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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225578
Party	Plaintiff Narrative Capital Partners LLC
Correspondence Address	NAOMI JANE GRAY SHADES OF GRAY LAW GROUP PC 548 MARKET STREET, #18014 SAN FRANCISCO, CA 94104 UNITED STATES Email: ngray@shadesofgray.law, copyright@shadesofgraylaw.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Naomi Jane Gray
Filer's email	ngray@shadesofgray.law, ngray@shadesofgraylaw.com
Signature	/Naomi Jane Gray/
Date	09/29/2017
Attachments	Motion to amend.170929.Narrative.pdf(248893 bytes ) Gray Decl ISO motion to amend.170929.Narrative.pdf(1913337 bytes )

1 SHADES OF GRAY LAW GROUP, P.C.  
2 NAOMI JANE GRAY (CA SBN 120171)  
3 ngray@shadesofgray.law  
4 548 Market Street, # 18014  
5 San Francisco, CA 94104  
6 Telephone: (415) 746-9260  
7 Facsimile: (415) 968-4328

8 Attorneys for Opposer,  
9 Narrative Capital Partners, LLC

10  
11 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
12 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

13 NARRATIVE CAPITAL PARTNERS, LLC,  
14 a Delaware corporation,

15 Opposer,

16 v.

17 TODD SAMMANN, an individual,

18 Applicant.

19 **OPPOSER NARRATIVE CAPITAL,**  
20 **LLC’S MOTION TO AMEND ITS**  
21 **NOTICE OF OPPOSITION**

22 Opposition No. 91225578

23 App. Serial No. 86541546

24 Mark: NARRATIVE CAPITAL

25 Pursuant to 37 C.F.R. § 2.107 and Fed. R. Civ. P. 15, Opposer Narrative Capital Partners, LLC  
26 (“Opposer”) hereby moves to amend its Notice of Opposition to Application Serial No. 86541546 (the  
27 “Application” filed by Applicant Todd Sammann (“Applicant”) to add as a ground for opposition  
28 likelihood of confusion based its use of the trademark and trade name “NARRATIVE CAPITAL  
PARTNERS.”

29 **FACTUAL BACKGROUND**

30 Opposer Narrative Capital Partners, LLC (“Opposer” or “Narrative”) provides lending,  
31 investment and other financial services, and has done so using the mark NARRATIVE CAPITAL

1 since at least as early as June, 2014. (U.S. Application Serial No. 86865048.) On February 20,  
2 2015, Applicant applied to register the mark NARRATIVE CAPITAL on an intent-to-use basis in  
3 connection with a variety of investment, financing and loan services. (U.S. Application Serial No.  
4 86541546.) On December 30, 2015, Opposer filed its Notice of Opposition to the Application,  
5 asserting a likelihood of confusion based on its use of the trademark and trade name NARRATIVE  
6 CAPITAL. (D.N. 1.) Applicant moved to dismiss the Notice of Opposition on the ground that it  
7 failed to state a claim for relief. (D.N. 5.) The Board denied the motion, holding, in pertinent part,  
8 that Opposer had properly alleged that it used the mark NARRATIVE CAPITAL before Applicant's  
9 application filing date. (D.N. 8 p. 4.)

10 On January 20, 2017, Applicant served Opposer with its first sets of requests for production  
11 and interrogatories. (Declaration of Naomi Jane Gray in Support of Opposer Narrative Capital,  
12 LLC's Motion to Amend Its Opposition ("Gray Decl.") ¶ 2 and Exhs. A-B.) The requests defined  
13 the term "Opposer's Mark," in pertinent part, as any word "incorporating the letter string  
14 NARRATIVE or its phonetic equivalent, in which you claim rights. ..." (Gray Decl. Exh. A pp. 3-4,  
15 Exh. B p. 3.) In the course of responding to these requests, Opposer discovered documents  
16 reflecting its use of the trademark and trade name NARRATIVE CAPITAL PARTNERS in addition  
17 to the pleaded mark NARRATIVE CAPITAL. In accordance with the definition in the requests,  
18 Opposer produced documents and information relating to its use of the mark NARRATIVE  
19 CAPITAL PARTNERS. (Gray Decl. ¶ 3.)

20 Shortly after Opposer responded to Applicant's discovery requests, Opposer filed a motion to  
21 compel Applicant to provide further responses to Opposer's discovery requests. (Gray Decl. ¶ 4 and  
22 D.N. 15.) The Board stayed proceedings on April 3, 2017. (Gray Decl. ¶ 4 and D.N. 17.) On July  
23 10, 2017, the Board granted the motion to compel in full. (Gray Decl. ¶ 5 and D.N. 22.) Applicant  
24 produced additional materials in August. (Gray Decl. ¶ 6.) Also in August, Applicant reached out to  
25 Opposer to continue settlement discussions. (*Id.*) The parties have not yet taken any depositions.  
26 (*Id.* ¶ 7.) Discovery is currently scheduled to close on October 11, 2017. (D.N. 22.)

