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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.

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; STEVEN FRANKS; PAULA MARIA BARNARD; PETE T. and LISA A. FREEMAN; LEON GOLDEN; C.A. MURFF; GERDA FERN BILLBE; BOB and ROBYN TRESKA; MICHAEL RANDOLPH, and FREDERICK WILLIS, Plaintiffs, vs. LARRY L. HAHN, individually, and as President of and Treasurer of Kokoweef, Inc., and former President and Treasurer of Explorations Incorporated of Nevada; HAHN'S WORLD OF SURPLUS, INC., a Nevada corporation; DOES I-X, inclusive; DOE OFFICERS, DIRECTORS and PARTICIPANTS I-XX, Defendants, and KOKOWEEF, INC., a Nevada corporation; EXPLORATIONS INCORPORATED OF NEVADA, a dissolved Nevada corporation; Nominal Defendants.	CASE NO. A558629 DEPT. XIII DATE: 10/13/08 TIME: 9:00 a.m.

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OPPOSITION TO MOTION FOR CLARIFICATION OF THE PRELIMINARY FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING NOMINAL DEFENDANT KOKOWEEF, INC.'S RENEWED MOTION TO REQUIRE SECURITY FROM PLAINTIFFS DRAFTED AND SUBMITTED BY KOKOWEEF, INC.

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

("SURPLUS")("HAHN and SURPLUS sometimes collectively referred to herein as ("RESPONDING DEFENDANTS") hereby respond and oppose the Motion for Clarification of the Preliminary Findings of Fact and Conclusions of Law and Order Granting Nominal Defendant Kokoweef, Inc.'s Renewed Motion to Require Security from Plaintiffs Drafted and Submitted by Kokoweef, Inc. ("MOTION") filed by Plaintiffs[1].

FACTUAL BACKGROUND

The initial complaint in this matter was filed on or about the 7th day of March, 2008. Various motions were heard by the Court. An evidentiary hearing was held on the 30th day of July, 2008, to determine whether Plaintiffs should be required to post surety. This Court issued a Decision that was entered on August 11, 2008, requiring Kokoweef, Inc. ("KOKOWEEF") to submit "proposed preliminary Findings of Fact and Conclusions of Law and a proposed order consistent with the foregoing." KOKOWEEF submitted the proposed document to the Court which was entered on the 28th day of August, 2008 ("ORDER").

On or about the 12th day of September, 2008, Plaintiffs filed the MOTION. The last fact that must be set forth is the filing of a so-called Verified Derivative First Amended Complaint by some, but not all, of the original named Plaintiffs ("AMENDED COMPLAINT").

POINTS AND AUTHORITIES

The MOTION suggests that the ORDER is improper. A chart is set forth purportedly showing what was set forth in the ORDER and what the Court ordered. Efforts to obtain specific language from Plaintiffs to understand what "needs" to be changed have gone unanswered.

PLAINTIFFS HAVE NOT TAKEN THE APPROPRIATE STEPS TO HAVE THE LANGUAGE OF THE ORDER CHANGED

The MOTION is devoid of any authority for the action being taken by Plaintiffs. There is a citation to *Trail v. Faretto* , 91 Nev. 401, 536 P.2d 1026 (1975) stating that "a court may, *for*

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[1] The MOTION states that it is being brought by Plaintiffs. However, the caption of the MOTION removed Jackie and Fred Kravitz as Plaintiffs, although no Court order allowed them to be removed or allowed an amendment of the caption of the case. RESPONDING DEFENDANTS are more confused because the so-called Verified Derivative First Amended Complaint (to be discussed infra) has included Jackie and Fred Kravitz, but removed Pete T. and Lisa A. Freeman from the caption. RESPONDING DEFENDANTS would like to know which of the purported plaintiffs have consented to be plaintiffs in this matter and are participating in the action.

sufficient cause shown, amend, correct, resettle, modify or vacate, as the case may be, an order previously made and entered on the motion in progress of the cause or proceeding." (Emphasis added).

Faretto does not stand for the proposition that a motion once heard and decided can be reheard. In that case, a motion to dismiss was filed pursuant to NRCP 41(e) for want of prosecution and denied. Two years later, the Court *sua sponte*, dismissed the action pursuant to NRCP 41(e). Plaintiff sought to have the cases reinstated and were denied. The Supreme Court ruled that the Court acted properly. While the dicta cited by Plaintiffs did not appear necessary, it was set out to justify the Court's actions.

