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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' SUPPLEMENTAL
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 & Associates LLP, hereby file their Supplemental Opposition to Defendants
6 Larry L. Hahn's (hereafter "Hahn") and Hahn's World of Surplus, Inc.'s (hereafter "HWS")
7 (hereafter collectively the "Hahn Defendants") Motion for Partial Summary Judgment (hereafter
8 the "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 27th day of January, 2011.

13
14 ROBERTSON & ASSOCIATES, LLP

15
16 By: 

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21
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,
27
28

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 Motion is the Hahn Defendants’ second attempt at dismissal, but without bringing
4 any new information or facts to the table. The Hahn Defendants’ arguments regarding the Fourth
5 and Eighth Causes of Action fail to meet the rigorous standards for obtaining summary judgment,
6 Instead, the Hahn Defendants still rely upon their protestations regarding the sufficiency of
7 Plaintiffs’ pleadings despite the January 19, 2011 production of expert reports, which undercut
8 their arguments. Additionally, Plaintiffs maintain that the Hahn Defendants’ second general
9 argument regarding the status of this suit as a derivative suit, and the adequacy of the Plaintiffs to
10 bring these claims, has already been unsuccessfully argued in front of Judge Denton. They are,
11 essentially, seeking a Motion for Reconsideration of Judge Denton’s ruling well past the
12 permitted time.

13 Finally, in simply re-noticing their Motion for Summary Judgment, the Hahn Defendants
14 have made significant misrepresentations that, along with Plaintiffs’ expert reports, raise
15 questions of fact sufficient to preclude a summary adjudication of these issues. Therefore,
16 Defendants’ Motion must be denied.

18 II. STATEMENT OF FACTS

19 A. Procedural History:

20 The Hahn Defendants’ current Motion is part of a long history of law and motion practice
21 in this litigation, including a prior Motion to Dismiss filed on November 4, 2008, by the Hahn
22 Defendants for which they have already received a ruling on their arguments related to the
23 adequacy of Plaintiffs’ representations on behalf of Kokoweef. See Ex. 1 to Plaintiffs’
24
25

26 ¹ Plaintiffs are also asserting a claim against Defendant Patrick C. Clary (“Clary”) for negligent
27 misrepresentation, which is the subject of a separate Motion for Partial Summary Judgment filed by . To the extent
28 that this re-noticed Motion for Summary Judgment contains overlapping issues of fact or law with the Clary Motion
or Plaintiffs’ Opposition thereto, or Supplemental Opposition and Counter-Motion for Summary Judgment
(collectively the “Oppositions”), Plaintiffs incorporate those Oppositions into the instant Opposition.

1 Opposition to Defendant Larry L. Hahn and Hahn's World of Surplus, Inc.'s Motion for Partial
2 Summary Judgment filed on March 16, 2009.

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 **B. Statement of Facts:**

19 Defendants have failed to provide "a concise statement setting forth each fact material to
20 the disposition of the motion." NRCP 56(c). Instead, the Hahn Defendants have simply claimed
21 Plaintiffs First Amended Complaint is deficient on its face and included unsupported statements
22 of counsel, (Mot. 10:25-28 - 11:1-13, describing the number of shares owned by Plaintiffs, and in
23 particular, Plaintiff Ted Burke), and self-serving unsupported Affidavits of Defendant Larry
24 Hahn, Christina Hahn and the declaration of their counsel. The unsupported Affidavit of Larry
25 Hahn refers to stock records, but produces no documentary evidence to support their statements.

26 The Hahn Defendants also attach the Affidavit of Christina Hahn. See Mot. Ex. B,
27 Affidavit of Christina Hahn. Ms. Hahn's Affidavit makes a number of factual assertions which
28 Plaintiffs contest. Ms. Hahn states: "KOKOWEF does not have paid employees. Substantially

1 all of the work performed at KOKOWEEF is done by investors for NO PAY!.” Mot. Ex. B.,
2 Affidavit of Christina Hahn, 1:17-18. However, Plaintiffs have identified evidence that
3 contradicts Ms. Hahn. Attached hereto as Ex.1 is the Affidavit of Laretta Kehoe (hereafter the
4 “L. Kehoe Affidavit”). Ms. Kehoe has spent a significant amount of time analyzing the
5 incomplete records received to date from Kokoweef, and avers that checks have been located
6 demonstrating payment to “employees” of Kokoweef. Ex. 2, 2:7-13.

