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CLERK OF THE COURT

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: XIII

APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND APPLICATION FOR TEMPORARY APPOINTMENT OF RECEIVER; MOTION FOR PRELIMINARY INJUNCTION, AND MOTION FOR APPOINTMENT OF RECEIVER

Plaintiffs Ted R. Burke; Michael R. And Lauretta L. Kehoe; John Bertoldo; Paul Barnard; Eddy Kravetz; Jackie and Fred Kravetz; Steven Franks; Paula Maria Barnard; Peter T. And Lisa A. Freeman; Leon Golden; C.A. Murff; Gerda Fern Billbe; Bob and Robyn Treska; Michael Randolph and Frederick Willis are hereinafter collectively referred to as Plaintiffs, by and through their undersigned counsel of record, Robertson & Vick LLP, hereby apply, pursuant to NRS 90.640 and NRCP Rule 65, to have this Court enter a temporary restraining order against Defendants Larry H. Hahn (hereafter "HAHN"), Hahn's World of Surplus, Inc. (Hereafter "HWS"), Patrick Clary (hereafter "CLARY"), Kokoweef, Inc. (hereafter "KOKOWEEF"), and Explorations Incorporated of Nevada (hereafter "EIN"), enjoining these Defendants from selling, conveying, assigning or otherwise wasting or misappropriating the assets of KOKOWEEF until this matter can be heard on the merits, and thereafter seek entry of a preliminary injunction against Defendants, enjoining any depletion, removal, or other disposition of KOKOWEEF's assets, or the further illegal issuance of KOKOWEEF stock, unless such action is first approved by a court-appointed receiver, pending the outcome of this lawsuit and Plaintiffs' claims.

In addition, Plaintiffs apply, pursuant to NRS 90.640 and NRCP Rule 65 of the Nevada Rules of Civil Procedure, to have this Court appoint a temporary receiver to conduct the business of KOKOWEEF until this matter can be heard on the merits, and thereafter seek entry of an order appointing a receiver, during the pendency of this matter, to conduct the business of KOKOWEEF, and further restraining KOKOWEEF from conducting any business whatsoever except by and through the court-appointed receiver.

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This motion is made and based upon the following Memorandum of Points and Authorities, the exhibits attached hereto, the accompanying affidavit of Ted Burke, the papers and pleadings on file herein, and those matters adduced by the Court at the hearing hereof.

DATED this 17th day of November, 2008.

ROBERTSON & VICK, LLP

By: _____
ALEXANDER ROBERTSON, IV
Bar No. 8642
JENNIFER L. TAYLOR
Bar No. 5798
401 N. Buffalo Drive, Suite 202
Las Vegas, Nevada 89145

Attorneys for Plaintiffs

NOTICE OF MOTION

TO: ALL COUNSEL AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that the Plaintiffs will bring the above and foregoing APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND APPLICATION FOR TEMPORARY APPOINTMENT OF RECEIVER; MOTION FOR PRELIMINARY INJUNCTION, AND MOTION FOR APPOINTMENT OF RECEIVER on for hearing at the courtroom of the above-entitled Court on the 22 day of December, 2008, at 9:00 a.m. of said day, in Department XIII of said Court.

Dated this 17th day of November, 2008.

ROBERTSON & VICK, LLP

By _____
Alexander Robertson, IV
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This shareholder derivative action arises out of the defendants' scheme to fraudulently induce shareholders to purchase shares of corporate stock in a gold mine investment scheme managed by defendant HAHN, in order for HAHN to finance his personal lifestyles under the guise of conducting a legitimate gold mine operation. This scheme included the sale of unregistered and non-exempt securities in violation of NRS 90.460. Plaintiffs allege that over the past 25 years, defendant HAHN solicited the sale of securities in both KOKOWEEF, and its predecessor company EIN, to defraud approximately 1,200 investors, including Plaintiffs, through the sale of unregistered securities to finance the construction of a private compound used solely for the personal use of defendants at the mine location.

