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1 **OPPS**
Neil J. Beller, Esq.
2 **NEIL J. BELLER, LTD.**
Nevada Bar No. 002360
3 7408 W. Sahara Ave.
Las Vegas, Nevada 89117
4 (702) 368-7767
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5 Attorney for Plaintiffs

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

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

Case No. A558629
Dept. XIII

14 Plaintiffs,

**PLAINTIFFS' OPPOSITION TO
EMERGENCY MOTION TO
CONTINUE HEARINGS AND
EX PARTE MOTION FOR
ORDER SHORTENING TIME**

15 vs.

16 **LARRY L. HAHN, individually, and as President**)
and Treasurer of Kokoweef, Inc., and former)
17 **President and Treasurer of Explorations**)
Incorporated of Nevada; HAHN'S WORLD OF)
18 **SURPLUS, INC., a Nevada corporation; DOES**)
19 **I - X, inclusive; DOE OFFICERS, DIRECTORS**)
and PARTICIPANTS I - XX,)

Exempt from Arbitration
(Shareholders Derivative Action-
Equitable Relief)

20 Defendants,.

21 and

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

Date of Hearing: May 7, 2008

24 Nominal Defendants.)

Time of Hearing: 9:00 a.m.

25
26 COMES NOW the Plaintiffs, by and through their attorney of record, NEIL J. BELLER,
27 ESQ., of the law firm of NEIL J. BELLER, LTD, and submits their Opposition to Emergency Motion
28 to Continue Hearings and Ex Parte Motion for Order Shortening Time as follows:

LAW OFFICES
NEIL J. BELLER, LTD.
A PROFESSIONAL CORPORATION
7408 WEST SAHARA AVENUE
LAS VEGAS, NEVADA 89117
AREA CODE 702-368-7767

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1 What the attorney for Nominal Defendant Kokoweef, Inc. has termed an emergency motion
2 to continue hearings contains within it a disguised opposition to Plaintiffs' motion to disqualify
3 Mr. Clary. Kokoweef requests this Court to continue the hearing of May 12, 2008 that Plaintiffs'
4 set on an order shortening time to the date of the hearing set on May 19, 2008 for Kokoweef's
5 motion to require security from plaintiffs.

6 Plaintiffs filed both their motions on an order shortening time based on their contentions that
7 if the stay pursuant to NRS 41.520 remains in effect, this time period will allow Defendant Hahn
8 to further breach his fiduciary duties owed to the shareholders/directors/officers of Kokoweef.

9 Thus, the necessity for the hearing of Plaintiffs' motions on a order shortening time. Now,
10 Mr. Clary wants to vacate this Court's granting of its orders shortening the time for the hearing.
11 Kokoweef's counsel has cited no procedural rule supporting its request to continue the hearing set
12 for May 12, 2008. Instead, counsel for Kokoweef states that Plaintiffs' motions are improper.

13 Firstly, concerning the request to continue the hearing set for May 19, 2008, Kokoweef's
14 motion to require security from plaintiffs was signed by both Patrick C. Clary, Esq. and Curtis W.
15 Cannon, Esq., as attorneys for Kokoweef, Inc. Because there are two attorneys representing
16 Kokoweef, there is no reason why Mr. Cannon cannot represent Kokoweef at the May 19th hearing.
17 Additionally, there is no reason why Mr. Clary cannot attend the May 19th hearing when he has
18 stated in his Affidavit that he will be returning to Las Vegas on Sunday, May 18th. Mr. Clary has
19 shown no reason why the hearing on May 19, 2008 regarding Kokoweef's motion to require security
20 from plaintiffs should not go forward.

21 Secondly, concerning the request to continue the hearing set for May 12, 2008, Plaintiffs in
22 their motions clearly stated the reasons why their motion to disqualify and their motion to strike
23 needed to be heard on an order shortening time. The reasons were that any stay in these proceedings
24 would allow Defendants to further breach and continue to breach the fiduciary duties owed to
25 Plaintiffs. This Court accepted Plaintiffs contentions and the Affidavit of their counsel, Neil J.
26 Beller, Esq. and signed the order shortening time. Counsel for Kokoweef has shown no reason why
27 Plaintiffs' Motion to Strike Motion to Require Security from Plaintiffs cannot go forward on May
28 12, 2008. Attorney Cannon represents Kokoweef and no reason has been given regarding his

1 inability to be present for that hearing.