7 Further, Ms. Hahn asserts in her Affidavit that “not one of the Plaintiffs participates in the
8 exploration operations of KOKOWEEF.” Mot. Ex. B., Affidavit of Christina Hahn, 1:20-21.
9 However, attached hereto as Ex. 2 is the Affidavit of Michael Kehoe (hereafter the “M. Kehoe
10 Affidavit”). In it, Mr. Kehoe describes in detail the significant exploration operations he was
11 involved in prior to being precluded from continuing this work by Defendant Hahn. Ex. 3, 1:11-
12 28 - 2:1-16. Additionally, attached hereto as Ex. 3 is the Affidavit of Plaintiff Ted Burke. As
13 with Mr. Kehoe, Mr. Burke’s Affidavit sets forth in detail the vast amount of work he performed
14 in the exploration operations of Kokoweef. This conflicting evidence precludes any grant of
15 summary judgment which might be requested based upon the Christina Hahn Affidavit.²

16 Additionally, attached hereto as Ex. 4 is the report of Talon Stringham of Sage Forensics
17 detailing the nearly one-million dollars of unsupported expenditures found during Sage Forensics
18 review of the Kokoweef, EIN and HWS documentation. In regard to the Hahn Defendants, Mr.
19 Stringham specifically delineates the mismatches between amounts HWS claims it is owed by
20 Kokoweef and EIN. Ex. 4, p. 9. Specifically, HWS claims to be owed more than Kokoweef or
21 EIN identify as being owed, thus raising an issue of material fact as to whether HWS is being
22 unjustly enriched at the expense of Kokweef and EIN. This discrepancy alone is sufficient to
23 defeat the Hahn Defendants’ Motion for Summary Judgment.

24
25 ² 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 Further, for the Court's ease of reading, attached hereto as Ex. 5 is the Affidavit of Edwin
2 J. Apenbrink, which was also attached to Plaintiffs' Supplemental Opposition to Defendant
3 Patrick C. Clary's Motion for Summary Judgment Mr. Apenbrink details the numerous
4 violations in the sale of shares conducted at the behest of Patrick C. Clary and the primary
5 controlling board member and majority shareholder, Defendant Larry Hahn.

6 **III. LEGAL AUTHORITY:**

7 **A. STANDARD FOR SUMMARY JUDGMENT:**

8 The standard for Summary Judgment is well known: "The judgment sought shall be
9 rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions of
10 file, together with the affidavits, if any, show that there is no genuine issue as to any material
11 fact." NRCP 56(c). Plaintiffs' expert reports were only served on January 19, 2011, pursuant to
12 this Court's Order, and those reports provide sufficient evidence to warrant denying the Hahn
13 Defendants' Motion for Summary Judgment.

14 Trial courts should exercise great care in granting summary judgment. Pleadings and
15 documentary evidence must be construed most favorably to the party against whom the motion is
16 made. Copeland v. Desert Inn Hotel, 99 Nev. 823, 673 P.2d 490 (Nev. 1983). Additionally, in
17 determining whether a summary judgment is proper, the nonmoving party is entitled to have the
18 evidence and all inferences therefrom accepted as true. Johnson v. Steel, Inc., 100 Nev. 181, 678
19 P.2d 676 (Nev. 1984). Further, the trial judge may not, in granting summary judgment, pass
20 upon the credibility or weight of the opposing affidavits or evidence; that function is reserved for
21 the finder of fact at trial. Hidden Wells Ranch, Inc. v. Strip Realty, Inc., 83 Nev. 143, 425 P.2d
22 599 (Nev. 1967) (Emphasis added). On summary judgment motions the court is obligated to
23 accept as true all evidence favorable to the party against whom the motion is made. Id. In this
24 matter, given the fact that the Hahn Defendants' fail to assert a legal basis for their Motion for
25 Summary Judgment, and because conflicting evidence has been presented by Plaintiffs and
26 Plaintiffs' experts, the Hahn Defendants' Motion for Summary Judgment must be denied.

27 **B. DEFENDANTS HAVE NOT MET THEIR BURDEN FOR SUMMARY** 28 **ADJUDICATION OF THE FOURTH AND EIGHTH CAUSES OF ACTION.**

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

3 The Hahn Defendants simply renoticed their Motion for Summary Judgment, which
4 relied substantially on protestations regarding the sufficiency of Plaintiffs' pleadings. To that
5 extent, therefore, the Hahn Defendants' Motion must fail because Plaintiffs' clearly surpass the
6 minimum threshold requirements for determinations on the pleadings.