The request for the application for a temporary restraining order and appointment of a receiver stems also from:

(1) Defendants' refusal to conduct the affairs of KOKOWEEF in accordance with the Bylaws and Nevada law concerning the governance of a corporation;

(2) Defendants' violations of state and federal securities laws by issuing corporate stock without registration, exemption and without proper records;

(3) Defendants' refusal to conduct a formal audit by a CPA or maintain accounting records in accordance with generally accepted accounting practices;

(4) Defendants' failure to notify shareholders of their potential tax liability for the issuance of corporate stock by Defendants in exchange for alleged

services rendered by certain shareholders, without payment of any legitimate consideration;

(5) Defendants' failure to give proper notice of shareholder and board of director meetings;

(6) Defendant HAHN's *ultra vires* actions in unilaterally removing Board members, and appointing replacement Board members, at his sole discretion, depending upon whether they support his misconduct or not;

(7) Defendant HAHN's improper use of corporate assets to pay for his defense of this shareholder derivative lawsuit, which constitutes further unauthorized use of corporate assets for his personal financial benefit; and

(8) Defendant HAHN's forgery of Plaintiff BURKE's signature on a set of Bylaws for the corporation.

Through these actions, Defendants continue to damage KOKOWEEF and the Plaintiffs, as well as all of the approximately 1,200 shareholders in KOKOWEEF. Absent an immediate court order granting Plaintiffs' request for a Temporary Restraining Order and the Appointment of a Receiver, there is substantial likelihood that Defendant HAHN will continue to embezzle or otherwise misuse corporate assets, remove and appoint board members in a capricious manner, and continue to illegally issue stock to unsuspecting members of the public through violations of both state and federal securities laws, thus subjecting the corporation to even further liability and damages.

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II.

STATEMENT OF FACTS

This is a shareholder derivative lawsuit against Defendant Hahn, KOKOWEEF's president, and his alter-ego, HAHN'S WORLD OF SURPLUS. This shareholder derivative suit seeks damages owed to the corporation as a result of, among other acts of malfeasance, self-dealing, securities fraud, and conversion of corporate assets by the Defendants. Plaintiffs, all shareholders and/or directors of KOKOWEEF, purchased shares of corporate stock in a gold mine investment managed by HAHN. The mine is located approximately eleven miles south of state line in San Bernardino County, California. Over the past twenty-five (25) years, Defendant HAHN has solicited and sold investments in this gold mine to over twelve hundred (1,200) investors throughout the country, although he cannot produce records of the names, addresses or amount of consideration, if any, paid by all of these investors.

EIN was incorporated on October 24, 1984, for the purpose of exploration and continuing the search for gold in underground caverns. During EIN's corporate existence, Defendant HAHN issued an undetermined number of shares to literally hundreds of investors in the gold mine for a sale price of $6 per share. The issuance of these shares of stock in EIN violated both federal and state securities laws as more fully alleged in the First Amended Complaint (FAC) on file herein.

Following is a history of the past and current actions of Defendants that warrant imposition of a Temporary Restraining Order and Preliminary Injunction, and the appointment of a Receiver.

Defendant CLARY was the corporate counsel to EIN, and at all times relevant herein, was and is the corporate counsel to KOKOWEEF. As alleged more fully in the FAC, recognizing that EIN and HAHN had violated both federal and state securities laws by issuing non-exempt shares in EIN, Defendants HAHN and CLARY devised a scheme to conceal these illegal transactions from the shareholders by "reorganizing" EIN into a new corporation, called KOKOWEEF.

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On or about November 10, 2005, EIN entered into an "Agreement and Plan of Reorganization" with KOKOWEEF, whereby EIN agreed to sell and assign to KOKOWEEF all of EIN's assets and KOKOWEEF agreed to assume all of the liabilities of EIN, ***"excepting liability to the Old Company's [EIN] stockholders"***, in exchange for voting shares of KOKOWEEF's common stock. KOKOWEEF was incorporated by Defendant HAHN on or about May 25, 2004. Defendant CLARY acted as both corporate counsel for EIN and the surviving corporation, KOKOWEEF.

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

As alleged at paragraph 13 of the FAC, Defendants CLARY and HAHN devised the scheme to "reorganize" EIN into KOKOWEEF in an attempt to conceal from the shareholders the fact that 99% of EIN's stock sales were illegal. Further Defendant CLARY has admitted that he wrote the Agreement and Plan of Reorganization in such a way to avoid KOKOWEEF's liability to its unsuspecting shareholders for these securities violations in violation of NRS 90.460.

Plaintiffs allege that Defendants failed to keep records of the identities of the approximately 1,200 investors in EIN and KOKOWEEF, the amount of consideration paid by each investor for their stock, and the number of shares issued by Defendants to each investor. Further, Plaintiffs allege that Defendants failed to maintain financial statements and follow generally accepted accounting principals for either EIN and KOKOWEEF.

