

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

Plaintiffs,

v.

MARK PHILLIPS, KENNETH GORDON,
JANE DOE GORDON, and the marital
community composed thereof; and
BANANA CORPORATION,

Defendants.

NO. 09-2-07963-3 SEA

ORDER GRANTING DEFENDANT
PHILLIPS' MOTION TO REMOVE
KYLEEN CANE AND ANTHONY
BAY FROM DEMAND REVIEW
COMMITTEE

THIS MATTER having come before the undersigned judge of the above-entitled
court on Defendant Mark Phillips' Motion to Terminate Voting Trust and to Remove Kyleen
Cane and Anthony Bay from the Demand Review Committee, and the Court having read
and considered the records and files herein including:

1. Defendant Phillips' Motion to Remove Kyleen Cane and Anthony Bay as
Members of MOD System, Inc.'s Demand Review Committee;
2. Declaration of Mark Phillips (with exhibits);

ORDER GRANTING DEF. PHILLIPS' MOTION
TO REMOVE KYLEEN CANE AND ANTHONY
BAY FROM DEMAND REVIEW COMMITTEE -

ORIGINAL

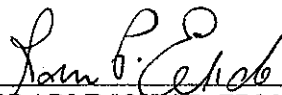
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2505 Second Avenue, Suite 500
Seattle, WA 98121
(t) 206.386.5566 (f) 206.682.0675

3. Declaration of Dennis M. Mandell (with exhibits);
4. Supplemental Declaration of Dennis M. Mandell (with exhibits);
5. Declaration of Charles R. T. O'Kelley (with exhibits);
6. Declaration of Parrish Medley (with exhibits);
7. Custodial Declaration of Donovan Flora (with exhibits);
8. Plaintiff Arnold's Response to Motion to Terminate Voting Trust;
9. Declaration of Julia de Haan;
10. Declaration of Jeff Smyth (with exhibits);
11. Plaintiff MOD Systems Inc.'s Opposition to Defendant Phillips' Motion to Terminate Voting Trust and to Remove Cane and Bay from DRC;
12. Decl. of Anthony Bay in Support of MOD System Inc.'s Opposition to Defendant Phillips' Motion to Terminate Voting Trust and to Remove Cane and Bay from DRC (with exhibits);
13. Def. Phillips' Reply in Support of Motion to Terminate Voting Trust and to Remove Cane and Bay from Demand Review Committee;
14. Custodial Decl. of Mark Johnson in Support of Reply to Phillips' Motion to Terminate Voting Trust;
15. Supplemental Declaration of Mark Phillips; and

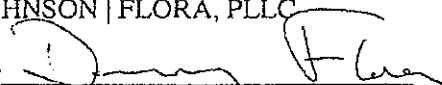
The Court having heard argument of counsel and being otherwise fully advised, it is now, hereby, ORDERED that Defendant Mark Phillips' Motion to Remove Kyleen Cane and Anthony Bay from the Demand Review Committee is GRANTED and they shall take no further action as members of said Committee.

1 DATED this 12th day of November, 2009.

2
3
4 
5 HONORABLE JOHN P. ERICK

6 Presented by:

7 JOHNSON | FLORA, PLLC

8 By 
9 Mark Johnson, WSBA #8463
10 Donovan Flora, WSBA #5624
11 Attorneys for Defendant Mark Phillips

12 Approved as to form, notice of presentation waived:

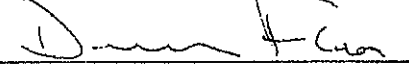
13 SMYTH & MASON, PLLC

14 By 
15 ~~for~~ Jeff Smyth, WSBA #6291 *per e-mail auth 11/12/09*
16 Attorneys for Plaintiff Robert Arnold

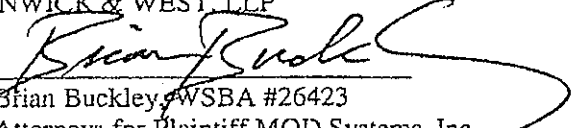
17 SMITH & HENNESSEY, PLLC

18 By 
19 ~~for~~ James A. Smith, Jr., WSBA #5444
20 Geoffrey P. Knudsen, WSBA #1324 *per tel. auth 11/12/09*
21 Attorneys for Banana Corporation

22 LEEN & O'SULLIVAN, PLLC

23 By 
24 ~~for~~ David Leen, WSBA # 3516 *per e-mail auth 11/12/09*
25 Attorneys for Defendants Gordon

26 FENWICK & WEST, LLP

By 
Brian Buckley, WSBA #26423
Attorneys for Plaintiff MOD Systems, Inc.

ORDER GRANTING DEF. PHILLIPS' MOTION
TO REMOVE KYLEEN CANE AND ANTHONY
BAY FROM DEMAND REVIEW COMMITTEE - 3

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2505 Second Avenue, Suite 500
Seattle, WA 98121
(1) 206.386.5566 (1) 206.682.0675