27 Opposer sought Applicant's consent to the proposed amendment before filing this motion.  
28 On September 17, 2017, Opposer's counsel emailed one of Applicant's attorneys seeking consent to

1 the amendment and attaching a redline of the notice of opposition showing the proposed changes.  
2 (Gray Decl. ¶ 9 and Exh. C.) On September 20, another of Applicant’s attorneys stated that she was  
3 “conferring” with Applicant “as to whether we will consent to your proposed amendment and will  
4 revert as soon as possible.” (*Id.* ¶ 10 and Exh. D.) On September 28, 2017, in response to a request  
5 by Applicant that the parties agree to extend the discovery deadline in order to complete depositions,  
6 Opposer’s counsel again requested that Applicant consent to Opposer’s proposed amendment. (*Id.* ¶  
7 11 and Exh. E.) Applicant has not consented to the proposed amendment. (*Id.* ¶ 12.)

8  
9 **ARGUMENT**

10 **THE LIBERAL STANDARD FOR ALLOWING AMENDED PLEADINGS IS SATISFIED.**

11 “Pleadings in inter partes proceedings before the Board may be amended in the same manner  
12 and to the same extent as pleadings in a civil action before a United States District Court,” subject to  
13 limited exceptions not applicable here. TBMP § 315; 37 C.F.R. § 2.107. Accordingly, leave to  
14 amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). “This mandate is to  
15 be heeded.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). “In general, the Board liberally grants  
16 leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the  
17 proposed amendment would be prejudicial to the rights of the adverse party or would violate settled  
18 law.” *Trek Bicycle Corp. v. Styletrek Limited*, 2001 WL 1869327, at \*1 (T.T.A.B. Dec. 19, 2001);  
19 *Boral Ltd. v. FMC Corp.*, 2000 WL 33417500, at \*1 (T.T.A.B. Mar. 29, 2000).

20 Here, Opposer seeks to add as a ground for opposition likelihood of confusion based on its  
21 use of the trademark and trade name NARRATIVE CAPITAL PARTNERS. Granting the motion  
22 would not prejudice Applicant. Applicant’s discovery requests specifically sought documents and  
23 information relating to Opposer’s use of any mark “incorporating the letter string ‘NARRATIVE.’”  
24 (Gray Decl. ¶ 2 and Exhs. A-B.) Applicant plainly contemplated that Opposer had made use of the  
25 NARRATIVE CAPITAL mark incorporating slightly different or additional matter. Opposer  
26 produced responsive documents and information relating to its use of NARRATIVE CAPITAL  
27 PARTNERS seven months ago. (Gray Decl. ¶¶ 2,3.) Applicant has all responsive written discovery  
28 and documents in his possession as to Opposer’s use of the NARRATIVE CAPITAL PARTNERS

1 mark.

2 The parties have not yet taken any depositions. (*Id.* ¶ 7.) Indeed, as of the date of this filing,  
3 although Opposer has offered his deposition at three different times, there is no confirmed date for  
4 his deposition to occur. The action was stayed for several months following the filing of Opposer’s  
5 motion to compel. (*Id.* ¶¶ 4-5.) After the Board granted the motion, Applicant produced additional  
6 responsive documents and information, and reached out to Opposer to continue the parties’  
7 settlement discussions. (*Id.* ¶¶ 6-7.) Applicant has been on notice of Opposer’s intention to amend  
8 its Notice of Opposition since September 17, 2017. Applicant has had plenty of notice of Opposer’s  
9 intention to amend its Notice of Opposition, and plenty of time to make whatever resulting  
10 preparations may be necessary in order to take Opposer’s deposition.

11 Nor would the proposed amendment violate the law. The Board has already found that  
12 Opposer properly alleged that it used the mark NARRATIVE CAPITAL before Applicant’s filing of  
13 his application. (D.N. 8 p. 4.) Opposer merely seeks to add the mark NARRATIVE CAPITAL  
14 PARTNERS to its allegations of prior use and likely confusion, which is supported by the  
15 documents that have been in Applicant’s possession for months. (Gray Decl. ¶ 3.)

16 **CONCLUSION**

17 Accordingly, the Board should grant Opposer leave to file the Amended Notice of Opposition  
18 annexed hereto as Exhibit A.

19 Dated: September 29, 2017

Respectfully submitted,

21 SHADES OF GRAY LAW GROUP, P.C.  
22 NAOMI JANE GRAY

23 By:     /s/ Naomi Jane Gray    

24 Naomi Jane Gray

25 Attorneys for Opposer  
26 Narrative Capital Partners, LLP  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a true and correct copy of the attached **OPPOSER NARRATIVE CAPITAL,**  
3 **LLC'S MOTION TO AMEND ITS NOTICE OF OPPOSITION** was served on Applicant via email on  
4 September 29, 2017, addressed to:

5 Eugene Chang  
6 Willkie Farr & Gallagher LLP  
7 787 Seventh Avenue  
8 New York, NY 10019  
9 [echang@willkie.com](mailto:echang@willkie.com)  
10 [rdooley@willkie.com](mailto:rdooley@willkie.com)

11 */s/ Naomi Jane Gray*  
12 Naomi Jane Gray

# **EXHIBIT A**

1 SHADES OF GRAY LAW GROUP, P.C.  
2 NAOMI JANE GRAY (CA SBN 120171)  
3 ngray@shadesofgray.law  
4 548 Market Street, # 18014  
5 San Francisco, CA 94104  
6 Telephone: (415) 746-9260  
7 Facsimile: (415) 968-4328

8 Attorneys for Opposer,  
9 Narrative Capital Partners, LLC

10  
11 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
12 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

13 NARRATIVE CAPITAL PARTNERS, LLC,  
14 a Delaware corporation,

15 Opposer,

16 v.