Plaintiffs further allege that over the past twenty-five (25) years, Defendants, HAHN solicited the sale of securities in EIN and KOKOWEEF as part of a scheme to defraud Plaintiffs and other investors, whereby Defendants used the sale of unregistered securities to finance the

construction of a private compound used solely for the personal use of Defendant HAHN at the mine location. Plaintiffs are further informed and believe that in furtherance of the scheme to defraud the Plaintiffs and other investors, HAHN prohibited any unannounced visits to the mine site and would only allow access to the mine on special occasions. During these approved visits, Defendants would give a tour of the mine, mining equipment and promote the progress of the mining operation, although in fact no serious mining operations were regularly conducted by the Defendants. Plaintiffs allege that HAHN used the proceeds of the sale of unregistered securities to finance his own lifestyle, construction of his compound and his living expenses and not in furtherance of a commercial mining operation to the financial detriment of the shareholders.

On or about September 16, 2006, an assayer retained by EIN presented Defendant HAHN with an analytical report, which indicated the presence of gold and silver and other valuable mineral at depth in the mine. In the Spring of 2007, the President of Mayan Gold, Inc. met with Defendant HAHN and Plaintiff BURKE regarding a proposal to pay to KOKOWEEF the sum of Four Million Dollars ($4,000,000.00) in investment capital to mine gold, silver and other valuable minerals at the mine in a joint venture with KOKOWEEF. At this meeting, the President of Mayan Gold, Inc. made a standard request to review the books and financial records of KOKOWEEF as part of his due diligence investigation. In response to this request, Defendant HAHN abruptly terminated the meeting and rejected Mayan Gold's $4 million investment offer, to the financial detriment of the shareholders.

On or about June of 2007, Plaintiff BURKE and several other shareholders discovered the existence of the Bylaws of KOKOWEEF, and upon reviewing those Bylaws, had reason to suspect that KOKOWEEF's business practices were in conflict with the Bylaws. Plaintiff BURKE asked Defendant HAHN whether an annual audit of KOKOWEEF's financial records had ever been performed. Defendant HAHN informed BURKE that no such audit had ever been performed and refused to make KOKOWEEF's books and financial records available to BURKE, despite the fact that BURKE was a Director and Secretary of KOKOWEEF at the time. BURKE was not alone in requesting that an audit of KOKOWEEF's financial records be performed. Attached hereto as Exhibit "1" are affidavits from several stockholders, outside of

the named Plaintiffs, requesting an inspection of the books and records. Plaintiffs believe that while Defendants have produced some of the books and records for purposes of this litigation, that the documents necessary for a full audit, as required in the Bylaws, have still not been produced.

BURKE then informed HAHN that he was going to request a board meeting to address his concerns and to request a formal audit be conducted of KOKOWEEF's books. BURKE also discussed his request for an audit with Defendant CLARY, who informed BURKE that the board meeting could be held on August 28, 2007, at CLARY's office.

Upon learning that BURKE had requested a meeting of the board of directors of KOKOWEEF to be scheduled on August 28, 2007, HAHN then noticed a "Special Meeting" of all shareholders to be held on the same date to vote on new Board members. Defendant HAHN failed to give proper notice of the "Special Meeting" pursuant to the Bylaws. HAHN noticed the location for this "Shareholder Meeting" to be held at the mine location, which was approximately seventy (70) miles from the location of the Board meeting in Las Vegas making it impossible to attend both meetings. As a result, the Board meeting was never held, and BURKE and other Plaintiffs instead attended the shareholder meeting on August 28, 2007.

At the shareholder meeting, HAHN nominated five (5) individuals for the Board of Directors without any prior notice to the shareholders or the existing Board of Directors, again in violation of the Bylaws. HAHN also announced at the shareholder meeting that he would consent to an audit of KOKOWEEF's books and financial records. However, the subsequent audit directed by BURKE was only performed on the financial records of KOKOWEEF for a period of the preceding eight (8) months and no review of the financial records of the predecessor entity, EIN, was allowed by HAHN.

