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18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 AVIVA SPORTS, INC., a Minnesota  
21 corporation,

22 Plaintiff,

23 v.

24 FINGERHUT DIRECT MARKETING, INC.,  
25 a Delaware corporation, MENARD, INC., a

26 Wisconsin corporation, K MART

27 CORPORATION, a Michigan corporation,

28 WAL-MART STORES, INC., a Delaware

29 corporation dba Wal-Mart and Sam's Club and

30 MANLEY TOYS, LTD., a Hong Kong

31 corporation dba Manley Toys and ToyQuest,

32 Defendants.

33 ) **CASE NO.: CV 10-80249 MISC WHA**

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

37 ) **DISCOVERY MATTER**

38 ) **[PROPOSED] ORDER ON THIRD  
39 ) PARTIES BRIAN DUBINSKY'S AND  
40 ) AQUAWOOD, LLC'S MOTION TO  
41 ) QUASH SUBPOENA SERVED ON  
42 ) WHAM-O, INC. AND FOR MONETARY  
43 ) SANCTIONS AGAINST PLAINTIFF  
44 ) AVIVA SPORTS, INC.**

45 ) Date: October 28, 2010

46 ) Time: 11:00 a.m.

47 ) Ctrm: 9

48 ) Judge: Hon. William Alsup

49 )  
50 ) **AND RELATED CROSS-ACTIONS**

51 )  
52 ) **[PROPOSED] ORDER ON THIRD PARTIES BRIAN DUBINSKY'S AND AQUAWOOD,  
53 ) LLC'S MOTION TO QUASH SUBPOENA SERVED ON WHAM-O, INC. AND FOR  
54 ) MONETARY SANCTIONS AGAINST PLAINTIFF AVIVA SPORTS, INC.**

55 ) Case No. CV 10-80249 MISC WHA

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

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[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 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.

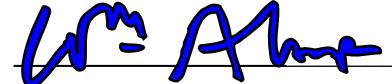
3 Aviva Sports, Inc. is ordered to pay all costs, including reasonable attorney fees, associated  
4 with producing the requested documents. However, the Court cautions Wham-O, as well as third  
5 parties Brian Dubinsky and Aquawood, LLC, to be circumspect in calculating the amount they  
6 seek in 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



17 Hon. William H. Alsup

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