17 TODD SAMMANN, an individual,

18 Applicant.

**OPPOSER NARRATIVE CAPITAL,  
LLC'S [PROPOSED] AMENDED  
NOTICE OF OPPOSITION**

Opposition No. 91225578

App. Serial No. 86541546

Mark: NARRATIVE CAPITAL

19  
20 Narrative Capital Partners, LLC, a Delaware corporation, having its principal place of  
21 business at 130 East 67th Street, New York, New York 10065 ("Narrative Capital" or "Opposer"),  
22 believes that it will be damaged by registration of the mark NARRATIVE CAPITAL shown in  
23 Application Serial No. 86541546 (the "Opposed Mark" shown in the "Opposed Application").  
24 Todd Sammann, an individual, having a place of business at 612 El Cerco Place, Pacific Palisades,  
25 California, 90272 ("Applicant"), filed the Opposed Application, which Narrative Capital hereby  
26 opposes. As grounds for opposition, Narrative Capital alleges:

27 //



1                                   **DESCRIPTION OF THE OPPOSED APPLICATION**

2           1.       Applicant filed the Opposed Application on February 20, 2015, and it was published  
3 for opposition in the Official Gazette on September 1, 2015.

4           2.       The Opposed Application seeks registration of the Opposed Mark in International  
5 Class 36 for: “Investment of funds for others; private equity fund investment services; funds  
6 investment services; financing and loan services; mezzanine financing and loan services; real  
7 estate investment services; real estate investment advisory services; financial investment in the  
8 field of real estate; real estate funds investment services; financial due diligence services in the  
9 field of real estate; and real estate acquisition services.”

10          3.       On September 30, 2015, Opposer requested, and the Trademark Trial and Appeal  
11 Board granted, one 90-day extension of time to oppose the Opposed Application.

12                                   **OPPOSER’S SERVICE MARK AND TRADE NAME**

13  
14          4.       Narrative Capital provides lending, investment and other financial services.  
15 Narrative Capital has acquired common-law rights in the service marks NARRATIVE  
16 CAPITAL and NARRATIVE CAPITAL PARTNERS, which ~~is~~ are ~~a~~ word marks, by using the  
17 marks in connection with a variety of such services. ~~This~~ these ~~uses~~, and Narrative Capital’s  
18 resulting common-law rights, ~~predates~~ the filing date of the Opposed Application; ~~predates~~ any  
19 priority date associated with the Opposed Application; and ~~predates~~ Applicant’s first use, if any,  
20 of the Opposed Mark. Opposer’s use of NARRATIVE CAPITAL and NARRATIVE CAPITAL  
21 PARTNERS in connection with its services has been continuous and has not been abandoned.

22          5.       Moreover, Narrative Capital has used “Narrative Capital” and NARRATIVE  
23 CAPITAL PARTNERS as ~~a~~ trade names in connection with its lending, investment and other  
24 financial services described above since before the date that Applicant filed the Opposed  
25 Application; before any priority date associated with the Opposed Application; and before  
26 Applicant’s first use, if any, of the Opposed Mark.

27                                   **LIKELIHOOD OF CONFUSION**

1           6.       The Opposed Application seeks registration of the opposed Mark in International  
2 Class 36 for “Investment of funds for others’ private equity fund investment services; funds  
3 investment services; financing and loan services; mezzanine financing and loan services; real  
4 estate investment services; real estate investment advisory services; financial investment in the  
5 field of real estate; real estate funds investment services; financial due diligence services in the  
6 field of real estate; and real estate acquisition services.”

7           7.       These services are closely related to, and in some cases identical to or  
8 overlapping, the services offered by oppose. For example, Opposer offers the following services  
9 to third parties under its NARRATIVE CAPITAL and NARRATIVE CAPITAL PARTNERS  
10 names and marks: investment of funds for others; private equity fund investment services; funds  
11 investment services; financing and loan services; and mezzanine financing and loan services.

12           8.       Moreover, the marks at issue are identical, or virtually identical. In view of the  
13 closely related nature of the parties’ services, Applicant’s mark will appear to consumers to share  
14 a common source, sponsorship, or affiliation with Opposer and its NARRATIVE CAPITAL and  
15 NARRATIVE CAPITAL marks.

16           9.       Given the association of NARRATIVE CAPITAL and NARRATIVE CAPITAL  
17 PARTNERS with Opposer, consumer confusion is likely. When relevant customers see the  
18 parties’ marks in the marketplace, they are likely to draw the false conclusion that Applicant and  
19 his services share a common source, sponsorship, or affiliation with Opposer or its services.

20           10.      Accordingly, the Opposed Mark should be denied registration under Section 2(d)  
21 of the Lanham Act, 15 U.S.C. § 1052(d), because its use is likely to cause confusion with  
22 Opposer’s NARRATIVE CAPITAL and NARRATIVE CAPITAL marks. Opposer is neither  
23 affiliated with nor a sponsor of Applicant, and the services identified by the Opposed Mark do  
24 not originate from Opposer.

25           11.      Registration of the Opposed Mark would be inconsistent with Opposer’s  
26 established service mark rights under common law, and would damage Opposer.