On or about September 18, 2007, BURKE was invited to attend a meeting with Defendants HAHN and CLARY. At that meeting, BURKE asked Defendant CLARY what his personal liability was as a Director of KOKOWEEF for what BURKE perceived to be KOKOWEEF's violation of the Bylaws and for what he believed to be HAHN's misappropriation of corporate funds to pay for his personal expenses. At this meeting, Defendant

CLARY informed BURKE that the reason KOKOWEEF was formed was an attempt to "clean up" the multiple securities violations of EIN. Defendant CLARY further informed BURKE that ninety percent (99%) of EIN's stock sales by Defendant HAHN were unlawful. When BURKE stated his intent to report these unlawful activities to the Securities and Exchange Commission ("SEC"), Defendant CLARY told BURKE going to the SEC was "insane", that the SEC was "the big bad wolf", that the SEC were " assholes", and that "they destroy companies and they destroy people." Further, Defendant CLARY told BURKE, "I just don't want you to do anything stupid, I mean, the idea of going to talk to the SEC is about as insane as anything you could personally do. I mean, if you want to just stick a knife in yourself, it'd be a shorter way to solve the problem."

Defendant CLARY further advised BURKE that although 99% of the securities transactions had probably not been conducted lawfully, and further informed him that the impropriety was irrelevant because the statute of limitations had run. However, Defendant CLARY did not tell BURKE that Defendants HAHN had issued approximately 1,057,565 shares of unregistered securities in KOKOWEEF during 2007 to approximately 580 investors at a price of $6 per share, violating NRS 90.460. The statute of limitations for such violation is two (2) years from the date the violation was discovered, or should have been discovered by the exercise of reasonable diligence. NRS 90.670. Thus, the applicable statute of limitations has not run, contrary to Defendant CLARY's misrepresentation to Plaintiff BURKE.

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

During the September 18, 2007 meeting, BURKE asked Defendant CLARY the direct question, "You are general counsel for KOKOWEEF, Inc., right?" Mr. CLARY responded that in fact he was general counsel for the corporation, and was not acting as general counsel for Defendant HAHN. However, at that same meeting, BURKE expressed his concerns over

improprieties in the issuance of securities for EIN and KOKOWEEF, as well as the corporation's failure to maintain adequate financial records and comply with the Bylaws. In response, attorney CLARY stated that if something went wrong he would correct it or "make it go away." Also, during this meeting, Defendant CLARY informed BURKE that the issuance of 70,000 shares of stock in KOKOWEEF to BURKE was illegal and created a tax liability for BURKE and all other shareholders who had been given shares of stock in exchange for alleged services contributed to the corporation. Defendant CLARY stated that he would inform all of the shareholders that they needed to file amended tax returns, but the Plaintiffs are informed and believe, and thereon allege, that as of the date of filing this action, Defendant CLARY has failed to give notice to the shareholders of this tax liability.

Plaintiffs further allege that commencing in 2003 to the present, Defendant HAHN has written checks from the KOKOWEEF and EIN bank accounts to himself and his separately owned company, HAHN'S WORLD OF SURPLUS, INC., (hereinafter "HAHN'S WORLD") for personal use. Defendant HAHN has wasted corporate assets and converted corporate assets for his own personal benefit and use, thereby breaching his fiduciary duty owed to the Plaintiffs as a director. See Affidavit of Plaintiff Michael R. Kehoe (hereafter "Kehoe") shareholder and director of KOKOWEEF, attached hereto as Exhibit "2". Mr. Kehoe's Affidavit details his review of Kokoweef's financial records, and sets forth specific examples of Defendant's mismanagement of Kokoweef. These examples include evidence that Hahn wrote checks to family members and personal friends for their personal use, including food, pet food and care, and other supplies, that checks were written to pay back personal loans of Hahn, that Hahn wrote checks as loans that were never repaid, that money was taken for sales of shares with no concomitant record of the deposit of those sums, that company funds were improperly used for construction of improvements to residences at the camp site, that cash advances were taken on Kokoweef credit cards with no back-up invoices, and that Hahn wrote checks to various vendors for his own benefit, including his own dental work.

