

HONORABLE JOHN ERLICK

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ROBERT M. ARNOLD, derivatively on  
behalf of MOD SYSTEMS, INC. and  
BANANA CORPORATION,

Plaintiffs,

v.

MARK PHILLIPS, KENNETH GORDON,  
JANE DOE GORDON, and the marital  
community composed thereof; ANTHONY  
BAY, JANE DOE BAY, and the marital  
community composed thereof; MOD  
SYSTEMS, INC., and BANANA  
CORPORATION,

Defendants.

NO. 09-2-07963-3 (SEA)

SUBPOENA DUCES TECUM

**THE STATE OF WASHINGTON:**

**TO: JAN WALLACE**  
6929 E. Cheney Drive  
Paradise Valley, Arizona 85253

YOU ARE HEREBY COMMANDED to produce and permit inspection and copying of the documents and tangible things set forth on Schedule A, attached hereto, at the place, date and time specified below. In lieu of appearance, you may complete the attached form and furnish copies to the undersigned.

SUBPOENA DUCES TECUM - 1

F:\JAS Active\Arnold, Bob v. Phillips & MOD\Discovery\SDT to Jan Wallace.wpd

LAW OFFICES  
**SMYTH & MASON, PLLC**  
7100 COLUMBIA CENTER  
701 FIFTH AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 621-7100

**Schedule A**  
**Definitions and Instructions**

1. The term “document” is used as defined broadly in Civil Rule 34(a), and includes without limitation, the original, master, and every copy of every kind of any writing, or recording of any type, or description in any form or medium regardless of the form in which they are embodied (e.g., physical and electronic form). Any copy having on it or attaching to it any alterations, notes, comments, or other material not included in the originals or copies referred to above shall be deemed a separate document within the foregoing definition.

2. The term “concern” or “concerning” as used herein shall mean anything directly or indirectly relating to, referring to, describing, evidencing, constituting, alluding to, responding to, connected with, commenting to, regarding, discussing, showing, mentioning, analyzing, reflecting, evidencing, containing, summarizing, memorializing in whole or in part.

3. The use of the singular of any term in these requests includes the plural of any term in these requests includes the singular, unless otherwise stated.

4. MOD Systems, Incorporated means that Washington corporation with UBI No. 602490867, and its predecessors and successors in interest, its attorneys, consultants, advisors, agents, officers, assignees, or employees.

5. Toshiba/NCR transaction means that certain Series A preferred stock sale transaction of October 2008 by and among MOD Systems, Incorporated, Toshiba Corporation, NCR Corporation, and Deluxe Corporation Entertainment Services Group, Inc., a Delaware Corporation.

6. Banana Corporation means that certain Washington corporation with UBI No. 602624394, and its predecessors & successors in interest.

7. A Dot Corporation means that certain Washington corporation with UBI No. 602283578, and its predecessors & successors in interest.

8. A Dot TV Corporation means that certain Washington corporation incorporated on September 15, 2004, and dissolved on January 3, 2006, with UBI No. 602431391.

9. Metawallet Corporation means that certain Washington corporation with UBI No. 602677851, and its predecessors & successors in interest.

10. In responding to this subpoena duces tecum, you are required to furnish truthfully and in good faith all information that is presently available to you, regardless of whether such information was obtained directly by you, by your attorneys, their agents, employees or investigators.

## **Schedule A**

## DOCUMENT CATEGORIES

- Any and all documents concerning, referring or relating to Robert Arnold;
- Any and all documents concerning, , referring or relating to Mark Phillips;
- Any and all documents concerning, referring or relating to Banana Corporation;
- Any and all documents concerning, referring or relating to A Dot Corporation;
- Any and all documents concerning, referring or relating to A Dot TV Corporation;
- Any and all documents concerning, referring or relating to Ken Gordon;
- Any and all documents concerning, referring or relating to Anthony Bay;
- Any and all documents concerning, referring or relating to Toshiba/NCR transaction;
- Any and all documents concerning, referring or relating to Fully Play Media Systems, Inc.
- Any and all documents concerning, referring or relating to Doug Lower;
- Any and all documents concerning, referring or relating to Warren Lieberfarb.
- Any and all documents or records pertaining to, relating or referring to Metawallet;
- Any and all documents or records pertaining to, relating or referring to MOD Systems, Incorporated;
- Any and all documents you have furnished to, or made available for inspection by, any party to this lawsuit, or his/its representative(s).

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**PLACE:** Law Offices of Smyth & Mason, PLLC  
701 Fifth Avenue, Suite 7100  
Seattle, Washington 98104

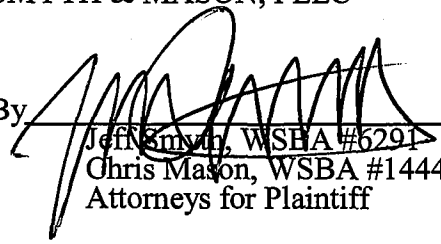
**DATE:** April 2, 2009, at 10:00 a.m.

Your record custodian shall bill each of the attorneys for the costs of making their respective copies.

Dated this 23<sup>rd</sup> day of March, 2009.

SMYTH & MASON, PLLC

By



Jeff Smyth, WSBA #6291  
Chris Mason, WSBA #14442  
Attorneys for Plaintiff

CR 45, Sections (c) & (d):

**(c) Protection of Persons Subject to Subpoenas.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that, the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

**(B) If a subpoena**

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**DECLARATION OF JAN WALLACE**

The undersigned **JAN WALLACE** declares under penalty of perjury that the answers to the following questions are true.

1. State your name and address. \_\_\_\_\_

2. Do you have custody of any records or documents that pertain to the claims set forth in the complaint filed under King County Superior Court Cause No. 09-2-07963-3? \_\_\_\_\_

3. Have any changes or alterations been made to the records since the date they were originally prepared? \_\_\_\_\_

4. If your answer to Question 3 was in the affirmative, please identify any changes or alterations to the records which were made since the date they were originally made. \_\_\_\_\_

5. Have you sent copies which are accurate in all respects to the originals of these records? \_\_\_\_\_

6. Do the records you are conveying to counsel for the parties in response to this records deposition constitute all of the records in your possession or control relating to the above-referenced matter? \_\_\_\_\_

7. If your answer to Question 6 is in the negative, please identify what other records you possess or control on the above-referenced individual which you are not conveying in response to this records deposition. \_\_\_\_\_

I DECLARE, under penalty of perjury under the laws of the State of Washington and under the laws of the United States, that the foregoing answers are true and correct.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

By: \_\_\_\_\_