The MOTION also refers to EDCR 2.24 which provides:

> Rule 2.24. Rehearing of motions
>
> (a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.
>
> (b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the 30-day period for filing a notice of appeal from a final order or judgment.
>
> (c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

Under EDCR 2.24(a), Plaintiffs must move for reconsideration of the existing order. They have not done so. More importantly, it does not appear that Plaintiffs are seeking an opportunity to revisit the issues determined by the Court at the lengthy evidentiary hearing that they wanted, but simply to seek a modification of the language of the order that was entered by the Court.

In essence, the MOTION must be considered one under NRCP 60(b)(1) which provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . .

This rule was addressed in *A-Mark Coin Co. v. Estate of Redfield*, 94 Nev. 495, 582 P.2d 359 (1978).

The Court stated, at page 361:

> A probate court has jurisdiction to vacate a prior order upon learning that it was entered through mistake. Abel v. Lowry, 68 Nev. 284, 231 P.2d 191 (1951). Our remedial rule, NRCP 60(b), contemplates such action.

This case would apply to District Court as well as "Probate Court". While the Court has authority to change the language of the ORDER, Plaintiffs have not provided the Court with any information, or law, to support their position.

PLAINTIFFS PROPOSED ORDER DOES NOT SEEK ANY SUBSTANTIAL CHANGES TO THE ISSUED AND OUTSTANDING ORDER THAT JUSTIFIES CLARIFICATION OR CHANGE

The Court should note that Neil Beller, Esquire, is no longer the attorney for Plaintiffs. The firm of Robertson & Vick has substituted as the counsel for Plaintiffs and filed the MOTION. However, we have to deal with the same issue that was raised by Plaintiffs to prior orders.

Plaintiffs seem to believe that the language of an order must parrot the minutes of the Court or the words set forth in the Decision. KOKOWEEF caused the ORDER to be prepared based upon the language of the Court in its Decision. RESPONDING DEFENDANTS believed, and still believe, the ORDER properly reflects the ruling of the Court. Plaintiffs have not provided any information to support the argument that the ORDER is not proper.

As set forth in the affidavit of M Nelson Segel, Esquire, efforts were made by RESPONDING DEFENDANTS to determine why Plaintiffs believed the proposed changes were necessary. While RESPONDING DEFENDANTS believe the ORDER is proper, they were open to a discussion of the language and modification, if necessary. This case has been a procedural nightmare since inception and RESPONDING DEFENDANTS would prefer to move this case forward. No response was received from Plaintiffs and this Opposition was necessary.

RESPONDING DEFENDANTS have gone through the proposed amended order and have found four (4) proposed changes, none of which justify modifying the ORDER that was reviewed by, and approved by, the Court. The first proposed change is adding the words, "*prima facie* showing" in two places. In the Preliminary Findings of Fact section, on page 3 of the order, at line 9, Plaintiffs want the words "*prima facie* showing" to the discussion of Defendants' burden. Plaintiffs seek to add the same language to the Preliminary Conclusions of Law section on line 26

of page 3.

The third proposed change on page 3, commencing on line 25. Plaintiffs want the ORDER to be changed to say any dismissal for the failure to post the Seventy Five Thousand Dollars ($75,000) security would be without prejudice where the present language says with prejudice. They also do not like the "automatic" language and apparently believe Defendants should be required to file a motion with the Court. This change appears to fly in the face of NRS §41.520(4)(b) which states:

> If the court, upon any such motion, makes a determination that security must be furnished by the plaintiff as to any one or more defendants, the action must be dismissed as to such defendant or defendants, unless the security required by the court is furnished within such reasonable time as may be fixed by the court.

This language makes it clear that an "automatic" dismissal is not inappropriate. The language states that in the event the security is not posted, "the action **must** be dismissed." The objection of Plaintiffs to this language is without basis. It simply carries forward the language of the statute.

The final change in language demanded by Plaintiffs is the elimination of the last paragraph that provides the Court retains jurisdiction to address the issue of Defendants' right to seek an award of attorneys' fees from the Court. A reading of the language of NRS §41.520(4)(b) shows that the legislature anticipated that the failure of the plaintiff to post security justified dismissal of the case. However, a complete dismissal would eliminate the jurisdiction of the Court to enter further orders.