Defendants will undoubtedly argue that this litigation was filed by a few disgruntled shareholders. However, the reality is that this litigation will benefit all the shareholders, because

the corporate defalcation continues, with new and egregious examples. Most recently, a newsletter was sent out by Defendant Hahn soliciting funds for the defense of the litigation. A true and correct copy of this newsletter is attached hereto as Ex. "3 ". The Affidavit of Ted Burke authenticating this newsletter is attached hereto as Ex. "4". Ample case authority would support the imposition of a Temporary Restraining Order, Preliminary Injunction and appointment of a Receiver based solely on this newsletter. ***Sobba v. Elmen,*** 462 F. Supp. 2d 944, 950 (E.D. Ark. 2006) ("Allowing the nominal [corporate] defendants to defend on the merits in effect would allow the [individual defendants] to shift the cost of his defense of the derivative suit to the corporation against which he has allegedly committed tortious conduct...[The individual defendant's] using his control of the nominal defendants to get them to defend on the merits would shift the cost of his defense to the corporation even if [the shareholder plaintiff's] claims are proven."); ***See also Rowen v. Le Mars Mut. Ins. Co. of Iowa***, 282 N.W. 2d 639, 645 (Iowa 1979); ***Meyers v. Smith,*** 251 N.W. 20-21 (Minn. 1933).

During the September 18, 2007 meeting, Defendant CLARY also advised BURKE that the sales of securities in EIN and KOKOWEEF did not need to be registered with the SEC, because they fell within an exemption provided by Rule 504 of Regulation D. However, Plaintiffs believe that the sale of securities in EIN and KOKOWEEF were not eligible for the exemption provided by Rule 504 of Regulation D of the SEC because neither EIN nor KOKOWEEF registered the offering of shares with the State of Nevada, nor filed a Registration Statement with the State of Nevada or delivered substantive disclosure documents as required to investors such as Plaintiffs. Further, neither EIN nor KOKOWEEF filed a Form D after they first sold their securities, which is a requirement under Rule 504 of Regulation D. Additionally, Defendant CLARY advised BURKE that the sale of securities of EIN and KOKOWEEF were also exempt under Nevada securities laws. However, Plaintiffs are informed and believe, and thereon allege, that these representations were also false in that none of the transactions complied with the exemptions provided by NRS §90.520 or NRS §90.530.

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III.

APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND MOTION FOR PRELIMINARY INJUNCTION

A. Legal Standard

In Nevada, Rule 65 of the Nevada Rules of Civil Procedure and NRS 90.640 of the Nevada Revised Statutes govern injunction and remedies for the illegal sale of securities. The Supreme Court has explained, injunctions are issued to protect plaintiffs from irreparable injury and to preserve the Court's power to render a meaningful decision after a trial on the merits. ***See Ottenheimer v. Real Estate Division,*** 91 Nev. 338, 535 P.2d 1284 (1975). The standards for granting a temporary restraining order and a preliminary injunction are largely identical. ***See Nevada Civil Practice Manual* § 2503 (1988).** A temporary restraining order or preliminary injunction may be granted "[w]hen it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually." ***NRS* §** 33.010. Generally, "[a] preliminary injunction is available if an applicant can show a likelihood of success on the merits and a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy." ***Danberg Holdings Nevada, L.L.C. v. Douglas County and its Bd. Of County Comm'rs*** 115 Nev. 129, 142 (1999) (citing ***Pickett v. Comanche Construction, Inc.,*** 108 Nev. 422, 426 (1992)). The court may also consider the balance of hardships between the parties. ***See Clark County School Dist. V. Buchanan***, 112 Nev. 1146, 924 P.2d 716 (1996). The purpose of a preliminary injunction is to preserve the status quo ante pending the outcome of the action. ***Number One Rent-A-Car v. Ramada Inns,*** 94 Nev. 779, 781, 587 P.2d 1329, 1330 (1978). The decision to grant or deny a preliminary injunction "is within the sound discretion of the district court, whose decision will not be disturbed on appeal absent an abuse of discretion." ***Id.*** As to a temporary restraining order, it may issue without notice to the adverse party if the moving party establishes that it will suffer immediate and irreparable injury, loss, or damages. ***See*** NRCP 65(b).

B. A Temporary Restraining Order and Preliminary Injunction is Appropriate

Plaintiffs seek an injunction to maintain the *status quo* and prevent Defendants from taking any of the following acts:

(1) Issuing, redeeming, assigning or transferring any corporate stock in KOKOWEEF;

(2) Transferring any money from Kokoweef to any Defendant;

(3) Transferring, assigning, or encumbering any asset of KOKOWEEF;

(4) Using any asset of KOKOWEEF to pay for the defense of Defendants, HAHN, HAHN'S WORLD OF SURPLUS, INC. and/or CLARY; or

(5) Destroying or altering any corporate records of KOKOWEEF;

NRS §90.640 expressly authorizes District Courts to issue a TRO, permanent or temporary restraining order or mandatory injunction and appoint a receiver for the defendants' assets.

