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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

14 AVIVA SPORTS, INC., a Minnesota
15 corporation,

16 Plaintiff,

17 v.

18 FINGERHUT DIRECT MARKETING, INC.,
a Delaware corporation, MENARD, INC., a
19 Wisconsin corporation, KMART
CORPORATION, a Michigan corporation,
20 WAL-MART STORES, INC., a Delaware
corporation dba Wal-Mart and Sam's Club and
21 MANLEY TOYS, LTD., a Hong Kong
corporation dba Manley Toys and ToyQuest,

22 Defendants.

CASE NO.: CV 10-80249 MISC WHA

Action pending in the United States
District Court for the District of Minnesota
Case No. 09-CV-01091 JNE/JSM

DISCOVERY MATTER

**~~PROPOSED~~ ORDER ON THIRD
PARTIES BRIAN DUBINSKY'S AND
AQUAWOOD, LLC'S MOTION TO
QUASH SUBPOENA SERVED ON
WHAM-O, INC. AND FOR MONETARY
SANCTIONS AGAINST PLAINTIFF
AVIVA SPORTS, INC.**

Date: October 28, 2010

Time: 11:00 a.m.

Trm: 9

Judge: Hon. William Alsup

26 AND RELATED CROSS-ACTIONS

28 **~~PROPOSED~~ ORDER ON THIRD PARTIES BRIAN DUBINSKY'S AND AQUAWOOD,
LLC'S MOTION TO QUASH SUBPOENA SERVED ON WHAM-O, INC. AND FOR
MONETARY SANCTIONS AGAINST PLAINTIFF AVIVA SPORTS, INC.**

1 The motion to quash the subpoena served on third party Wham-O, Inc. by Plaintiff Aviva
2 Sports, Inc. (“Aviva”) and for monetary sanctions filed by third parties Brian Dubinsky and
3 Aquawood, LLC came on for hearing on October 28, 2010 at 11:00 a.m. in Courtroom 9 of the
4 United States District Court for the Northern District of California before the Honorable William
5 H. Alsup. Gregory P. Barchie appeared for third parties Brian Dubinsky and Aquawood, LLC.
6 Timothy J. Carrigan (admitted *pro hac vice*) and Vijay K. Toke appeared on behalf of Aviva.
7 Having considered the papers and argument submitted by counsel, the Court rules as follows:

8 The parties were required to meet and confer regarding this discovery dispute, as per the
9 Court’s October 13, 2010 order. As a result of the meet and confer process, Aviva agreed to
10 waive requests 2, 3, and 4 of the subpoena, with the reservation that it could reassert request
11 number 2 at a later time, if appropriate, based on facts learned later in the litigation. Aviva
12 therefore narrowed the scope of the subpoena to only request documents responsive to the first
13 request in the subpoena, limiting the request to all declarations and depositions of Samson Chan,
14 Lisa Liu, Brian Dubinsky, and Maggie Wong and “any other Manley / Toyquest / Aquawood /
15 SLB Toys, Inc. employee, officer or director” in the *Color 1* and *Color 2* cases, and the
16 depositions of Brian Dubinsky in the *Wave Rider* case. Third parties Brian Dubinsky and
17 Aquawood, LLC requested that the motion be granted and that the subpoena be quashed.

18 The Court orders that Wham-O, Inc. (“Wham-O”), the subpoenaed party, must produce all
19 declarations and depositions of Samson Chan, Lisa Liu, Brian Dubinsky, and Maggie Wong in
20 the *Color 1* and *Color 2* cases, and the depositions of Brian Dubinsky in the *Wave Rider* case.
21 Wham-O is not required to produce declarations or depositions of any other “Manley / ToyQuest
22 / Aquawood / SLB Toys, Inc.” employee, officer, or director, as specified in the request.
23 Accordingly, in accordance with this order, the motion to quash the subpoena is DENIED in part
24 and GRANTED in part.

25 Wham-O shall produce the responsive documents to counsel for third parties Brian Dubinsky
26 and Aquawood, LLC, who shall be allowed to redact any personal financial information of
27 Samson Chan, Lisa Liu, Brian Dubinsky, and Maggie Wong from the documents to be produced
28 under the subpoena. Counsel for third parties Brian Dubinsky and Aquawood, LLC shall then

1 provide the redacted versions of the produced documents to counsel for Plaintiff Aviva Sports.
2 The documents shall be produced within 20 day of the date of this Order.

3 Aviva Sports, Inc. is ordered to pay all costs, including reasonable attorney fees, associated
4 with producing the requested documents. However, the Court cautions Wham-O, as well as third
5 parties Brian Dubinsky and Aquawood, LLC, to be circumspect in calculating the amount they
6 seek in reimbursement for producing the requested documents. If the Court determines that the
7 amount is unreasonable, then the responding parties may be required to bear all the costs of
8 production.

9 In addition, third parties Brian Dubinsky's and Aquawood, LLC's request for sanctions
10 against Aviva is DENIED.

11 Wham-O's compliance with this order is stayed until November 4, 2010, pending third
12 parties Brian Dubinsky's and Aquawood, LLC's potential appeal of this order.

13
14 IT IS SO ORDERED.

15
16 Dated: November 1, 2010



Hon. William H. Alsup