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

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

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

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

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

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

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

15 The Hahn Defendants rely upon two cases to obtain the standard for maintenance of a
16 claim for Negligent Misrepresentation: Bill Stremmel Motors, Inc. v. First National Bank of
17 Nevada, 94 Nev. 131, 575 P.2d 938 (Nev. 1978) and Nelson v. Herr, 123 Nev. 217, 163 P.3d 420
18 (Nev. 2007). Neither of these cases cite the elements for negligent misrepresentation, and,
19 Nelson, in fact analyzes the cause of action for intentional misrepresentation. Plaintiffs are at a
20 loss to understand how the Hahn Defendants can, in good faith, rely on a case addressing a
21 completely different cause of action. Nonetheless, Nelson has no applicability to the instant
22 matter, and therefore, fails to support any of the assertions by the Hahn Defendants related to the
23 elements required to be pled by Plaintiffs. Mot. 6:1-21.

24 The proper standard is found in Barmettler v. Reno Air, 114 Nev. 441, 956 P.2d 1382
25 (1998). Barmettler defines negligent misrepresentation as being committed by "[o]ne who, in the
26 course of his business, profession or employment, or in any other action in which he has a
27 pecuniary interest, supplies false information for the guidance of others in their business
28 transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance

1 upon the information, if he fails to exercise reasonable care or competence in obtaining or
2 communicating the information.” Id. at 1387. The Affidavit of Edwin Apenbrink details
3 statements made by Larry Hahn, as the majority shareholder and the holder of a pecuniary
4 interest, that were relied upon by Plaintiffs to their detriments. Additionally, the report of Talon
5 Stringham demonstrates that a genuine issue of material fact exists as to representations made by
6 Larry Hahn regarding the finances of Kokoweef and/or EIN regarding the legitimate business
7 purposes of the nearly one-million dollars in unsupported expenses, which again, were made to
8 the detriment of Plaintiffs and the remaining Kokoweef shareholders.

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

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

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

1 statements and the recipient of the statements. Ex. 6, 5:17-28 - 7:1-20. Additionally, the Fourth
2 Cause of Action alleges:

3 66. Defendants supplied false guidance to the Plaintiffs
4 in the sale of the securities of EIN and KOKOWEEF by representing that such
5 sales were exempt from registration under both federal and Nevada securities laws
when in fact the sale of these securities were illegal and not exempt from
registration under either federal or Nevada securities laws.

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

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

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

13 The Affidavit of Mr. Apenbrink demonstrates that EIN and Kokoweef shares were,
indeed, sold in violation of Nevada state securities laws, and that Mr. Hahn participated in
14 representations that the shares being offered for sale were legally issued. See Ex. 5.

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

24
25 **4. Defendants' argument regarding damages is misplaced.**

26 As noted above, Plaintiffs' have more than sufficiently pled their claim for negligent
27 misrepresentation. However, Defendants also argue that they are entitled to summary judgment
28 because, they assert, Plaintiffs have suffered no damages. The Hahn Defendants base this

1 assertion on their flawed interpretation of Goodrich & Pennington Mortgage Fund, Inc. v. J.R.
2 Woolard, Inc., 120 Nev. 777, 101 P.3d 792 (Nev. 2004). Defendants' rely on, and cite to the
3 court, paraphrased and incomplete language for the standard for damages in a negligent
4 misrepresentation case. Mot. 6:22-28 - 7:1-6.

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

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

13 Id. at 782, 795-96. Therefore, the Hahn Defendants assertion that Plaintiff has suffered no
14 damages is inaccurate. Specifically, the Hahn Defendants argue that Plaintiffs have suffered no
15 damages because they purchased shares for six-dollars and so did every other shareholder. Mot.
16 7:15-18. This analysis is utterly misplaced and does not follow the standard set in Goodrich &
17 Pennington.