Additionally, courts in other jurisdictions have recognized that courts may enjoin the disposition of assets under a defendant's control in order to secure a plaintiff's equitable remedy of restitution. ***See Federal Sav. & Loan Ins. Corp. v. Dixon,*** 835 F.2d 554 (5th Cir. 1987). In ***Federal Sav. & Loan Ins. Corp.***, officers and directors of a Savings and Loan Association participated in a scheme to falsify the Association's records, thus enabling them to justify inflated salaries in the millions of dollars. ***Id.*** at 557. The appointed receiver of the Association, the FSLIC, filed a motion for a temporary restraining order and preliminary injunction to enjoin the defendant officers and directors from secreting or dissipating their assets. ***Id.*** The district court granted the receiver's motion. ***Id.*** On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the district court's decision, concluding that an asset freeze was an appropriate method to assure the equitable relief sought by the FSLIC. ***Id.*** at 561. The Fifth Circuit reasoned that, although a preliminary injunction is generally not permissible to secure post-judgment legal relief in the form of damages, a court may exercise its equitable powers in ordering a preliminary injunction to secure an equitable remedy such as restitution. ***Id.*** at 560.

In addition to holding that a preliminary injunction is appropriate to secure an equitable remedy like restitution, the Fifth Circuit more specifically held in ***Federal Sav. & Loan Ins. Corp.***, that an injunction freezing a defendant's assets is a suitable method to assure that equitable relief is granted in certain circumstances. In this case, enjoining the Defendants from disposing of the corporation's assets in order to secure Plaintiffs' equitable remedies is appropriate because, without a temporary restraining order and preliminary injunction, as discussed more fully below, the Plaintiffs will: (1) suffer irreparable harm, and (2) have no adequate remedy at law, despite the fact that they have a clear likelihood of success on the merits of their claim.

1. Plaintiffs Will Suffer Immediate and Irreparable Harm if a Preliminary Injunction Is Not Granted.

Injunctive relief is appropriate where a party will suffer irreparable injury. ***Dangberg***, 115 Nev. at 142; ***NRS*** § 33.010. Plaintiffs' rights and interests in KOKOWEEF will be irreparably injured or possibly destroyed if Defendants are allowed to dispose of assets currently under their control during the pendency of this matter because Plaintiffs may lose their opportunity to recover those assets once they have been wasted. As more fully described in the Affidavit of Plaintiff BURKE, attached hereto as Ex. "4", when BURKE requested, as the corporate secretary, to review KOKOWEEF's financial book and records and have an audit performed, Defendant HAHN unilaterally removed BURKE as a director and secretary of KOKOWEEF, in violation of the Bylaws. It is clear that HAHN believes he is above the law, that he does not have to comply with the Bylaws, and runs KOKOWEEF as if it were his personal checking account. Further, the corporate documents upon which Defendants based their improper removal of Plaintiff Burke included Burke's forged signature. ***See*** Burke Affidavit, Ex. "5". This again supports the urgent need for the granting of Plaintiff's request for a Temporary Restraining Order, Preliminary Injunction and Appointment of a Receiver.

2. Plaintiffs Do Not Have an Adequate Remedy at Law

In order to obtain a preliminary injunction, a party must establish that compensatory damages are an inadequate remedy. ***See Dangberg***, 115 Nev. at 142. In this case, compensatory

damages will be inadequate if Defendants are allowed to loot the corporation's assets during the pendency of this lawsuit. ***See Federal Sav. & Loan Ins. Corp.***, at 561 (***citing Foltz v. U.S. News & World Report,*** 760 F.2d 1300 (D.C. Cir. 1985) (plaintiff's cause of action would have been destroyed by the dissipation of funds to numerous recipients unless employee benefits plan was enjoined from paying out its assets to numerous possible recipients); ***also citing Lynch Corp. v. Omaha National Bank***, 666 F.2d 1208 (1981) (irreparable harm and no adequate remedy at law because a multiplicity of suits would be required for plaintiff to gain relief)). Plaintiffs are without an adequate remedy at law. Absent the equitable relief of an injunction to freeze the assets under HAHN's control, nothing will stand in the way of HAHN completely depleting KOKOWEEF's assets for his own profit, and otherwise acting against the shareholders' interests, thereby leaving Plaintiffs and countless many other KOKOWEEF shareholders without recourse or value in their KOKOWEEF stocks.