27           12.      Registration of the Opposed Mark would also be inconsistent with Opposer’s use  
28 of “Narrative Capital” and “Narrative Capital Partners” as a trade names, and would damage

1 Opposer.

2  
3 **PRAYER**

4 WHEREFORE, Opposer prays that Application Serial No. 86541546 be rejected, that no  
5 registration thereon be issued to Applicant, and that this opposition be sustained in favor of  
6 Opposer. Opposer hereby appoints as its attorneys Shades of Gray Law Group, P.C., a law  
7 corporation composed of members of the Bar of the State of California, with full power to  
8 prosecute this Opposition, transact all relevant business with the U.S. Patent and Trademark  
9 Office and the United State Courts and receive all official communication in connection with this  
10 Opposition.

11 Dated: September \_\_, 2017

Respectfully submitted,

12 SHADES OF GRAY LAW GROUP, P.C.  
13 NAOMI JANE GRAY

14 */Naomi Jane Gray/*

15 Attorneys for Opposer  
16 NARRATIVE CAPITAL, LLC

1 SHADES OF GRAY LAW GROUP, P.C.  
2 NAOMI JANE GRAY (CA SBN 120171)  
3 ngray@shadesofgray.law  
4 548 Market Street, # 18014  
5 San Francisco, CA 94104  
6 Telephone: (415) 746-9260  
7 Facsimile: (415) 968-4328

8 Attorneys for Opposer  
9 Narrative Capital Partners, LLC

10  
11 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
12 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

13 NARRATIVE CAPITAL PARTNERS, LLC,  
14 a Delaware corporation,

15 Opposer,

16 v.

17 TODD SAMMANN, an individual,

18 Applicant.

19 **DECLARATION OF NAOMI JANE**  
20 **GRAY IN SUPPORT OF OPPOSER**  
21 **NARRATIVE CAPITAL, LLC'S MOTION**  
22 **TO AMEND ITS NOTICE OF**  
23 **OPPOSITION**

24 Opposition No. 91225578

25 App. Serial No. 86541546

26 Mark: NARRATIVE CAPITAL

27 I, Naomi Jane Gray, declare as follows:

28 1. I am the principal of Shades of Gray Law Group, P.C., counsel for Opposer Narrative Capital, LLC in the above-captioned action. I make this declaration on personal knowledge except where otherwise indicated. I could and would testify to the matters herein if called upon to do so.

2. On January 20, 2017, Applicant served Opposer with its first sets of requests for production and interrogatories. The requests defined the term "Opposer's Mark," in pertinent part, as any word "incorporating the letter string NARRATIVE or its phonetic equivalent, in which you

1 claim rights. ...” True and correct copies of relevant excerpts of Applicant’s First Set of Requests  
2 for the Production of Documents and Things to Opposer (Nos. 1-37) and Applicant’s First Set of  
3 Interrogatories to Opposer (Nos. 1-26) are annexed hereto as Exhibits A and B, respectively.

4 3. In the course of responding to these requests, Opposer discovered documents  
5 reflecting its use of the mark NARRATIVE CAPITAL PARTNERS in addition to the pleaded mark  
6 NARRATIVE CAPITAL. In accordance with the definition in the requests, Opposer produced  
7 documents and information relating to its use of the mark NARRATIVE CAPITAL PARTNERS.  
8 Opposer produced these responses in February, 2017 – seven months ago.

9 4. Shortly after Opposer responded to Applicant’s discovery requests, Opposer filed a  
10 motion to compel Applicant to provide further responses to Opposer’s discovery requests. (D.N.  
11 15.) The Board stayed proceedings on April 3, 2017. (D.N. 17.)

12 5. On July 10, 2017, the Board granted the motion to compel in full. (D.N. 22.)

13 6. Applicant produced additional materials in August. Also in August, Applicant  
14 reached out to Opposer to continue settlement discussions.

15 7. The parties have not yet taken any depositions. Although Opposer has offered his  
16 deposition at three different times, there is no confirmed date for his deposition to occur.

17 8. Discovery is currently scheduled to close on October 11, 2017. (D.N. 22.)

18 9. On September 17, 2017, I emailed Eugene Chang, one of Applicant’s attorneys,  
19 seeking Applicant’s consent to Opposer’s proposed amendment. I attached a redline of the proposed  
20 amended pleading, showing the changes, to the email. A true and correct copy of my September 17,  
21 2017 email to Mr. Chang is annexed hereto as Exhibit C.

22 10. On September 20, 2017, another of Applicant’s attorneys, Sabrina Hasan, emailed  
23 me to state, *inter alia*, that she was “conferring” with Applicant “as to whether we will consent to  
24 your proposed amendment and will revert as soon as possible.” A true and correct copy of Ms.  
25 Hasan’s September 20, 2017 email to me is annexed hereto as Exhibit D.

26 11. On September 28, 2017, in response to a request by Applicant that the parties extend  
27 the discovery deadline in order to complete depositions, I emailed Mr. Chang asking again if  
28

1 Applicant would consent to Opposer’s proposed amendment. A true and correct copy of my  
2 September 28, 2017 email to Mr. Chang is annexed hereto as Exhibit E.

3 12. Applicant has not consented to the proposed amendment.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing  
5 is true and correct to the best of my knowledge, and this declaration was executed on September 29,  
6 2017 in Mill Valley, California.

