plaintiffs without abiding by the registration requirements of Nevada, did not have any preemption therefrom, and therefore Plaintiffs, under NRS § 90.660, may recover the consideration paid for the security and the interest at the legal rate of the state from the date of the payment, costs and reasonable attorneys' fees, less the amount of income received on the security.

46. Plaintiffs discovered the violations of NRS 90.660 within two (2) years of the filing of this action, and within five (5) years after the act, omission or transaction constituting the violations.

47. Plaintiffs are also entitled to all remedies available under NRS § 90.640, including a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus; appointment of a receiver, the imposition of a civil penalty of not more than \$2,500 for a single violation or \$100,000 for multiple violations in a single proceeding or a series of related proceedings; declaratory judgment; restitution; the appointment of a receiver or conservator for the Defendants' assets; an order of payment of the Division's investigative costs; or an order of such other relief as the court deems just and proper.

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SECOND CAUSE OF ACTION

**(Violation of NRS § 90.570 for the Unlawful Sale of a
Security by Means of a Scheme to Defraud Against Defendants HAHN, CLARY
and Does 1-50, Inclusive)**

48. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 38 above as though fully set forth herein.

49. Defendants, through the sale of unregistered securities, have employed a device, scheme or artifice to defraud members of the public described in specificity in paragraphs 1 through 38 above, by making false representations that these securities were exempt from registration and the disclosure and prospectus requirements of both federal and Nevada securities laws and that the Plaintiffs' investment in EIN and KOKOWEEF was for the purpose of mining explorations with the expectation of profit. Further fraudulent representations made by the defendants consisted of representations that the Plaintiffs' investment capital would be used to fund the commercial mining operation, but were in fact used by Defendants for their own personal use and benefit.

50. As alleged herein-above, Defendants made several untrue statements of material facts and/or omitted to state material facts necessary in order to make the statements made not misleading and true under the circumstances concerning the defendants' actual use of the Plaintiffs' investment capital and the fact that defendants knew that the sale of these unregistered securities were illegal and violated both federal and state laws and exposed Plaintiffs to tax liabilities.

51. Defendants, through the false and fraudulent sales of these unregistered securities, engaged in acts, practices and/or a course of business which operated as a fraud or deceit upon Plaintiffs by inducing Plaintiffs to purchase these securities. Moreover, Defendants either knew, and in the existence of reasonable care should have known, of the nature of their untrue statements and misleading omissions, or made the utterances with conscious or reckless disregard for the truth of these statements but made them to defraud Plaintiffs.

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1 52. The Plaintiffs did not know that the statements of material facts made to them by
2 Defendants during the sale of securities to them were untrue or that there was an omission of a
3 statement of material facts.

4 53. Plaintiffs did not receive any written offer, including financial or other
5 information necessary to correct all material misstatements or omissions in the information
6 required to be furnished to Plaintiffs, at the time of sale of these securities.

7 54. Defendants, pursuant to the fraudulent scheme, business practice, and on the basis
8 of untrue material facts and omissions, issued securities to the Plaintiffs, which are not exempt
9 from registration, without abiding by the registration requirements of Nevada, and therefore
10 Plaintiffs, under NRS § 90.660, may recover the consideration paid for the securities and interest
11 at the legal rate of the state from the date of payment, costs and reasonable attorneys' fees, less
12 the amount of income received on the securities.

13 55. Plaintiffs discovered the Defendants' fraud within two (2) years of the filing of
14 this action, and withing five (5) years after the act, omission or transaction constituting the
15 violations.

16 56. Plaintiffs are also entitled to all remedies available under NRS § 90.640, including
17 a Temporary Restraining Order, permanent or temporary prohibitory or mandatory injunction or a
18 writ of prohibition or mandamus; appointment of a receiver, the imposition of a civil penalty of
19 not more than \$2,500 for a single violation or \$100,000 for multiple violations in a single
20 proceeding or a series of related proceedings; declaratory judgment; restitution; the appointment
21 of a receiver or conservator for the Defendants' assets; an order of payment of the Division's
22 investigative costs; or an order of such other relief as the court deems just and proper.

23 **THIRD CAUSE OF ACTION**

24 **(Fraudulent Misrepresentation Against Defendants HAHN**

25 **and DOES 1-100, Inclusive)**

26 57. Plaintiffs reallege and incorporate herein by reference the allegations contained in
27 paragraphs 1 through 38 above as though fully set forth herein.