Defendants' burden under NRS §41.520 was substantial. While it is not a determination of the outcome of the case, to prevail, a defendant has a strong burden. In most cases, if a plaintiff did not prevail and was required to post security, most derivative plaintiffs would not post the bond and the case would be over. Therefore, to prevent injustice to the corporation, the Court has to have a mechanism to enable the corporation to seek damages, i.e., attorneys' fees, from the plaintiff who brought a frivolous action. While RESPONDING DEFENDANTS do not believe the language is necessary, and the Court has the inherent power to review a request for attorneys' fees notwithstanding the dismissal of a complaint pursuant to NRS §41.520, the retention of jurisdiction language was included in the ORDER.

A review of the four proposed changes show that changes 3 and 4 are moot. Plaintiffs posted

the security; therefore, there is no further issue. If the Court enters an order requiring further security, which appears to be necessary in light of the actions of Plaintiffs, a new order will be entered. Plaintiffs will be able to address the language of the new order when it is prepared. However, there is nothing for the Court to address as it relates to the present ORDER.

In essence, only two, actually one, change is in issue. Is it necessary for the ORDER to be modified to add the language "*prima facie* showing" in two places of the ORDER? RESPONDING DEFENDANTS believe this is an unnecessary change.

EFFECT OF THE VERIFIED DERIVATIVE FIRST AMENDED COMPLAINT

On or about Thursday, September 25, 2008, Plaintiffs caused three copies of Summonses and a so-called Verified Derivative First Amended Complaint ("AMENDED COMPLAINT") to be served upon HAHN who was already a party to this action. While RESPONDING DEFENDANTS have not, and will not in this Opposition, address the propriety of filing of the AMENDED COMPLAINT, Plaintiffs violated NRCP 5(b)(1) which provides:

> Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service **shall** be made upon the attorney unless the court orders that service be made upon the party.

Although Plaintiffs have been notified that their service was improper, no action has been taken by them to correct the service of the AMENDED COMPLAINT.

RESPONDING DEFENDANTS are not certain whether the MOTION was a smoke screen to enable Plaintiffs to prepare and serve the AMENDED COMPLAINT or it is something that the Plaintiffs intend to pursue. However, the filing of the AMENDED COMPLAINT has created a serious problem for KOKOWEEF.

The new allegations set forth in the AMENDED COMPLAINT allege that KOKOWEEF engaged in the improper sale of unregistered securities. KOKOWEEF's attorney, Patrick C. Clary, Esquire, has been added as a named defendant as well.

While RESPONDING DEFENDANTS, and KOKOWEEF believe the filing of the AMENDED COMPLAINT was improper, without foundation, and a likely violation of NRCP 11, it creates a problem. Responses to the MOTION are due. However, KOKOWEEF must hold a meeting of the Board of Directors to address the allegations of the AMENDED COMPLAINT and

make a determination whether a conflict of interest exists that prevents CLARY from continuing as the attorney for KOKOWEEF.

There was not sufficient time to hold said meeting and CLARY has been out of town. It is essential that CLARY appear before the Board of Directors to address the allegations of the AMENDED COMPLAINT.

CONCLUSION

The Court should summarily deny the MOTION as set forth herein. The ORDER properly sets forth the relative provisions of the Decision. If the Court is willing to entertain the MOTION, any "final" hearing on the MOTION should be postponed to enable KOKOWEEF to determine whether CLARY can continue as its attorney in these proceedings.

DATED this 3rd day of September, 2008.

M NELSON SEGEL, CHARTERED

By _____
M NELSON SEGEL, ESQUIRE
Nevada Bar No. 0530
624 South 9th Street
Las Vegas, Nevada 89101
Attorneys for Defendants Larry Hahn
and Hahn's World of Surplus, Inc.

EXHIBIT A

AFFIDAVIT OF M NELSON SEGEL

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

I, M NELSON SEGEL, being duly sworn, depose and state:

1. I am an attorney at law duly licensed to practice before this Court; make this affidavit in support of Defendant Larry Hahn and Hahn's World of Surplus, Inc.'s opposition to the Motion for Clarification of the Preliminary Findings of Fact and Conclusions of Law and Order Granting Nominal Defendant Kokoweef, Inc.'s Renewed Motion to Require Security from Plaintiffs Drafted and Submitted by Kokoweef, Inc. ("MOTION"); it is made from my own knowledge, unless stated upon information and belief; and I am competent to testify to the matters set forth herein.