7

8

*/s/ Naomi Jane Gray*

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Naomi Jane Gray

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a true and correct copy of the attached **DECLARATION OF NAOMI**  
3 **JANE GRAY IN SUPPORT OF OPPOSER NARRATIVE CAPITAL, LLC'S MOTION TO AMEND ITS**  
4 **NOTICE OF OPPOSITION** was served on Applicant via email on September 29, 2017, addressed  
5 to:

6 Eugene Chang  
7 Willkie Farr & Gallagher LLP  
8 787 Seventh Avenue  
9 New York, NY 10019  
[echang@willkie.com](mailto:echang@willkie.com)  
[rdooley@willkie.com](mailto:rdooley@willkie.com)

10  
11 */s/ Naomi Jane Gray*  
12 Naomi Jane Gray

# **EXHIBIT A**



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Narrative Capital Partners, LLC	)	
	)	
Opposer,	)	<b>Opposition No. 91225578</b>
	)	<b>Serial No. 86/541,546</b>
v.	)	<b>Mark: NARRATIVE CAPITAL</b>
	)	
Todd Sammann	)	
	)	
Applicant.	)	

**APPLICANT’S FIRST SET OF REQUESTS FOR THE  
PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER (NOS. 1-37)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant Todd Sammann ("Applicant"), by his undersigned attorneys, hereby requests that Opposer Narrative Capital Partners, LLC ("Opposer") produce for inspection and copying within thirty (30) days of service, the documents and things set forth below that are in Opposer’ possession, custody, and control, to the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019.

**DEFINITIONS**

The following terms and definitions shall apply to these requests:

1. The term “**document**” is used in a comprehensive sense as set forth in Fed. R. Civ. P. 34(a) and means all written or graphic matter, however produced or reproduced, in Opposer’ actual or constructive possession, custody, care or control, including, but not limited to, originals (or copies where originals are unavailable) of correspondence, e-mail, computer storage

media, computer software needed to produce in human-readable form from said computer storage media, instructions for using said computer software, telegrams, notes of any type of personal or telephone conversations, or of meetings or conferences, minutes of directors or committee meetings, memoranda, inter-office communications, studies, analyses, reports, engineering drawings, results of investigations, catalogs, contracts, licenses, agreements, working papers, statistical records, ledgers, books of account, vouchers, invoices, charge slips, freight bills, time sheets or logs, stenographers' notebooks, diaries, or papers similar to any of the foregoing however denominated. "Documents" shall also mean (1) any copy which is not identical to the original or to any other copy and (2) any tangible thing that is called for by or identified in response to a request for documents.

2. The terms "**communication**" or "**communications**" mean any transmittal of information regardless of the manner in which the communications took place, including but not limited to, face-to-face conversations, correspondence, electronic or computer mail, voicemail, telephone calls, facsimile communications or telegrams.

3. When referring to a person, "**identify**" or "**identification**" means to give to the extent known, the person's full name, present and last known address, and, when referring to a natural person, the present or last known place of employment.

4. When referring to documents, "**identify**" or "**identification**" means to give, to the extent known, the (i) type of document; (ii) the general subject matter; (iii) the date of the document; and (iv) author(s), addressee(s) and recipient(s).

5. The term "**concerning**" means relating to, referring to, describing, evidencing, or constituting.

6. Something is “**relating to**” a subject if it makes a statement about, refers to, mentions, discusses, describes, reflects, deals with, consists of, constitutes, comprises, concerns, evidences, records, or in any way pertains to the subject, whether as a whole or in part, and either directly or indirectly.

7. The terms “**and**” and “**or**” shall be construed both conjunctively and disjunctively and the plural shall be construed as the singular, and vice versa, as necessary and in order to bring within the scope of these Requests any information, documents, or things that might otherwise be construed to be outside their scope.

8. The use of the singular form of any word includes the plural and vice versa.

9. The term “**including**” means including, without limitation.

10. The term “**Opposer**” means Narrative Capital Partners, LLC and its respective employees, officers, directors, attorneys, agents, representatives, and all persons acting or purporting to act on its behalf.

11. The term “**Applicant**” means Todd Sammann and his agents, representatives, employees and attorneys, and all persons acting or purporting to act on its behalf.

12. The terms “**you**” and “**your**” refers to Opposer and all related entities, as defined above.

13. The term “**Applicant’s Mark**” means the mark that is the subject of United States Trademark Application, Serial No. 86/541,546.

14. The term “**Application**” means United States Trademark Application, Serial No. 86/541,546.

15. The term “**Opposer’s Mark**” means the mark that is the subject of United States Trademark Application, Serial No. 86/865,048, and any word, name, symbol or device or other

designation of origin incorporating the letter string NARRATIVE or its phonetic equivalent, in which you claim rights, including any other trademark, service mark, or Internet domain name, or any trademark or service mark application or registration.

16. The term “**Opposer’s Services**” means funds investment services, financing and loan services, investment advisory services and intellectual property financing services.

17. The Term “**Opposition**” means the current opposition, No. 91225578, in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

18. The term “**person**” means any individual, individuals, business entity or entities that ever existed, including, but not limited to, corporations, partnerships, governmental entities, associations or business trusts.

19. The term “**mark**” means any word, name, symbol or device or other designation of origin, including any trademark, service mark, or Internet domain name, or any trademark or service mark application or registration.

### **GENERAL INSTRUCTIONS**

1. Each Request is continuing in nature. All documents and things responsive to these Requests that come into the possession, custody or control of Opposer after it has made its first response to these Requests shall be produced promptly to Applicant in accordance with Opposer’s obligation to supplement responses under Federal Rule of Civil Procedure 26(e).

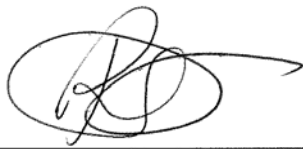
2. No Request shall be construed with reference to any other request for purposes of limitation.