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1 58. Defendants made false and fraudulent misrepresentations as described with
2 specificity above and incorporated by reference herein.

3 59. Defendants, and each of them, made these representations with the knowledge or
4 belief that the representations were false or with an insufficient basis of information for making
5 these representations to Plaintiffs.

6 60. Defendants intended to induce Plaintiffs to act upon the misrepresentations by
7 entering into the purchase of the securities by the Defendants.

8 61. Plaintiffs were ignorant of the truth of the misrepresentations and concealments
9 made by Defendants and in fact justifiably relied on the misrepresentations made by Defendants,
10 and each of them.

11 62. As a direct and proximate result of Defendants' misstatements and
12 misrepresentations of material facts, Plaintiffs purchased securities from the Defendants in EIN
13 and KOKOWEEF and have suffered damages as more fully set forth herein in an amount to be
14 proved at trial.

15 63. As a result, Plaintiffs are, in the alternative, entitled to rescission of the contract, an
16 accounting and the return of any and all money or property given, plus interest and expenses.

17 64. Defendants had actual knowledge of the fact that the representations were in fact
18 false, and for these reasons, and because the conduct by these Defendants was malicious,
19 oppressive and/or fraudulent, Plaintiffs are, therefore, entitled to punitive damages to make an
20 example of and to punish these Defendants in addition to actual damages.

21 **FOURTH CAUSE OF ACTION**

22 **(Negligent Misrepresentation Against Defendants HAHN, CLARY**
23 **and DOES 1-100, Inclusive)**

24 65. Plaintiffs reallege and incorporate herein by reference the allegations contained in
25 paragraphs 1 through 38 above as though fully set forth herein.

26 66. Defendants supplied false guidance to the Plaintiffs in the sale of the securities of
27 EIN and KOKOWEEF by representing that such sales were exempt from registration under both

1 federal and Nevada securities laws when in fact the sale of these securities were illegal and not
2 exempt from registration under either federal or Nevada securities laws.

3 67. The misrepresentations made to Plaintiffs included the false and fraudulent
4 statements described above in this First Amended Complaint and incorporated herein by
5 reference.

6 68. Defendants, and each of them, made these representations negligently, and
7 without any reasonable basis for believing them to be true.

8 69. Plaintiffs were ignorant of the truth of the misrepresentations and concealments
9 made by Defendants and in fact justifiably relied on the misrepresentations made by Defendants.

10 70. As a direct and proximate result of Defendants' misstatements and
11 misrepresentations of material facts, Plaintiffs purchased securities from the Defendants in EIN
12 and KOKOWEEF and have suffered damages as more fully set forth herein in an amount to be
13 proved at trial.

14 71. As a result, Plaintiffs are, in the alternative, entitled to rescission of the purchase of
15 their securities, an accounting and the return of any and all money or property given, plus interest
16 and expenses.

17 **FIFTH CAUSE OF ACTION**

18 **(Fraud In The Inducement Against Defendants HAHN, CLARY**
19 **and DOES 1-100, Inclusive)**

20 72. Plaintiffs reallege and incorporate herein by reference the allegations contained in
21 paragraphs 1 through 38 above as though fully set forth herein.

22 73. Plaintiffs purchased securities from the Defendants in EIN and KOKOWEEF
23 based upon the false representations made to Plaintiffs in order to induce them to purchase these
24 securities.

25 74. The false representations made to Plaintiffs included, *in alia*, the fraudulent
26 statements described with specificity above and incorporated by reference herein.

27 75. Defendants presented numerous false representations regarding the exemption
28 from registration of the securities under both federal and state law to Plaintiffs, and the fact that

1 Plaintiffs' investment capital would be used exclusively to finance the commercial mining
2 operation of gold and silver and other precious metals at the mine, despite knowing the true and
3 correct facts that the sale of all securities issued by Defendants in EIN and KOKOWEEF violated
4 both federal and Nevada securities laws and that the proceeds of the sale of securities to the
5 Plaintiffs would be used for the Defendants' personal use and benefit.

6 76. Defendants, and each of them, had a duty to disclose the true nature of all known
7 material facts and circumstances surrounding the sale of securities to the Plaintiffs. Defendants
8 had exclusive knowledge of all such material facts and such material facts were not known or
9 reasonably accessible to Plaintiffs.

10 77. The concealment of the true facts from Plaintiffs were done with the intent to
11 induce them to purchase the securities from the Defendants in both EIN and KOKOWEEF.