2. I received a copy of the MOTION but I do not understand what Plaintiffs are seeking.

3. In an effort to avoid the expense of responding to the MOTION, I attempted to reach Jennifer Taylor, Esquire, the attorney who appears to be the local attorney for Robertson & Vick. No response was received.

4. A letter was prepared on September 22, 2008, to send to Ms. Taylor regarding the MOTION, a copy of which is attached hereto as Attachment "1". Unfortunately, I was in a FINRA securities arbitration on September 23 and 24, 2008. The letter did not get sent to Ms. Taylor until Thursday, September 25, 2008. I did not receive a response.

5. Another call was placed to Ms. Taylor on Friday, September 26, 2008. I was told that she was on the telephone and a message was left for her to return my call. When I did not receive a response by late afternoon, I prepared a second letter, a copy of which is attached hereto as Attachment "2". It was sent to her by facsimile the same day.

6. As of the completion of this affidavit, I have not received any response from Robertson & Vick.

7. I was advised that Mr. Hahn was served with a document entitled Verified Derivative First Amended Complaint ("AMENDED COMPLAINT"). Based upon the allegations of the AMENDED COMPLAINT, I believe the Board of Directors needs to discuss Mr. Clary's continued representation of Kokoweef, Inc. ("KOKOWEEF").

8. While I do not represent KOKOWEEF, my client is the Chairman of the Board of Directors and the President of KOKOWEEF. Additionally, it is my understanding that he holds nearly fifty percent (50%) of the issued and outstanding shares of KOKOWEEF. My client has a fiduciary duty to all of the shareholders of KOKOWEEF to assure that his actions are proper. Therefore, he intends to call a meeting of the Board of Directors to have Mr. Clary report to it and have a vote of the independent directors regarding Mr. Clary continuing as counsel for KOKOWEEF or the need to retain new counsel.

9. Mr. Clary has been out of Las Vegas and there has been insufficient time to call a meeting of the Board of Directors. We are in the process of arranging said meeting and hope to have it convened shortly. Until said determination is made, I do not believe KOKOWEEF can respond to the MOTION and the Court should consider the opposition filed herewith to be sufficient to treat as though KOKOWEEF opposed it as well.

10. If I knew why Plaintiffs wanted to change of language of the ORDER, I might be willing to recommend it to my clients. However, it is unclear and appears we are fighting over nothing, again!

DATED this 29 day of September, 2008.

M NELSON SEGEL

SUBSCRIBED and SWORN to before me
this 29 day of September, 2008.

DIANA L. WOLF
Notary Public State of Nevada
No. 96-2966-1
My appt. exp. June 10, 2012

NOTARY PUBLIC

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 29th day of September, 2008, she served the foregoing OPPOSITION TO MOTION FOR CLARIFICATION OF THE PRELIMINARY FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER GRANTING NOMINAL DEFENDANT KOKOWEEF, INC.'S RENEWED MOTION TO REQUIRE SECURITY FROM PLAINTIFFS DRAFTED AND SUBMITTED BY KOKOWEEF, INC. by causing true and correct copies to be placed in the United States Mail, postage fully prepaid thereon and addressed as follows:

Jennifer Taylor, Esquire 401 North Buffalo Drive, Suite 202 Las Vegas, Nevada 89145	Patrick Clary, Esquire 7201 West Lake Mead Drive, Suite 503 Las Vegas, Nevada 89128

An employee of M NELSON SEGEL, CHARTERED

ATTACHMENT 1

LAW OFFICE OF
M NELSON SEGEL, ESQUIRE
624 SOUTH 9TH STREET
LAS VEGAS, NEVADA 89101
TELEPHONE (702) 385-5266
FAX (702) 382-2967
EMAIL: mediator@anv.net

September 22, 2008

VIA FACSIMILE

Jennifer Taylor, Esquire
401 North Buffalo Drive,
Suite 202
Las Vegas, Nevada 89145

Re: ***HAHN ET AL. ADV BURKE ET AL.***

Dear Ms. Taylor:

We have received your Motion for Clarification of the Preliminary Findings of Fact and Conclusions of Law and Order Granting nominal Defendant Kokoweef, Inc.'s Renewed Motion to Require Security from Plaintiffs as Drafted and Submitted by Kokoweef, Inc. ("MOTION") The MOTION leaves us confused.

