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

Proceeding	92053501
Party	Defendant Del Taco, LLC
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

CHRISTIAN M. ZIEBARTH,

Petitioner,

vs.

DEL TACO LLC

Respondent.

Reg. No. 1,043,729
Cancellation No. 92053501

RESPONDENT DEL TACO LLC'S NOTICE OF FILING
CROSS-EXAMINATION TESTIMONY OF DANIEL DVORAK AND EXHIBITS

Pursuant to Rule 703.01 of the Trademark Trial and Appeal Board Manual of Procedure and Trademark Rules 2.123(h), Respondent Del Taco LLC ("Del Taco"), by its counsel, hereby files the cross-examination testimony of Daniel Dvorak and accompanying Exhibits 14-15, and R.

Please note that Exhibit R has been marked as CONFIDENTIAL, and therefore has been filed separately under seal in accordance with the Stipulated Protective Order filed with the Board on June 12, 2012 and Trademark Rule 2.126(c). In addition, the portion of the testimony of Mr. Dvorak set forth below has been marked CONFIDENTIAL and is also being separately filed under seal pursuant to the Stipulated Protective Order and Trademark Rule 2.126(c).

CONFIDENTIAL Deposition Testimony:

- 43:21-61:3

Respectfully Submitted,

Dated: **January 15, 2014**

/ April L Besl /

April L. Besl
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by first-class mail, with courtesy copy via email, on this 15th day of January, 2014, to Kelly K. Pfeiffer, Amezcua-Moll Associations PC, Lincoln Professional Center, 1122 E. Lincoln Ave. Suite 203, Orange, CA 92865.

/ April L Besl /

April L Besl

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

CHRISTIAN M. ZIEBARTH,)
)
 Petitioner,)
)
vs.) Reg. No. 1,043,729
)
) Cancellation No. 92053501
DEL TACO LLC,)
)
 Respondent.)
_____)

CROSS-EXAMINATION DEPOSITION OF:
DANIEL RAYMOND DVORAK
Thursday, November 21, 2013

Reported by:
Stephanie Leslie
CSR No. 12893

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I N D E X

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E X H I B I T S

Respondent's	Description	Introduced
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Thursday, November 21, 2013, 10:51 a.m.
Orange, California

Daniel Raymond Dvorak,
was called as a witness by and on behalf of the
Respondent, and having been first duly sworn by the
Certified Shorthand Reporter, was examined and
testified as follows:

EXAMINATION

BY MS. BESL:

Q Mr. Dvorak -- am I saying that correctly?

A It's close enough. I'm used to it.

Q Could you state your full name for the record,
please.

A Daniel Raymond Dvorak.

Q Is it okay if I call you "Dan"?

A That's perfectly fine.

Q Okay. Thank you. I'm going to botch your
last name if I try, so I'll go with your first name,
then.

A No worries.

Q Excellent. We'll go ahead and get things
started with: Have you ever had a deposition taken
before?

1 A I've never done this before.

2 Q Okay. Great. So basically, today I'm just
3 going to be asking you some questions. If at any time
4 you don't understand what I asked you, please ask me to
5 repeat or rephrase the question. I'll be happy to do
6 so.

7 A Okay.

8 Q Now, all of this is being taken down by the
9 court reporter. This is not a video recording, so if
10 you could give your answers in the form of a verbal
11 response, not shaking your head or "uh-huh" or
12 shrugging your shoulders, that would be much
13 appreciated.

14 A Okay.

15 Q And then you are in a video feed, so
16 occasionally I might not know -- you might not be done
17 responding, and I might say something. In that case,
18 with the lag, just go ahead and -- I'll stop and let
19 you finish your response, if that works for you.

20 A Okay.

21 Q If at some point the attorney may make an
22 objection. Let her make her objection, and then go
23 ahead and answer, and we'll get this moving as quickly
24 as we can.

25 A Okay. Great.

1 MS. BESL: If you could hand what's in
2 Folder 14, mark it as Exhibit 14, and hand it to the
3 witness, I would greatly appreciate it.

4 (Whereupon, Respondent's Exhibit 14 was
5 marked for identification.)

6 MS. PFEIFFER: Okay.

7 BY MS. BESL:

8 Q Do you have Exhibit 14 in front of you?

9 A Yes.

10 Q Could you read off what it is, the title of
11 it, for the record? Could you identify it?

12 A The title -- is that --

13 MS. PFEIFFER: Right here. This one
14 (indicating).

15 THE WITNESS: Amend notice of
16 cross-examination, deposition of Daniel Dvorak.

17 BY MS. BESL:

18 Q Okay. And have you seen this document before?

19 A Negative.

20 Q So you've never seen this? Who contacted you
21 regarding this deposition today?

22 A Kelly.

23 Q And that would be Mr. Ziebarth's counsel?

24 A Yes.

25 Q And in preparation for your deposition today,

1 did you speak to anyone?