12 78. Plaintiffs' justifiable reliance on statements made by Defendants was justified as
13 Defendant CLARY purported to have professional legal expertise concerning securities laws and
14 Defendant HAHN had exclusive knowledge that the use of the Plaintiffs' investment capital was
15 used for his own personal benefit instead of financing commercial mining operations at the mine.

16 79. As a result of Defendants false representations, Plaintiffs were unaware of the true
17 nature of the facts concerning the legality of the purchase of shares from the Defendants in that
18 their investments capital would be diverted for the Defendants own personal use and benefit.

19 80. As a result of these the false representations, Plaintiffs purchased securities from
20 the Defendants in EIN and KOKOWEEF and suffered damages in an amount to be proven at
21 trial.

22 81. As a result, Plaintiffs are, in the alternative, entitled to rescission of the contract,
23 securities, an accounting and the return of any and all money or property given, plus interest and
24 expenses.

25 82. Defendants had actual knowledge of the fact that the representations were in fact
26 false, and for these reasons and because the conduct by these Defendants was malicious,
27 oppressive and/or fraudulent, Plaintiffs are, therefore, entitled to punitive damages to make an
28 example of and to punish these Defendants in addition to actual damages.

SIXTH CAUSE OF ACTION

**(Fraudulent Concealment Against Defendants HAHN, CLARY
and DOES 1-100, Inclusive)**

83. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 38 above as though fully set forth herein.

84. Plaintiffs purchased securities from the Defendants and relied upon their representations that the purchase of these securities complied with all relevant federal and state securities laws and that the Plaintiffs investment capital would be used to finance the commercial mining operation, which would yield them dividends and a profit on their investment.

85. The material facts concealed from Plaintiffs including, *inter alia*, the fraudulent statements described with specificity above and incorporated herein by reference.

86. Defendants concealed and suppressed the material facts regarding the illegality of the sale of securities to them by the Defendants, despite knowing the true and correct facts regarding the securities. These misrepresentations were made and the true and correct facts concealed by Defendants in order to intentionally induce the Plaintiffs to purchase the securities in EIN and KOKOWEEF.

87. Defendants, and each of them, had a duty to disclose the true nature of all known material facts and circumstances surrounding the sale of securities and use of their investment capital by Defendants. Defendants had exclusive knowledge of all such material facts and such material facts were not known or reasonably accessible to Plaintiffs.

88. Plaintiffs' reliance on statements made by Defendants, and each of them, was justified as Defendant CLARY purported to have professional legal expertise concerning securities laws and Defendant HAHN had exclusive knowledge of the use of the Plaintiffs' investment capital in the mine.

89. As a result of Defendants intentional misrepresentations of material facts, Plaintiffs were unaware of the true nature of the facts alleged with specificity above herein. Had Plaintiffs been aware of the material facts concealed by Defendants, Plaintiffs would not have purchased securities from the Defendants.

1 90. As a result of the concealment alleged herein, Plaintiffs purchased securities from
2 the Defendants and have suffered damages in an amount to be proven at trial.

3 91. As a result, Plaintiffs are, in the alternative, entitled to rescission of the purchase of
4 the securities, an accounting and the return of any and all money or property given, plus interest
5 and expenses.

6 92. Defendants had actual knowledge of the fact that the representations were in fact
7 false, and for these reasons and because the conduct by these Defendants was malicious,
8 oppressive and/or fraudulent, Plaintiffs are, therefore, entitled to punitive damages to make an
9 example of and to punish these Defendants in addition to actual damages.

10 **SEVENTH CAUSE OF ACTION**

11 **(Breach of Fiduciary Duty Against Defendant HAHN**
12 **and DOES 1 through 100, Inclusive)**

13 93. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1
14 through 38 above as though fully set forth herein.

15 94. By reason of his position of President and Treasurer of KOKOWEEF and former
16 President and Treasurer of EIN, Defendant HAHN owes Plaintiffs, as shareholders of those
17 corporations, the fiduciary obligations of good faith, trust, loyalty and due care, and is required to
18 use his utmost ability to control and manage the corporate affairs in a fair, just, honest and
19 equitable manner. Defendants are required to act in the best interests of the corporation and its
20 shareholders and not in the furtherance of his own personal interests or financial benefit.
21 Defendants HAHN and DOES 1 through 100, inclusive, owe the corporation and its shareholders
22 the fiduciary duty to exercise good faith and diligence in the administration of those corporations
23 and in the use and preservation of its property and assets, and has the highest obligations of fair
24 dealing.