18 Defendants negligently misrepresented that the securities were exempt from registration
19 under Nevada securities laws because they fell within an exemption. See Ex. 5. However, that
20 representation was false, and many of the Kokoweef and EIN securities do not qualify for any
21 exemption. Therefore, the value of those illegally issued shares is not six dollars, but zero
22 dollars for every single shareholder holding illegally issued stock. Further, Kokoweef is subject
23 to potential liability to its shareholders to rescind one-hundred percent of the shares sold to
24 Nevada residents in any twelve month period where the number of shares sold exceeded twenty-
25 five. See Ex. 5. Additionally, Kokoweef, and its President and Treasurer, Larry Hahn faces
26 potential civil and criminal penalties for violating state securities laws. Thus, because the stock
27 was sold in violation of securities laws the stock is worthless, and Plaintiffs, along with many
28 other EIN and Kokoweef shareholders, have suffered the loss of the consideration they paid for
their shares, as well as "consequential damages", defined as an independent factual analysis of
damages "of a kind that might reasonably be expected to result from reliance upon the

misrepresentation.” Goodrich & Pennington, 120 Nev. at 784, 101 P.3d at 796-97 (quoting Restatement (Second) of Torts § 549 cmt. d (1977)).

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

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

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

As noted above, the Hahn Defendants’ misapprehend the standards required for pleading on Causes of Action for Unjust Enrichment. 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. Unjust enrichment is a claim in equity which precludes a person from having and retaining a benefit which in equity and good conscience belongs to another. Unionamerica Mortgage and Equity Trust v. McDonald, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (Nev. 1981). As such, unjust enrichment, does not fall within the parameters of NRCP 9(b), and does not mandate the level of pleading asserted by the Hahn Defendants. The Hahn Defendants have no legal support for this novel proposition, and, therefore, the Court may summarily reject this argument. Quillen v. State, 112 Nev. 1369, 1380, 929 P.2d 893, 900 (Nev. 1996) (concluding that a court may summarily reject a novel legal proposition when no relevant authority is cited)(citing Tahoe Village Realty v. DeSmet, 95 Nev. 131, 136, 590 P.2d 1158, 1162 (1979)).

Nonetheless, the First Amended Complaint (hereafter the “FAC”) more than adequately pleads the requisite assertions to support a claim for Unjust Enrichment. Paragraph 99 of the

1 FAC states: "Plaintiffs are informed and believe, and therein allege, that Defendants HAHN,
2 HAHN'S WORLD, and DOES 1 through 100, inclusive, were unjustly enriched by the illegal
3 transactions and activities of HAHN in the sale on unregistered securities and the diversion of
4 corporate funds and assets for the personal use of HAHN and HAHN'S WORLD." Ex. 6, ¶ 99.

5 Additionally, the expert report produced by Talon Stringham, belies the Hahn
6 Defendants' claims that: "All funds received by HAHN'S WORLD from KOKOWEEF and EIN
7 were provided for the payment of goods and materials delivered to KOKOWEEF and EIN. If
8 any funds were recived by LARRY from KOKOWEEF or EIN, they were for reimbursement of
9 advances made by LARRY for KOKOWEEF. Neither LARRY nor HAHN'S WORLD have
10 received payment of any funds or transfer of any property, that was not given for payment fort
11 advances made, goods supplied or reimbursement." See Mot., Ex. B., Affidavit of Christina
12 Hahn, 2:1-7. As noted above, weighing the credibility of such conflicting evidence falls to the
13 province of the finder of fact and is not appropriate for summary adjudication.

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

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

17 Defendants appear to be seeking some type of improper advisory ruling from the Court on
18 a question, that they claim was not properly addressed by Judge Denton at the time of the ruling
19 on their Motion to Dismiss. The Hahn Defendants assert that they do not believe that the FAC
20 constitutes a derivative action, as set forth in NRCP 23.1. Mot. 10:8. While the Hahn
21 Defendants admit raising this in their December 2008 Motion to Dismiss, they then state that
22 they "do not believe Judge Denton addressed the issue." Mot. 10:6-8. The time for questioning
23 Judge Denton's ruling on the Motion to Dismiss has long since past, and the Hahn Defendants
24 have no legal basis upon which to request this Court reconsider this previously ruled upon issue.