3. Each requested document shall be produced in its entirety, including all attachments and enclosures. If a portion of a document is responsive to a Request, produce the entire document, including all attachments, enclosures, “post-it”-type notes, and any other matter

**CERTIFICATE OF SERVICE**

I hereby certify that I have this January 20, 2017 served on Applicant via email, by agreement, the foregoing APPLICANT'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER (NOS. 1-37) to the following:

Naomi Jane Gray  
Shades of Gray Law Group, P.C.  
548 Market Street, #18014  
San Francisco, CA 94104  
United States  
[ngray@shadesofgray.law](mailto:ngray@shadesofgray.law)  
[copyright@shadesofgraylaw.com](mailto:copyright@shadesofgraylaw.com)

By:   
\_\_\_\_\_  
Rachel Dooley  
January 20, 2017

# **EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Narrative Capital Partners, LLC	)	
	)	
Opposer,	)	Opposition No. 91225578
	)	Serial No. 86/541,546
v.	)	Mark: NARRATIVE CAPITAL
	)	
Todd Sammann	)	
	)	
Applicant.	)	
	)	

**APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER (NOS. 1-26)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant Todd Sammann ("Applicant"), by his undersigned attorneys, hereby requests that Opposer Narrative Capital Partners, LLC's ("Opposer") respond to the following interrogatories within thirty (30) days of service.

**DEFINITIONS AND INSTRUCTIONS**

The following terms and definitions shall apply to these interrogatories:

1. The term "**document**" is used in a comprehensive sense as set forth in Fed. R. Civ. P. 34(a) and means all written or graphic matter, however produced or reproduced, in Opposer' actual or constructive possession, custody, care or control, including, but not limited to, originals (or copies where originals are unavailable) of correspondence, e-mail, computer storage media, computer software needed to produce in human-readable form from said computer storage media, instructions for using said computer software, telegrams, notes of any type of personal or telephone conversations, or of meetings or conferences, minutes of directors or

committee meetings, memoranda, inter-office communications, studies, analyses, reports, engineering drawings, results of investigations, catalogs, contracts, licenses, agreements, working papers, statistical records, ledgers, books of account, vouchers, invoices, charge slips, freight bills, time sheets or logs, stenographers' notebooks, diaries, or papers similar to any of the foregoing however denominated. "Documents" shall also mean (1) any copy which is not identical to the original or to any other copy and (2) any tangible thing that is called for by or identified in response to a request for documents.

2. The terms "**communication**" or "**communications**" mean any transmittal of information regardless of the manner in which the communications took place, including but not limited to, face-to-face conversations, correspondence, electronic or computer mail, voicemail, telephone calls, facsimile communications or telegrams.

3. When referring to a person, "**identify**" or "**identification**" means to give to the extent known, the person's full name, present and last known address, and, when referring to a natural person, the present or last known place of employment.

4. When referring to documents, "**identify**" or "**identification**" means to give, to the extent known, the (i) type of document; (ii) the general subject matter; (iii) the date of the document; and (iv) author(s), addressee(s) and recipient(s).

5. The term "**concerning**" means relating to, referring to, describing, evidencing, or constituting.

6. Something is "**relating to**" a subject if it makes a statement about, refers to, mentions, discusses, describes, reflects, deals with, consists of, constitutes, comprises, concerns, evidences, records, or in any way pertains to the subject, whether as a whole or in part, and either directly or indirectly.



7. The terms “**and**” and “**or**” shall be construed both conjunctively and disjunctively and the plural shall be construed as the singular, and vice versa, as necessary and in order to bring within the scope of these Requests any information, documents, or things that might otherwise be construed to be outside their scope.

8. The use of the singular form of any word includes the plural and vice versa.

9. The term “**including**” means including, without limitation.

10. The term “**Opposer**” means Narrative Capital Partners, LLC and its respective employees, officers, directors, attorneys, agents, representatives, and all persons acting or purporting to act on its behalf.

11. The term “**Applicant**” means Todd Sammann and his agents, representatives, employees and attorneys, and all persons acting or purporting to act on his behalf.

12. The terms “**you**” and “**your**” refers to Opposer and all related entities, as defined above.

13. The term “**Applicant’s Mark**” means the mark that is the subject of United States Trademark Application, Serial No. 86/541,546.

14. The term “**Application**” means United States Trademark Application, Serial No. 86/541,546.

15. The term “**Opposer’s Mark**” means the mark that is the subject of United States Trademark Application Serial No. 86/865,048 and any word, name, symbol, device or other designation of origin incorporating the letter string NARRATIVE or its phonetic equivalent, in which you claim rights, including any other trademark, service mark, or Internet domain name, or any trademark or service mark application or registration.

**INTERROGATORY NO. 23:**

Identify any study, research, focus group, testing, survey (formal, informal or anecdotal) or similar validation procedure employed by or on behalf of Opposer relating to the presence and/or absence of any confusion between Opposer's Mark and any other party's mark, including Applicant's Mark.

**INTERROGATORY NO. 24:**

Describe in in full and complete detail the basis for Opposer's contention, as set forth in the Opposition to Motion to Dismiss dated February 18, 2016, that Applicant knew of Opposer's use of Opposer's Mark prior to the filing date of the Application.