25 95. Defendants HAHN and DOES 1 through 100, inclusive, violated and breached
26 those duties by their actions described with specificity above.

27 96. As a direct and proximate result of the Defendants' breaches of fiduciary duties,
28 the corporation and its shareholders have sustained damages in an amount to be proven at trial.

PRAYER FOR RELIEF


Plaintiffs pray for judgment and relief against Defendants as follows:

1. For damages according to proof;
2. For interest and all damages as allowed by the laws of the State of Nevada according to proof at the time of trial;
3. For a Temporary Restraining Order, permanent or temporary, prohibitory or mandatory injunction or writ of prohibition or mandamus;
4. For the removal of HAHN as a director of KOKOWEEF;
5. For the reinstatement of BURKE as a director and corporate secretary;
6. For the imposition of a civil penalty of not more than \$2,500 for a single violation or \$100,000 for multiple violations in a single proceeding or a series of related proceedings;
7. For the issuance of a declaratory judgment;
8. For an order of rescission and restitution to Plaintiffs;
9. For an order for an accounting;
10. For an order of punitive damages;
11. For the appointment of a receiver or conservator of the Defendants' assets;
12. For an order of payment of the Division's investigative costs;
13. For an order of such other relief as this Court deems just and proper;
14. For consideration paid for the securities and interest at the legal rate of Nevada from the date of payment, plus all expenses incurred, costs and reasonable attorneys' fees, plus the amount of income received on the securities.

DATED this 22nd day of September, 2008.

ROBERTSON & VICK, LLP

By:


ALEXANDER ROBERTSON, IV, Bar No. 8642
JONATHAN S. VICK, Bar No. 8707
JENNIFER L. TAYLOR, Bar No. 5798
401 N. Buffalo Drive, Suite 202
Las Vegas, Nevada 89145

Attorneys for Plaintiffs

ROBERTSON
& VICK, LLP

1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

3 VERIFICATION

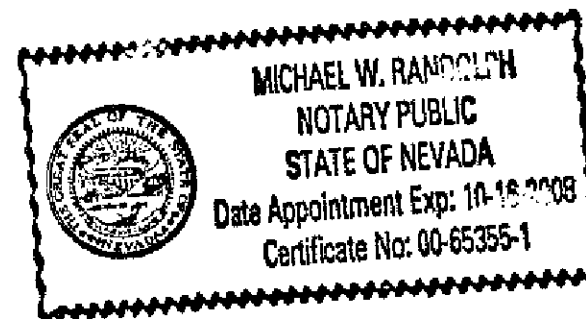
4 Under penalties of perjury, the undersigned declares that he is a Plaintiff named in the
5 foregoing VERIFIED DERIVATIVE COMPLAINT and knows the contents thereof, that the
6 pleading is true of his own knowledge, except as to those matters stated on information and
7 belief, and that as to such matters he believes it to be true, and that during all relevant time
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9 hold shares of Kokoweef, Inc., stock, and did hold shares of Explorations Incorporated of Nevada
10 stock, which were exchanged for Kokoweef, Inc., shares of stock by the Plan of Reorganization
11 of August 31, 2006.

12
13 
14 TED R. BURKE

15
16 SIGNED AND SWORN TO before me on this 22 day of September, 2008, by TED
17 R. BURKE.

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19 
20 NOTARY PUBLIC

21 [seal]



28 ROBERTSON
& VICK, LLP

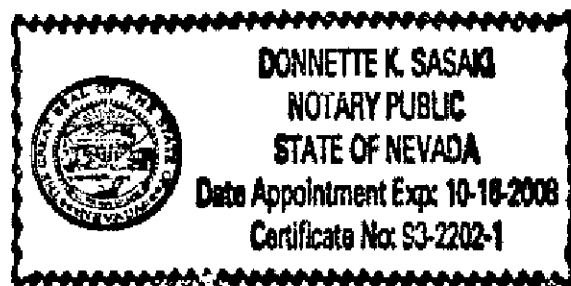
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

3 VERIFICATION

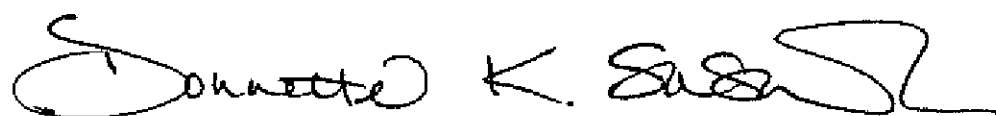
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10 stock, which were exchanged for Kokoweef, Inc., shares of stock by the Plan of Reorganization
11 of August 31, 2006.