25 Judge Denton's Order was entered more than one year ago. Mot., Ex. A, Attachment 3.
26 Such clarification cannot be sought pursuant to a motion for reconsideration under EDCR 2.24
27 because "such relief must be sought within ten (10) days after service of written notice of the
28 order or judgment unless the time is shortened or enlarged by order", which has not been done in

1 this matter. EDCR 2.24(b). Further, such relief cannot be sought under NRCP 60, because the
2 outside time in which an order can be challenged is six (6) months. NRCP 60(b). Therefore,
3 Defendants' complaint that they "do not believe Judge Denton addressed the issue", is an utterly
4 inappropriate and unsupported attempt to circumvent the clear dictates in the Nevada Rules of
5 Civil Procedure and the Eighth Judicial District Court Rules, and should be disregarded by this
6 Court.

7 Further, Judge Denton's ruling was clear and unequivocal. He stated: "The Eighth and
8 Tenth Causes of Action are the only ones that appear to be derivative." Mot. Ex. A, Attachment
9 2, 3:22-24 n.2. Therefore, it is clear that Judge Denton did address the issue, and found that
10 Plaintiffs' claims were derivative under NRCP 23.1.

11 **2. Judge Denton has already determined that Plaintiffs' have a proper derivative**
12 **action.**

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

17 For this Court's benefit, following is Plaintiffs' response to the Hahn Defendant's
18 recapitulation of their year-old argument.

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

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

25 The Hahn Defendants first argue that Plaintiffs do not fairly and adequately represent the
26 interests of the remaining Kokoweef shareholders. The two flawed bases in the Motion for this
27 claim are that: 1) Plaintiffs do not represent a sufficient number of shares and shareholders; and
28 2) Plaintiffs interests are different than the majority of Kokoweef shareholders and their claim for

1 relief, allegedly, is only for their own benefit. Both of these arguments lack factual and legal
2 support, and therefore, must fail.

3 First, the Hahn Defendants make a stretched argument that Plaintiffs do not
4 mathematically represent a sufficient number of issued shares of the corporation to maintain this
5 action. Defendants cite no authority for this non-existent criteria, and such a technical
6 requirement is not found in NRCP 23.1 or in NRS 41.520. The Hahn Defendants fail to grasp
7 the basis for Plaintiffs' FAC. Regardless of the number of shares held by Plaintiffs, Plaintiffs'
8 claim asserts that the Kokoweef and EIN stock was not exempt from registration. And, now that
9 Plaintiffs have been able to review stock records and ledgers, and shareholder information to
10 prove that the stock did not fall under any exemption, it is clear that a large percentage of
11 shareholders are holding invalid stock. See Ex. 5. This question, therefore, affects all of the
12 shareholders, and could have adequately been raised by a shareholder owning and holding only
13 one share of stock.

14 Additionally, the Hahn Defendants claim that Plaintiff Burke is not an actual shareholder.
15 However, the extent of this evidence is the affidavit of Larry Hahn and the declaration of his
16 counsel. Mr. Burke, however, has presented, along with his affidavit, copies of his receipts
17 showing that he is indeed a shareholder. See Ex. 3.

18 EDCR 2.20(e) requires that a memorandum of points and authorities contain more than
19 bare citations to statutes, rules of case authority, or the court may decline to consider it.
20 Additionally, the Nevada Supreme Court has repeatedly ruled that the court may disregard novel
21 legal arguments, which are unsupported by legal authority. See Quillen v. State, 112 Nev. 1369,
22 1380 (1996); Citti v. State, 107 Nev. 89, 91 (1991); Tahoe Village Realty v. DeSmet, 95 Nev.
23 131 (1979) (overruled on other grounds). Without a shred of legal authority, Defendants'
24 contention that Plaintiffs do not own a significantly significant portion of Kokoweef stock to
25 "fairly and adequately" represent the interests of the remaining shareholders should be
26 disregarded.

27 Notwithstanding Defendants' lack of legal authority for this claim, Larson v. Dumke, 900
28 F.2d 1363 (9th Cir. 1990), the very case Defendants rely upon to argue that Plaintiffs interests are

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

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

20 An adequate representative must have the capacity to vigorously
21 and conscientiously prosecute a derivative suit and be free from
22 economic interests that are antagonistic to the interests of the class.
23 Other courts have stated certain factors to determine adequacy of
24 representation: “(1) indications that the plaintiff is not the true
25 party in interest; (2) the plaintiff’s unfamiliarity with the litigation
26 and unwillingness to learn about the suit; (3) the degree of control
27 exercised by the attorneys over the litigation; (4) the degree of
28 support received by the plaintiff from other shareholders; (5) the
lack of any personal commitment to the action on the part of the
representative plaintiff; (6) the remedy sought by plaintiff in the
derivative action; (7) the relative magnitude of plaintiff’s personal
interests as compared to his interest in the derivative action itself;
and (8) plaintiff’s vindictiveness toward the defendants. These
factors are “intertwined or interrelated, and its frequently a
combination of factors which leads a court to conclude that the
plaintiff does not fulfill the requirements of 23.1.