**INTERROGATORY NO. 25:**

Describe in full and complete detail any contention by Opposer that its use of Opposer's Mark prior to February 20, 2015 constitutes use in commerce.

**INTERROGATORY NO. 26:**

Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories.

Dated: January 20, 2017

WILLKIE FARR & GALLAGHER LLP



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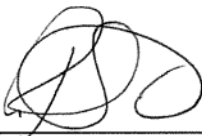
Eugene L. Chang  
Rachel S. Dooley  
787 Seventh Avenue  
New York, NY 10019-6099  
(212) 728-8000

*Attorneys for Applicant Todd Sammann.*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this January 20, 2017 served on Applicant via email, by agreement, the foregoing APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER (NOS. 1-26) to the following:

Naomi Jane Gray  
Shades of Gray Law Group, P.C.  
548 Market Street, #18014  
San Francisco, CA 94104  
United States  
[ngray@shadesofgray.law](mailto:ngray@shadesofgray.law)  
[copyright@shadesofgraylaw.com](mailto:copyright@shadesofgraylaw.com)

By:   
\_\_\_\_\_  
Rachel Dooley  
January 20, 2017

# **EXHIBIT C**

## Naomi Jane Gray

---

**From:** Naomi Jane Gray  
**Sent:** Sunday, September 17, 2017 9:48 PM  
**To:** Chang, Eugene  
**Cc:** Dooley, Rachel  
**Subject:** Narrative/Sammann  
**Attachments:** Proposed Amended Notice of Opposition.pdf

Dear Eugene,

Narrative intends to amend its notice of opposition to add as grounds for opposition its use of NARRATIVE CAPITAL PARTNERS as a trademark and trade name. I note that your written discovery requests sought documents relating to the use of any mark including the letter string NARRATIVE, and Narrative Capital produced responsive documents showing use of the mark NARRATIVE CAPITAL PARTNERS. Please let me know if your client will consent to the amendment. A redline showing the proposed changes is attached.

Naomi

Naomi Jane Gray  
Shades of Gray Law Group, P.C.

San Francisco – Los Angeles – Mill Valley

100 Shoreline Highway, Suite 100B  
Mill Valley, CA 94941  
Tel: (415) 746-9260  
Fax: (415) 968-4328  
Cell: (415) 302-2543

Blog: Shades of Gray: Copyright and trademark law from black to white and everything in between,  
[www.shadesofgraylaw.com](http://www.shadesofgraylaw.com)

Twitter: @ShadesofGrayLaw

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# **EXHIBIT D**

## Naomi Jane Gray

---

**From:** Hasan, Sabrina <SHasan@willkie.com>  
**Sent:** Wednesday, September 20, 2017 6:42 AM  
**To:** Naomi Jane Gray  
**Cc:** Chang, Eugene; Dooley, Rachel; Martinez, Olivia  
**Subject:** Narrative: Sammann Deposition

Hi Naomi,

We have been working out our client's schedule for his deposition, which has gotten tighter. Do you have a sense of how much time you need with Mr. Sammann? He is available October 17<sup>th</sup>, but if you need less than a full day he may be able to do an earlier date.

Additionally, we think a month extension in the discovery period is appropriate, given the outstanding depositions and the issue of your proposed amendment. Please let us know if you disagree. We are still conferring with our client as to whether we will consent to your proposed amendment and will revert as soon as possible.

Best,  
Sabrina

### Sabrina Hasan

Law Clerk

### Willkie Farr & Gallagher LLP

787 Seventh Avenue | New York, NY 10019-6099

Direct: +1 212 728 8663 | Fax: +1 212 728 9663

[shasan@willkie.com](mailto:shasan@willkie.com) | [vCard](#) | [www.willkie.com/bio](http://www.willkie.com/bio)

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# **EXHIBIT E**



## Naomi Jane Gray

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**From:** Naomi Jane Gray  
**Sent:** Thursday, September 28, 2017 2:31 PM  
**To:** 'Chang, Eugene'  
**Cc:** Dooley, Rachel  
**Subject:** RE: Notice of deposition

Eugene, I have attempted to work with you to schedule depositions at a mutually convenient time. After I spent significant time trying to rearrange my schedule and make myself and Daniel available in New York the week of September 26, you unilaterally announced that Mr. Sammann would only be available for an hour and a half. You have now offered him in New York on a date that I am unavailable. The Board's order allows me to notice Mr. Sammann's deposition "at any time," and I noticed it in Los Angeles, where he lives and works, which is entirely reasonable. Moreover, I offered Mr. Levin's deposition in Los Angeles at the same time.

For efficiency, both depositions should be scheduled to occur at the same time, since they will involve out-of-town travel. Accordingly, if Mr. Sammann refuses to appear for his properly noticed deposition next week, we will not offer Mr. Levin's deposition on Oct. 3.

Although Mr. Levin does not wish to extend the discovery deadline, we are willing to do so on the following terms.

- We extend the discovery deadline for 30 days, solely for the purpose of completing the depositions of Messrs. Samman and Levin. No new discovery shall be noticed or taken.
- The depositions will be taken in Los Angeles at a mutually convenient time. One trip to Los Angeles for both depositions.
- Mr. Sammann is deposed first.
- Mr. Sammann consents to the amendment of Narrative's notice of opposition to add NARRATIVE CAPITAL PARTNERS as a basis for opposition.
- We agree to extend all the remaining deadlines in the case by 30 days, to accommodate the later discovery deadline.