12
13 
14 MICHAEL RANDOLPH

15
16 SIGNED AND SWORN TO before me on this 22 day of September, 2008, by
MICHAEL RANDOLPH.



[seal]

28 
NOTARY PUBLIC

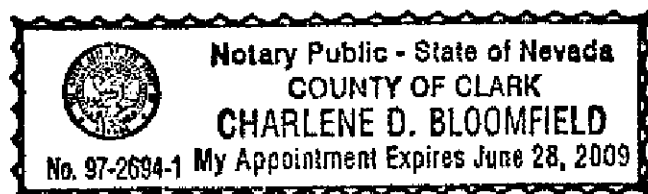
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

3 VERIFICATION

4 Under penalties of perjury, the undersigned declares that he is a Plaintiff named in the
5 foregoing VERIFIED DERIVATIVE COMPLAINT and knows the contents thereof, that the
6 pleading is true of his own knowledge, except as to those matters stated on information and
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10 stock, which were exchanged for Kokoweef, Inc., shares of stock by the Plan of Reorganization
11 of August 31, 2006.

12 
13 _____
14 JOHN BERTOLDO

15 SIGNED AND SWORN TO before me on this 19th day of September, 2008, by JOHN
16 BERTOLDO.



20 [seal]

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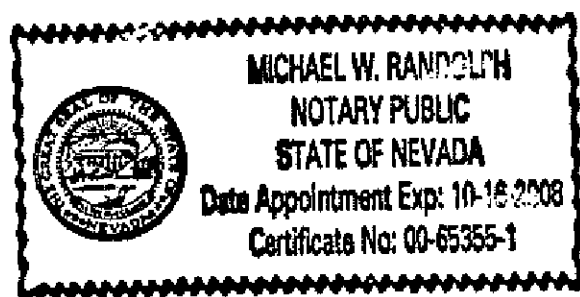
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

3 VERIFICATION

4 Under penalties of perjury, the undersigned declares that she is a Plaintiff named in the
5 foregoing VERIFIED DERIVATIVE COMPLAINT and knows the contents thereof, that the
6 pleading is true of her own knowledge, except as to those matters stated on information and
7 belief, and that as to such matters she believes it to be true, and that during all relevant time
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9 hold shares of Kokoweef, Inc., stock, and did hold shares of Explorations Incorporated of Nevada
10 stock, which were exchanged for Kokoweef, Inc., shares of stock by the Plan of Reorganization
11 of August 31, 2006.

12
13 Paula M. Barnard
14 PAULA M. BARNARD

15
16 SIGNED AND SWORN TO before me on this 22 day of September, 2008, by
PAULA M. BARNARD.



[seal]

28 Michael W. Randolph
NOTARY PUBLIC

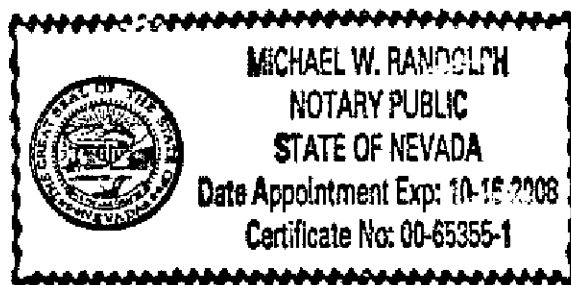
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

3 VERIFICATION

4 Under penalties of perjury, the undersigned declares that he is a Plaintiff named in the
5 foregoing VERIFIED DERIVATIVE COMPLAINT and knows the contents thereof, that the
6 pleading is true of his own knowledge, except as to those matters stated on information and
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10 stock, which were exchanged for Kokoweef, Inc., shares of stock by the Plan of Reorganization
11 of August 31, 2006.

12
13 Paul Barnard
14 PAUL BARNARD

15
16 SIGNED AND SWORN TO before me on this 22 day of September, 2008, by PAUL
BARNARD.



