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Attorneys for Plaintiff JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

| | |
|---|---|
| JENS ERIK SORENSEN, as Trustee of SORENSEN RESEARCH AND DEVELOPMENT TRUST,<br><br>Plaintiff<br><br>v.<br><br>RALLY MANUFACTURING, INC., a Florida Corporation; and DOES 1 – 100,<br><br>Defendants. | Case No. 08 cv 305 BTM CAB<br><br>**DECLARATION OF MELODY A. KRAMER IN SUPPORT OF MOTION FOR EXCEPTION TO STAY TO PRESERVE EVIDENCE**<br><br>Date: August 8, 2008<br>Time: 11:00 a.m.<br>Courtroom 15 – 5th Floor<br>The Hon. Barry T. Moskowitz<br><br>***Oral Argument Has Been Respectfully Requested by Plaintiff*** |

I, MELODY A. KRAMER, declare:

1. I am not a party to the present action. I am over the age of eighteen. I have personal knowledge of the facts contained within the following paragraphs, and could and would competently testify thereto if called as a witness in a court of law.

2. At all times relevant herein I have been an attorney for Sorensen Research and Development Trust ("SRDT"), Plaintiff in the above-captioned matter.

3. This Declaration is being submitted in conjunction with Plaintiff's Motion for Exception to Stay for Preservation of Evidence.

4. I have requested an exception for stay for preservation of the evidence outlined in the accompanying motion by letters to Defendants' counsel, but Defendants have failed to agree. Exhibit A attached hereto is a true and correct copy of that correspondence.

SWORN TO under penalty of perjury of the laws of the State of California and the United States, this 26th day of June, 2008.

/s/ Melody A. Kramer
Melody A. Kramer, Esq.

# EXHIBIT A

**Kramer Law Office, Inc.**
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VIA FACSIMILE 310-824-9696
AND FEDERAL EXPRESS

May 6, 2008

Gary M. Anderson
FULWIDER PATTON LLP
Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045

RE: Sorensen Research & Development Trust v. Rally Manufacturing, Inc., et al.
Case No. 08cv305 BTM CAB
Request for agreement to conduct limited discovery during stay for the purpose of preserving evidence

Dear Mr. Anderson:

In accordance with the Order for stay by Judge Moskowitz, we are hereby requesting the Defendant's agreement to preserve certain items of evidence to ensure that they will not be lost during the time that this case is being stayed. If we are unable to reach an agreement, we will be asking the Court for an order to produce this evidence.

1. All prototype and production molds used in the production of the Accused Products that are currently in the possession or control of either Defendants or non-parties; and
2. All design and technical Documents for the Accused Product that are in the possession or control of either Defendants or non-parties.
3. Initial disclosures pursuant to Rule 26(a)(1), specifically including the identity and location of all manufacturers, suppliers, and importers for the products at issue.

The products at issue at this point include the following identified products, and any other products made with the same molds or similar manufacturing process: Rally Rechargeable Spotlight.

It is our understanding that manufacturing of the Accused Products may have been done in China by unidentified company or companies, not by the Defendants. As such, and because we are also aware of often complicated, sometimes international, chain of company ownership, there is simply no assurance that this necessary technical information will be available to my client once the stay is lifted. Furthermore, as we already pointed out to you, failure to identify manufacturers, suppliers, and importers will make it impossible for us to assure that all evidence is preserved.

Please advise us no later than May 27th if your client is willing to stipulate to this limited discovery during the stay, otherwise we will file a motion with the Court.

Additionally, please advise us by May 27th if Defendants have any categories of evidence that they want to ensure are preserved. Although we are cognizant of our general obligation to preserve evidence, we are willing to work with you to ensure that any particular categories of evidence that you think may be necessary when stay is lifted, are adequately preserved.

Thank you for your attention to this matter.

Sincerely,

Melody A. Kramer

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□ OF COUNSEL
* NOT ADMITTED IN MD

Melody A. Kramer
Kramer Law Office, Inc.
9930 Mesa Rim Road
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San Diego, CA 92121

May 23, 2008

Re: Sorensen R&D Trust v. Rally Manufacturing, Inc.
Case No. 08cv305 BTM CAB

Dear Ms. Kramer,

I am in receipt of your letter addressed to Gary Anderson dated May 06, 2008 regarding the issue of limited discovery proposed by your client.

The Court Order staying this matter did not include any provision related to limited discovery despite your request to that effect in your opposition to the motion to stay. The Court Order was intended, in part, to avoid the exact type of potentially wasteful discovery propounded in your May 6th letter. Further, we believe that Sorensen specifically argued for this type of information as part of its opposition to the stay. However, the Judge rejected this argument.

When and if the stay is lifted in this matter, my client will cooperate with all discovery requests. In the meantime, we think such requests are premature and frivolous. Of course, my client understands its duty to preserve evidence during the stay.

Very truly yours,

By: _____
Matthew Stavish

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VIA FACSIMILE 310-824-9696

June 24, 2008

Gary M. Anderson
FULWIDER PATTON LLP
Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045

RE: Sorensen Research & Development Trust v. Rally Manufacturing, Inc., et al.
Case No. 08cv305 BTM CAB
Request for agreement to conduct limited discovery during stay for the purpose of preserving evidence

Dear Mr. Anderson:

We received your letter dated May 23d regarding my request for preservation of evidence pending lift of stay in this case. Unfortunately, your representation did not provide the necessary assurance to avoid our need to pursue this matter with the Court.

Be advised that on June 3, 2008 Judge Moskowitz granted our request for preservation of evidence in circumstances similar to those in this case, therefore we are confident that we will prevail in a request for the limited discovery we have requested from you.

Enclosed please find a copy of the transcript in the referenced hearing in Black & Decker case and resulting order wherein Judge Moskowitz granted my client an exception to stay to conduct certain items of discovery, including conducting a plant inspection. As you can see, there is every reason to believe that Judge Moskowitz would also grant a motion allowing us to conduct the same type of discovery of Rally.

If your client would like to avoid the necessity of motion practice on this issue, please reconsider your position and let me know immediately. Otherwise we will be filing a motion shortly.

Thank you for your attention to this matter.

Sincerely,

Melody A. Kramer

enclosures