Plaintiffs are merely seeking to maintain the *status quo* during the pendency of this case, and for an appointment of a receiver to review and approve of all business transactions conducted by KOKOWEEF in order to protect the value of the copy and the interests of all shareholders.

3. There is a Reasonable Likelihood of Success on the Merits

In order to obtain a preliminary injunction, a party must merely establish that it has a reasonable likelihood of prevailing on the merits of the case. ***Dangberg***, 115 Nev. at 142. Plaintiffs have more than a reasonable likelihood of success on the merits of one or more of the ten (10) causes of action contained in their First Amended Complaint ("FAC"). The First and Second causes of action are for violation of Nevada securities laws, which are strict liability causes of action. It is irrefutable that HAHN did not register any of the shares he sold to Plaintiffs. The evidence will show that in the year 2007, HAHN issued approximately 1,057,565 shares of unregistered securities in KOKOWEEF to approximately 580 investors at a price of $6 per share. None of these transactions complied with the exemptions from registration provided by NRS 90.520 or NRS 90.530. Further, any person claiming an exemption has the burden of proving the exemption from registration. The statutory burden of proof under NRS 90.690 is upon the Defendants, not the Plaintiffs in this case. Accordingly, Plaintiffs' likelihood of

prevailing meets this low threshold, and a temporary restraining order, and preliminary injunction are warranted.

4. Defendants Cannot Use the Assets of KOKOWEEF to Pay for Their Legal Defense of this Lawsuit

It is well settled that corporate directors who are defendants named in a shareholder derivative lawsuit cannot use the corporation's assets to pay for their legal defense of that action. ***See Patrick v. Alacer Corporation —Cal. Rptr. 3d —, 2008 WL 4649138*** (2008) (a copy of which is attached for reference as Ex. "6"); ***Sobba v. Elmen 462 F. Supp. 2d 944 (E.D. Ark. 2006)*** (holding directors cannot shift the cost of defense in a shareholder derivative lawsuit to the corporation, against which the directors have allegedly committed tortious conduct). In addition, two state high courts have recognized a corporation's limited ability to contest derivative actions. The Supreme Court of Iowa affirmed the dismissal of a corporation's cross-claim in a derivative action. ***See Rowen v. Le Mars Mut. Ins. Co. of Iowa (Iowa 1979) 282 N.W. 2d. 639, 645.*** The Iowa Supreme Court held that the corporation "should take no active part in the controversy, merely awaiting the outcome and reaping the fruits of any judgment for plaintiffs." ***Id.***

Similarly, the Supreme Court of Minnesota affirmed the striking of a corporation's affirmative defenses in a derivative action. ***See Myers v. Smith 251 N.W. 20-21 (Minn. 1933).*** It held that the corporation "is a nominal party only" with no "right to here step in and, by answer, attempt to defeat what is practically its own suit and causes of action." The court further stated: "Nor have the two individual defendants, in control thereof, any right to use the corporation for any such purpose or to impose on the corporation the burden of fighting their battle." ***(Emphasis added). Id at p. 21. Accord Slutzker v. Rieber, 28 A. 2d. 528-529 (N.J. Ch. 1942).***

Additionally, as described in Section II above, Defendants are currently, in violation of axiomatic case law, soliciting shareholder funds to pay for the defense of this litigation. A Temporary Restraining Order is imperative and appropriate to prevent Defendants HAHN, his

alter-ego HAHN's WORLD OF SURPLUS and CLARY from using KOKOWEEF's assets to pay for their defense of this lawsuit.

C. Conclusion

By entering a temporary restraining order to preserve the *status quo,* absolutely no harm will be done to Defendants. Defendants will still be able to conduct corporate business, despite the injunctive relief sought. Furthermore, KOKOWEEF'S shareholders will be protected from further wasting of corporate assets. For the foregoing reasons, Plaintiffs' Motion must be granted in its entirety, and a temporary restraining order issued pending a hearing on the preliminary injunction.

IV.

MOTION FOR APPOINTMENT OF RECEIVER

A. Legal Standard

In general, "a receiver is a neutral party appointed by the court to take possession of property and preserve its value for the benefit of the person or entity subsequently determined to be entitled to the property." ***Anes v. Crown Partnership, Inc.,*** 113 Nev. 195, 199, 932, P.2d 1067, 1069 (1997) **(*citing Lynn v. Ingalls,*** 100 Nev. 115, 120, 676 P.2d 797, 800-01 (1984)). A court-appointed receiver acts as an officer of the court. ***Bowler v. Leonard,*** 70 Nev. 370, 383, 269 P.2d 833, 839 (1954).