2 Kokoweef's counsel contends that the orders shortening time should not have been
3 considered by this Court and the motions should not have been accepted for filing because the case
4 was stayed pursuant to NRS 41.520 (5). Although prosecution of the case must be stayed by the
5 filing of the motion to require security, nevertheless, a motion to require security is a "motion" and
6 as such, pursuant to EDCR 2.20 (b), an opposition is permitted and failure to serve and file an
7 opposition "may be construed as an admission that the motion is meritorious and a consent to
8 granting the same." Is counsel for Kokoweef honestly contending that Plaintiffs are precluded from
9 filing an opposition or an motion to strike the motion to require security?

10 Then, counsel for Kokoweef has the audacity to state that this Court has "no justification for
11 the Plaintiffs' counsel's seeking the Order Shortening Time based on the false allegations of their
12 counsel's Affidavit in support thereof."

13 Thirdly, counsel for Kokoweef has inserted in its memorandum points and authorities a
14 disguised opposition to Plaintiffs' two motions. Does counsel for Kokoweef contend that the
15 hearing of May 12th needs to be continued because of the allegation that Plaintiffs' motions are
16 improper? If that is not the reason, why is the reference to the Dimartino v. Eighth Judicial District
17 Court case noted?

18 Because counsel for Kokoweef has noted the Dimartino case, Plaintiffs will discuss it.
19 Although the Nevada Supreme Court in DiMartino v. Eighth Judicial Dist. Court, 119 Nev.119, 66
20 P.3d 945 (2003) stated the SCR 178 "does not mandate complete disqualification of an attorney who
21 may be called as a witness; by its plain terms, SCR 178 simply prohibits the attorney from appearing
22 as trial counsel." (Id. at 122.), the court further stated that SCR 178 is virtually identical to the ABA
23 Model Rule of Professional Conduct 3.7, which has been interpreted by the ABA Commission on
24 Ethics and Professional Responsibility to allow a lawyer who is expected to testify at trial to
25 represent his client in pretrial proceedings although the lawyer may not appear in any situation
26 requiring the lawyer to argue his own veracity to a court. (emphasis added.) And therein is the crux
27 of the matter. Plaintiffs have provided a Transcript of the December 19, 2007 meeting where in
28 attendance were Ted Burke, Mr. Clary, Defendant Hahn and others. This Transcript is an exhibit

1 to Plaintiffs' Complaint, and to its Motion to Disqualify and its Motion to Strike. Based on the
2 statements made at this meeting by Mr. Clary, there is no doubt, not only will Mr. Clary be a
3 necessary witness in this litigation, but there exists a strong probability he may be named as a
4 Defendant. As such, Mr. Clary will be testifying to prove his veracity to this Court. Pursuant to the
5 opinion of the DiMartino court, this he cannot do while representing Kokoweef.

6 The facts in DiMartino are entirely different from the facts in this case at bar. That district
7 court did not determine whether that counsel was likely to be a necessary witness. Further, the move
8 to disqualify counsel was made two years into the litigation.

9 This instant matter is in its initial stages. Kokoweef has not yet even answered the Complaint.
10 As such, disqualification of counsel would not work a hardship on Kokoweef. Plaintiffs
11 acknowledged that a lawyer who may be called as a witness, may represent the client in the pre-trial
12 stages, but not at trial. However, there is no doubt that Mr. Clary will be called as a necessary
13 witness. This is evident from the contents of the Transcript of the meeting. There is also no doubt
14 that at some point, Mr. Clary will have to prove his veracity to this Court. This is evident from the
15 contents of the Transcript of the meeting.

16 Lastly, Mr. Clary in his Affidavit states that Plaintiffs' motion were not properly served on
17 him. Yet, he admits that on April 29, 2008, he received a fax from Mr. Beller that included a fax
18 from the court stating that the motion hearing was set for May 12, 2008. Pursuant to EDCR 2.26,
19 an order which shortens the notice of a hearing to less than 10 days may not be served by mail. If
20 Mr. Clary received notice on April 29, 2008 that the hearing was set for May 12th, then more than
21 10 days notice was given and he was duly noticed. Obviously, if the fax from the court stated the
22 order shortening time was granted and the date for the hearing was May 12th, the motions were filed,
23 and they were on April 29, 2008.