First, while the order does not "parrot" the language of Judge Denton's decision, we believe that it accurately reflects what was ordered. That being said, we do not want to waste time "fighting" over something that may not be a problem.

You should be aware that we have previously been forced to deal with the concerns of Plaintiffs that proposed orders were not properly drafted. While these disputes have been resolved in favor of the Defendants, it is possible that some clarification of the Security Order is necessary. Unfortunately, we cannot tell from the MOTION what changes you are seeking.

We had a dispute with Mr. Beller previously due to his desire to "parrot" the language of the minutes. Judge Denton utilized our proposed order that did not contain the language requested by Mr. Beller.

We would prefer to spend our time working on aspects of this case that are meaningful. Therefore, we suggest that you provide us with proposed language for a revised order. This will enable us to evaluate the suggested language and possibly reach a resolution without the need for the input of the Court. Even if we do not agree, it will enable Judge Denton to evaluate whether the Security Order needs to be modified.

If you have any questions, please feel free to contact us.

Very truly yours,

M Nelson Segel

MNS:dlw

cc: Mr. Larry Hahn
Patrick C. Clary, Esquire

ATTACHMENT 2

LAW OFFICE OF
M NELSON SEGEL, ESQUIRE
624 SOUTH 9TH STREET
LAS VEGAS, NEVADA 89101
TELEPHONE (702) 385-5266
FAX (702) 382-2967
EMAIL: mediator@nav.net

September 26, 2008

VIA FACSIMILE

Jennifer Taylor, Esquire
401 North Buffalo Drive
Suite 202
Las Vegas, Nevada 89145

Re: ***HAHN ET AL. ADV BURKE ET AL.***

Dear Ms. Taylor:

We attempted to reach you by telephone this morning, but were told that you were on a call. We left a message for you to call back, but we have not heard from you.

Normally, we would give an attorney at least a day to return a call. Unfortunately, circumstances require that we follow up before giving you a reasonable opportunity to respond.

We sent a letter dated September 22, 2008, to you regarding your pending Motion for Clarification of the Preliminary Findings of Fact and Conclusions of Law and Order Granting nominal Defendant Kokoweef, Inc.'s Renewed Motion to Require Security from Plaintiffs as Drafted and Submitted by Kokoweef, Inc. ("MOTION"). Unfortunately, it appears the letter was not forwarded to you until yesterday. Our records indicate that a response is due on Monday, September 28, 2008.

Normally, this would not be an issue. However, as our letter points out, we are not certain what is a problem and do not know how to respond. A simple response that says, "the order in question properly represents what the Court ordered" does not benefit the Court in determining what is in issue. That is why we sent the letter and requested some clarification.

Additionally, we were advised by our client, Larry Hahn, that you caused him to be served with a Summons and Amended Complaint. We are not certain why you did so. The NRCP make it clear that all service should be upon this office. We would appreciate receiving a copy of the documents from you.

We are not certain of your efforts to serve Mr. Clary. However, he is out of Las Vegas until next week. While I am certain he will not be happy to receive the Summons and Amended Complaint, I doubt he will make you jump through hoops to find him. I suggest that you send a Summons and Amended Complaint to his office along with an acceptance of service. If he has a problem accepting service, I will ask him to notify your office.

Filing the Amended Complaint against Mr. Clary creates serious issues for Kokoweef, Inc. Obviously, the first issue is whether Mr. Clary needs to withdraw as counsel for Kokoweef, Inc. More importantly, the Board of Directors needs to determine whether Mr. Clary should remain as counsel. Therefore, we need to hold a

meeting of the Board of Directors.

Based upon the filing of the Amended Complaint, a serious issue has been raised whether Kokoweef, Inc. can file a response to your MOTION. We believe the MOTION should be continued for at least two (2) weeks, as well as the obligation of the Defendants to file their responses. This will enable the Board of Directors to meet and determine whether Mr. Clary needs to be replaced and to retain new counsel to represent it.

Hopefully, we will be able to speak today. We will have to prepare an opposition over the weekend if you are not amenable to a continuance of the hearing and our date to file an opposition.

We look forward to hearing from you.

Very truly yours,

M Nelson Segel

MNS:dlw

cc: Mr. Larry Hahn
Patrick C. Clary, Esquire