NRS §90.640 expressly authorizes the District Court to appoint a receiver over a defendants' assets in a securities fraud case. Additionally, Nevada law allows for the appointment of a receiver upon the application of a creditor who seeks to subject any property or fund to a claim when the property or fund is in danger of being dissipated. ***See NRS* § 32.010(1).** Nevada law also allows for the appointment of a receiver upon the application of a plaintiff who has a probable claim to property or a fund and the property or fund is in danger of being lost, removed, or materially injured. ***See NRS* § 32.010(1).** Specifically, NRS 32.010(1) provides the following:

A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. **In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.**

NRS 32.010(1).

"The appointment of a receiver is an action within the trial court's sound discretion and will not be disturbed absent a clear abuse." ***Medical Device Alliance, Inc. v. Ahr,*** 116 Nev. 851, 862, P.3d 135, 142 (2000) (***citing Nishon's Inc. v. Kendigian,*** 91 Nev. 504, 505 538 P.2d 580, 581 (1975). ***See also Peri-Gil Corp. v. Sutton,*** 84 Nev. 406, 411, 442 P.2d 35, 37 (1968); ***Bowler v. Leonard***, 70 Nev. 370, 383, 269 P.2d 833, 839 (1954)). The appointment of a receiver does not require the posting of a bond. ***Bowler v. First Judicial Dist. Court,*** 68 Nev. 445, 234 P.2d 593 (1951). In Nevada, a court may appoint a receiver on an *ex parte* basis. Nevada Civil Practice Guide § 30.03[4] (2006)(***citing Maynard v. Railey,*** 2 Nev. 313, 317, 1866 Nev. LEXIS 58 (1866)). "The applicant must be prepared to show that the delay resulting from giving notice to the adverse parties would defeat the rights of the complainant, or that it would result in great injury to him." ***Id.***

In this case, this Court should exercise its discretion and appoint a receiver to oversee the business operations of KOKOWEEF, as discussed more fully below, Plaintiffs easily satisfy the statutory requirements of Section 32.010 of the Nevada Revised Statutes for the appointment of a receiver.

B. Plaintiffs Have Standing to Seek Appointment of a Receiver

In addition to NRS 32.010(1), NRS 90.640, provides Plaintiffs the standing to seek appointment of a receiver. Nevada law contemplates a receiver as an appropriate type of relief for the types of claim set forth by Plaintiffs.

C. A Receiver Should be Appointed to Manage KOKOWEEF

This Court should exercise its discretion and appoint a receiver to manage and control the business affairs of KOKOWEEF based upon Defendant HAHN's utter refusal to follow corporate formalities, repeated violations of both federal and state securities laws, and refusal to open the books and financial records of the corporation to even Directors or shareholders.

As more fully discussed in the attached Affidavit from Michael R. Kehoe, Defendants have misappropriated KOKOWEEF's assets for their own personal use for years. Until a proper audit can be conducted by a court-appointed receiver, the full extent of embezzlement and other wasting of corporate assets will not be known. Additionally, recent activity, such as the solicitation of defense funds through the KOKOWEEF corporate newsletter, makes it clear that Defendants intend to continue this corporate misconduct.

E. Conclusion

By entering a temporary appointment of a receiver, absolutely no harm will be done to Defendants. Plaintiffs simply demand that DEFENDANTS HAHN and CLARY comply with the appropriate Bylaws, Nevada law, and not divert corporate assets for HAHN's improper or personal uses. The *status quo* will be maintained. For the foregoing reasons, Plaintiffs' Motion must be granted in its entirety, and this Court should appoint a receiver during the pendency of this matter to conduct the business of KOKOWEEF, and enjoin defendants HAHN and CLARY from conducting any KOKOWEEF business, except by and through the court-appointed receiver.

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V.

CONCLUSION

Based on all of the foregoing, it is respectfully requested that this Court: (1) grant Plaintiffs' application for temporary restraining order; (2) grant Plaintiffs' motion for a preliminary injunction; and (3) grant Plaintiffs' application for appointment of a receiver.

DATED this 17th day of November, 2008.

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