If Mr. Sammann is willing to accept these conditions, Mr. Levin will agree to extend the deadline to complete the depositions. Otherwise, we have no hesitation in seeking enforcement of the Board's order.

Naomi

Naomi Jane Gray  
Shades of Gray Law Group, P.C.  
San Francisco – Los Angeles – Mill Valley  
100 Shoreline Highway, Suite 100B  
Mill Valley, CA 94941  
Tel. (415) 746-9260  
Fax (415) 968-4328

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---

**From:** Chang, Eugene [mailto:echang@willkie.com]  
**Sent:** Wednesday, September 27, 2017 12:38 PM

**To:** Naomi Jane Gray <ngray@shadesofgray.law>  
**Cc:** Dooley, Rachel <RDooley@willkie.com>; Naomi J. Gray (ngray@shadesofgraylaw.com) <ngray@shadesofgraylaw.com>  
**Subject:** RE: Notice of deposition

Naomi-

The Board's order does not allow you to compel Mr. Sammann's deposition at any time and at any place of your choosing, without regard for Mr. Sammann's schedule. Your attempt to harass Mr. Sammann and disrupt his business are unprofessional and inappropriate. Mr. Sammann is not available for deposition October 2.

If you are not available October 10, we should also be able to make Mr. Sammann available October 11 in New York, although we will need to confirm that with our client. If that date also does not work for you, as we have previously discussed, we are willing to agree to extend the discovery period. Let us know if you accept that date.

Given that Mr. Sammann is not available October 2, are you still offering Mr. Levin's deposition on October 3 in Los Angeles? If not, are there any dates prior to the discovery cutoff that you can offer Mr. Levin for deposition?

Regards,

Eugene

**Eugene L. Chang**  
**Willkie Farr & Gallagher LLP**  
787 Seventh Avenue | New York, NY 10019-6099  
Direct: +1 212 728 8988 | Fax: +1 212 728 9988  
[echang@willkie.com](mailto:echang@willkie.com) | [vCard](#) | [www.willkie.com/bio](http://www.willkie.com/bio)

---

**From:** [Naomi Jane Gray](#)  
**Sent:** Wednesday, September 27, 2017 3:24 PM  
**To:** [Chang, Eugene](#)  
**Cc:** [Dooley, Rachel](#); [Naomi J. Gray \(ngray@shadesofgraylaw.com\)](mailto:Naomi.J.Gray@shadesofgraylaw.com)  
**Subject:** RE: Notice of deposition

Eugene,

I am not available to take Mr. Sammann's deposition in New York on October 10. I have properly noticed his deposition for October 2 in Los Angeles. The Board's order granting our motion to compel requires him to appear "at any time" upon notice within the discovery period. Please confirm that Mr. Sammann will appear as noticed. You can then take Daniel's on Oct. 3.

Naomi

Naomi Jane Gray  
Shades of Gray Law Group, P.C.  
San Francisco – Los Angeles – Mill Valley  
100 Shoreline Highway, Suite 100B  
Mill Valley, CA 94941

Tel. (415) 746-9260

Fax (415) 968-4328

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---

**From:** Chang, Eugene [<mailto:echang@willkie.com>]

**Sent:** Wednesday, September 27, 2017 8:08 AM

**To:** Naomi Jane Gray <[ngray@shadesofgray.law](mailto:ngray@shadesofgray.law)>

**Cc:** Dooley, Rachel <[RDooley@willkie.com](mailto:RDooley@willkie.com)>; Naomi J. Gray ([ngray@shadesofgraylaw.com](mailto:ngray@shadesofgraylaw.com)) <[ngray@shadesofgraylaw.com](mailto:ngray@shadesofgraylaw.com)>

**Subject:** RE: Notice of deposition

Naomi-

Mr. Sammann is not available for deposition on October 2. We can make Mr. Sammann available in New York on October 10. Let us know if that date is acceptable.

Are you still offering Mr. Levin for deposition on October 3 in Los Angeles? Please let us know if there is any date before the existing discovery cutoff that you are offering Mr. Levin for deposition.

Regards,

Eugene

**Eugene L. Chang**

**Willkie Farr & Gallagher LLP**

787 Seventh Avenue | New York, NY 10019-6099

Direct: +1 212 728 8988 | Fax: +1 212 728 9988

[echang@willkie.com](mailto:echang@willkie.com) | [vCard](#) | [www.willkie.com/bio](http://www.willkie.com/bio)

---

**From:** [Naomi Jane Gray](#)

**Sent:** Thursday, September 21, 2017 4:07 PM

**To:** [Chang, Eugene](#)

**Cc:** [Dooley, Rachel](#); [Naomi J. Gray \(ngray@shadesofgraylaw.com\)](mailto:Naomi.J.Gray@shadesofgraylaw.com)

**Subject:** Notice of deposition

Eugene, following on our email exchange regarding deposition scheduling, attached please find a notice of deposition for Mr. Sammann for Monday, October 2 in Los Angeles. I note that the Board's order granting our motion to compel requires Mr. Sammann to appear for deposition upon notice "at any time" after the order issued.

Please let me know if you have any questions.

Naomi

Naomi Jane Gray

Shades of Gray Law Group, P.C.

San Francisco – Los Angeles – Mill Valley

100 Shoreline Highway, Suite 100B

Mill Valley, CA 94941  
Tel: (415) 746-9260  
Fax: (415) 968-4328  
Cell: (415) 302-2543

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