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

4 First, in regard to Defendants' argument that Plaintiffs' interests are different than the
5 other Kokoweef shareholders, Defendants fail to appreciate that no direct cause of action has
6 been alleged by the Plaintiffs against the corporation. Plaintiffs have prayed for rescission,
7 because the Defendants illegally issued Kokoweef stock, committing hundreds upon hundreds of
8 securities violations, rendering all the violating stock illegal, and not just the Plaintiffs' stock.
9 This request is not to simply obtain damages for the individual Plaintiffs, but to provide a benefit
10 to Kokoweef and all its shareholders. Rescinding the illegal stock, and re-issuing it to all of
11 Kokoweef's shareholders will benefit the corporation and all of the shareholders. A rescission
12 and legal re-issuance of the stock to all shareholders will clean up the past securities fraud upon
13 all impacted shareholders and mitigate against potential criminal and civil penalties, as well as
14 potential third party claims for monetary damages by the shareholders.

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

24 Other Larson factors examine components of the Plaintiffs' vigorous and conscientious
25 prosecution of the derivative suit. These include the Plaintiffs' familiarity with the litigation and
26 willingness to learn about the suit, the degree of control of the Plaintiffs, the personal
27 commitment of the Plaintiffs to this action. Id. at 1367. By any measure, the Plaintiffs will fairly
28 and adequately represent the class under these factors. As has been demonstrated throughout this

1 litigation, the Plaintiffs, have vigorously and conscientiously prosecuted this action. They have
2 taken time off work and traveled from out of state to attend the majority of the hearings. They
3 have provided numerous affidavits in support of endless law and motion work. They have kept
4 in regular contact with non-Plaintiff shareholders to apprise them of the status of the litigation.

5 Defendants further claim that Plaintiffs' prayer for relief and manner of pleading indicates
6 that the Plaintiffs are not acting for the benefit of the corporation. However, again in violation of
7 EDCR 2.20, the Hahn Defendants assert this theory with no legal support whatsoever. As has
8 been described above, this is simply not the case, and Defendants have provided no legal
9 authority in support of this claim. Instead, Plaintiffs have properly pled their requests for relief
10 and properly named Kokoweef as a nominal defendant, even though the fruits of the litigation
11 will be for the benefit of Kokoweef. In a derivative suit, any recovery the suing shareholder
12 obtains goes to the corporation because, " '[I]n reality the corporation is the plaintiff, the
13 stockholder being only a nominal plaintiff.' " Sobba v. Elmen, 462 F. Supp. 2d 944 (E.D. Ark.
14 2006). " ' Although the corporation is named in the complaint as a defendant, its interests are not
15 necessarily adverse to those of the plaintiff since it will be the beneficiary of any recovery.' " Id.
16 at 947 (quoting 13 William Meade Fletcher Et Al., Fletcher Cyclopedia of the Law of Private
17 Corporations § 5997 (perm. ed., rev. vol. 2004)). Additionally, Plaintiffs' have prayed for
18 damages which will inure to the benefit of Kokoweef and its shareholders. See First Amended
19 Complaint, Prayer for Relief ¶ 1,2,9,11 and 13. These requests for relief are more than sufficient
20 under NRCP 8(f) which requires that pleadings be construed as to do substantial justice.

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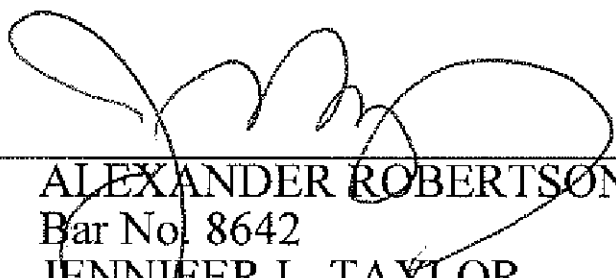
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IV. CONCLUSION

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

DATED this 27th day of January, 2011.

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