24 In support of Plaintiffs' Opposition regarding the reasons why the hearing on Plaintiffs' two
25 motions should not be continued from May 12, 2008, attached is the Affidavit of Michael R. Kehoe,
26 one of the Plaintiffs in this matter. Mr. Kehoe has personally reviewed the books and records of
27 Kokoweef and found many instances of questionable and possible fraudulent actions by Defendant
28 Hahn. In early or mid-April, 2008, Defendant Hahn sent out a proxy vote and letter to remove Mr.

1 Kehoe and two other directors from the Board in retaliation for filing the Complaint. Plaintiffs Ted
 2 Burke, Richard Dutchik and Mr. Kehoe did not receive a copy of the proxy vote or letter or notice
 3 of any meeting. Several other shareholders did not receive the proxy vote or letter or notice of any
 4 meeting from Defendant Hahn. Mr. Kehoe believes that the proxy vote and letter were only sent to
 5 a few select shareholders who would vote as directed by Mr. Hahn. Mr. Kehoe was never informed
 6 by Defendant Hahn or his attorney the he had been removed from the Board. The so-called vote to
 7 remove Mr. Kehoe, Mr. Burke and Mr. Dutchik from the Board of Directors was not in compliance
 8 with the ByLaws of Kokoweef or NRS 78.370 (3). Mr. Kehoe believes that Defendant Hahn is
 9 planning a shareholder's meeting on or about June 1, 2008. He has not received notice of that
 10 meeting. Mr. Kehoe believes that Defendant Hahn will continue to mislead current and prospective
 11 shareholders of Kokoweef at the upcoming shareholders meeting in an attempt to solidify his sole
 12 control of the company and its assets. Mr. Kehoe believes, based on his review of the Kokoweef
 13 books and records that Defendant Hahn removed Plaintiffs Burke, Dutchik, and himself so that he
 14 can be free to continue to solicit funds from investors for his own personal gain.

15 Based on the foregoing, showing the reasons and necessity of having Plaintiffs' two motions
 16 heard as set on the order shortening time to May 12, 2008, Plaintiffs request this Court to deny
 17 Kokoweef's emergency motion to continue the hearings. **Should this Court consider granting**
 18 **Kokoweef's emergency motion to continue the hearing, then Plaintiffs request that Plaintiffs'**
 19 **Motion to Strike Motion to Require Security from Plaintiffs be heard as scheduled on May**
 20 **12, 2008 because attorney Curtis W. Cannon also represents Kokoweef, Inc. and he can attend**

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 22 ///

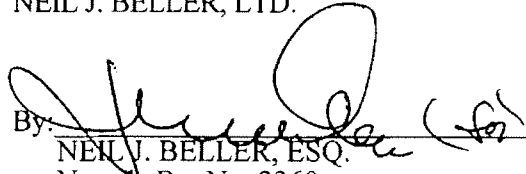
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on that date because no reason has been presented to this Court that he also is unable to attend.

DATED this 6th day of May, 2008.

NEIL J. BELLER, LTD.

By: 
NEIL J. BELLER, ESQ.
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7408 W. Sahara Avenue
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(702)368-7767
Attorney for Plaintiffs

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78.370 (3) because not all shareholders who are entitled to vote were given notice of the meeting or received a proxy.

8. Based upon information and belief, Defendant Hahn is planning a shareholders meeting on or about Sunday, June 1, 2008.

9. I have not received notice for a meeting of shareholders.

10. I believe Defendant Hahn will continue to mislead current and prospective shareholders of Kokoweef, Inc. at the upcoming shareholders meeting in an attempt to solidify his sole control of the company and its assets.

11. Based on my review of the books and records and the facts stated herein, it is my belief and fear that Defendant Hahn attempted to remove Mr. Burke and Mr. Dutchik and myself in order for him to continue to solicit funds from investors for his own personal gain.

Further affiant sayeth naught.

Michael R. Kehoe
MICHAEL R. KEHOE

Subscribed and Sworn to before me
This 12 Day of May, 2008

Starrlyn Farrow
NOTARY PUBLIC