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Michael W. Randolph
NOTARY PUBLIC

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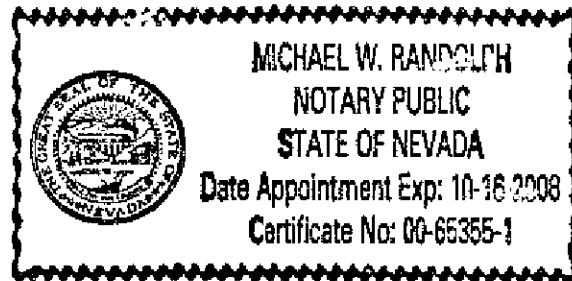
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss


3 VERIFICATION

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5 foregoing VERIFIED DERIVATIVE COMPLAINT and knows the contents thereof, that the
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11 of August 31, 2006.

12 
13 C.A. Murff

14
15 SIGNED AND SWORN TO before me on this 21 day of September, 2008, by
16 C.A. Murff.



19 
20 NOTARY PUBLIC

21 [seal]

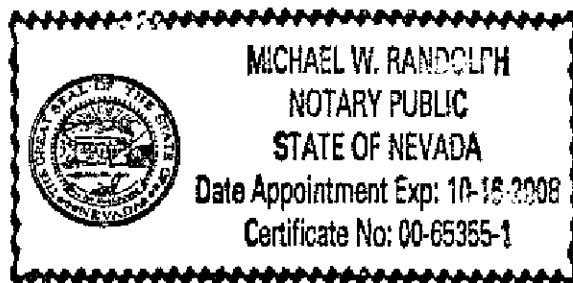
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

3 VERIFICATION

4 Under penalties of perjury, the undersigned declares that he is a Plaintiff named in the
5 foregoing VERIFIED DERIVATIVE COMPLAINT and knows the contents thereof, that the
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11 of August 31, 2006.

12
13 
14 LEON GOLDEN

15 SIGNED AND SWORN TO before me on this 21st day of September, 2008, by LEON
16 GOLDEN.



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22 NOTARY PUBLIC
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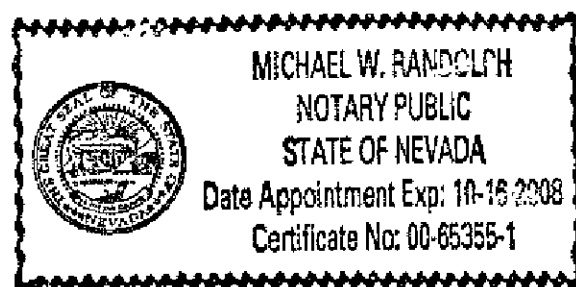
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

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11 of August 31, 2006.

12
13 Gerda Fern Billbe
14 GERDA FERN BILLBE

15 SIGNED AND SWORN TO before me on this 21st day of September, 2008, by
16 GERDA FERN BILLBE.



21 [seal]

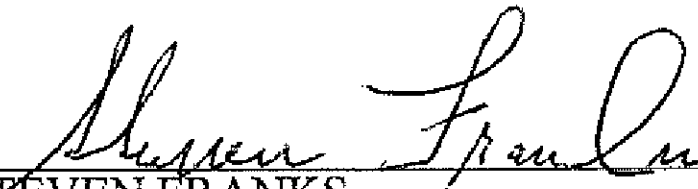
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Michael W. Randolph
NOTARY PUBLIC

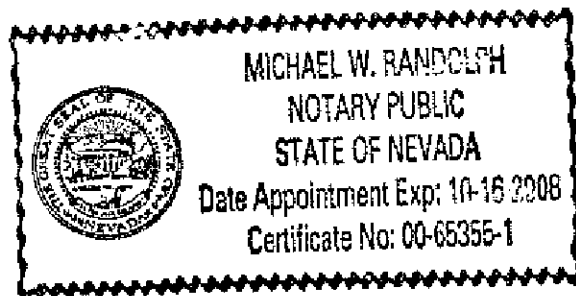
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

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11 of August 31, 2006.

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13 
14 STEVEN FRANKS

15 SIGNED AND SWORN TO before me on this 21st day of September, 2008, by
16 STEVEN FRANKS.



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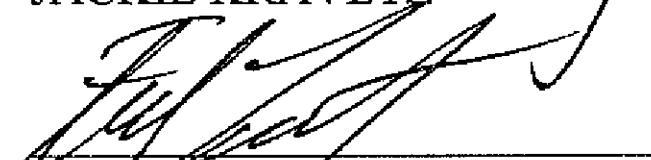
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NOTARY PUBLIC

[seal]

1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

3 VERIFICATION

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11 of August 31, 2006.

12
13 
14 JACKIE KRAVETZ
15 
16 FRED KRAVETZ

17 SIGNED AND SWORN TO before me on this 22 day of September, 2008, by
18 JACKIE KRAVETZ and FRED KRAVETZ.



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23 NOTARY PUBLIC

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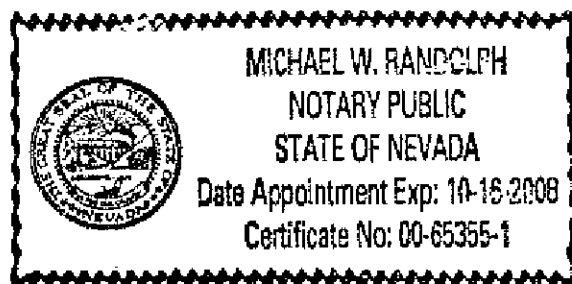
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

3 **VERIFICATION**

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11 of August 31, 2006.

12
13 
14 EDDY KRAVETZ

15 SIGNED AND SWORN TO before me on this 22 day of September, 2008, by EDDY
16 KRAVETZ.



[seal]

28 
NOTARY PUBLIC

1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

3 VERIFICATION

4 Under penalties of perjury, the undersigned declares that they are Plaintiffs named in the
5 foregoing VERIFIED DERIVATIVE COMPLAINT and know the contents thereof, that the
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11 of August 31, 2006.

12
13 Bob Treska
14 BOB TRESKA

15 Robyn L. Treska
16 ROBYN TRESKA

17 SIGNED AND SWORN TO before me on this 22 day of September, 2008, by BOB
18 TRESKA and ROBYN TRESKA.



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28 Michael W. Randolph
NOTARY PUBLIC

1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

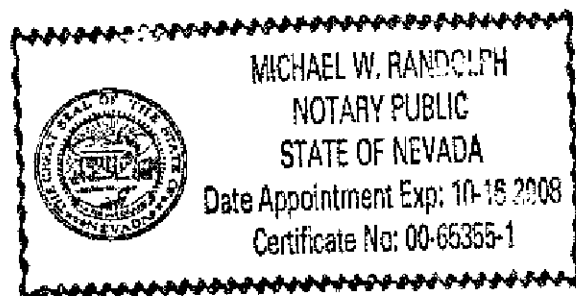
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11 of August 31, 2006.

12
13 Michael R. Kehoe
MICHAEL R. KEHOE

14
15 Lauretta L. Kehoe
LAURETTA L. KEHOE

16
17 SIGNED AND SWORN TO before me on this 22 day of September, 2008, by
18 MICHAEL R. KEHOE and LAURETTA L. KEHOE.



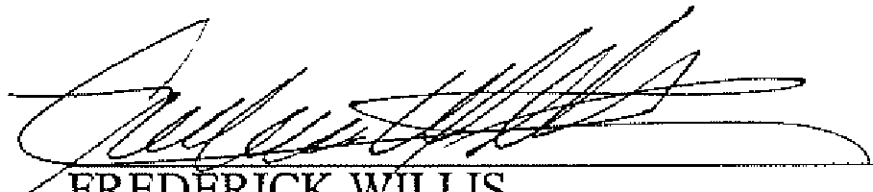
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28 Michael W. Randolph
NOTARY PUBLIC

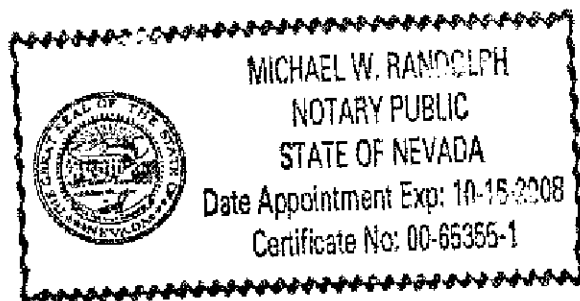
1 STATE OF NEVADA)
2 COUNTY OF CLARK) ss

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11 of August 31, 2006.

12 
13 FREDERICK WILLIS
14

15 SIGNED AND SWORN TO before me on this 22 day of September, 2008, by
16 FREDERICK WILLIS.



21 [seal]

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NOTARY PUBLIC