2 A No. I mean, yes. Sorry. Yes.

3 Q Okay. And who did you speak to?

4 A I spoke to Christian.

5 Q That would be Mr. Ziebarth?

6 A Yes.

7 Q And what did you two discuss?

8 A He told me about how -- his experience.

9 Q And that would be his previous deposition?

10 A Yes.

11 Q And did he give you any advice for this
12 deposition today?

13 A Negative.

14 Q And did he advise you as to any topics that
15 would be discussed today?

16 A Negative.

17 Q He just gave you a general overview of the
18 process itself; would that be a fair statement?

19 A Yes.

20 Q Now, in preparation for your deposition today,
21 did you review any documents?

22 A Negative.

23 Q And you didn't speak to anyone else about your
24 deposition?

25 MS. NOWELS: You can say --

1 MS. PFEIFFER: It's okay. You can say.

2 THE WITNESS: Yes.

3 BY MS. BESL:

4 Q And who did you speak to?

5 A Kelly.

6 Q And was that prior to coming in the room, or
7 was that at an earlier date?

8 A That was prior to coming into the room.

9 Q Okay. All right. I'm done with Exhibit 14,
10 if you want to set that aside.

11 MS. BESL: If you could, go ahead and take out
12 of Folder 15 and mark that as Exhibit 15 and hand it to
13 the witness, I would appreciate it.

14 (Whereupon, Respondent's Exhibit 15 was
15 marked for identification.)

16 BY MS. BESL:

17 Q And you have in front of you now what's been
18 marked as Exhibit 15; is that right?

19 A Yes.

20 Q And could you identify what this is for the
21 record?

22 A The title?

23 MS. PFEIFFER: Yeah.

24 THE WITNESS: Petitioner's testimony,
25 affidavit of Daniel Dvorak.

1 BY MS. BESL:

2 Q And this is your affidavit you submitted in
3 support of this matter; is that correct?

4 A Yes.

5 Q And I'm sorry. I don't know if I introduced
6 myself at the beginning of this. I'm April Besl. I'm
7 counsel for Del Taco. My apologies.

8 A I assumed that.

9 Q And you understand that this is a
10 cross-examination deposition in the cancellation
11 proceeding brought by petitioner Christian Ziebarth
12 against Del Taco; is that right?

13 A Yes.

14 Q And this proceeding involves Del Taco's
15 ownership of a Noggles trademark registration? Do you
16 understand that?

17 A Yes.

18 Q And you understand that Mr. Ziebarth is
19 seeking to have that registration canceled; is that
20 correct?

21 A Yes.

22 Q And your testimony here today is in support of
23 his efforts; is that correct?

24 A Yes.

25 Q Now, who asked you to submit the affidavit in

1 this case today?

2 A Christian Ziebarth.

3 Q He contacted you directly?

4 A Yes.

5 Q And what did he ask you to speak about?

6 A Just our involvement from the time that he
7 started this whole thing.

8 Q And this would be your personal involvement?

9 A Do I have personal involvement?

10 Q No. You said "our involvement," so I wanted
11 to clarify if it was you or someone else.

12 A Well, stated in my affidavit is the prior
13 knowledge of him starting this whole proceeding; and I
14 was not involved at the beginning. I didn't join
15 until, I believe, 2011. So that's -- because of this
16 proceeding or deposition -- we discussed that because I
17 have some experience with Christian's intent that I
18 would provide one.

19 Q Okay. Yeah. I think you said, when I asked
20 you about him asking you to give testimony -- I thought
21 you had said the word "our" to refer to multiple
22 people. Did he ask you and someone else at the same
23 time to testify?

24 A Oh. Negative.

25 Q Okay. So it was just you?

1 A Yes.

2 Q Okay. All right. That's very helpful. Thank
3 you.

4 Okay. I want to take you through some of the
5 statements in your affidavit. If you could, go to
6 page 1, paragraph 1. It states in here that you are
7 the lead industrial designer, slash, product designer
8 for ALCO Design; is that correct?

9 A Yes.

10 Q And you also own ProtoDrag Design, your own
11 design consulting business; is that correct?

12 A Yes.

13 Q And these are not restaurants; would that be
14 correct?

15 A Correct.

16 Q And you have never been in the restaurant
17 business; is that correct?

18 A Repeat.

19 Q You've never been in the restaurant business;
20 is that correct?

21 MS. BESL: Objection, leading, outside the
22 scope of direct.

23 Go ahead. Do you want to rephrase that? Have
24 you ever been involved in the restaurant business?

25 THE WITNESS: Yes, I have been in the

1 restaurant business.

2 BY MS. BESL:

3 Q Have you ever owned a restaurant before?

4 A Negative.

5 Q Would this be potentially summer positions
6 working at a restaurant as a waiter or something of
7 that nature?

8 A Yes.

9 Q Have you ever been involved in management of a
10 restaurant before?

11 A Yes.

12 Q And when was that?

13 A '97, possibly. It was right before I joined
14 the Marine Corps.

15 Q And was this a Noggles?

16 A Negative.

17 Q Have you ever worked at a Noggles?

18 A Negative.

19 Q And have you ever spoken with any Noggles
20 employees?

21 A Negative.

22 Q And have you ever spoken with any Noggles
23 owners or managers?

24 A Yes.

25 Q And who was that?

1 A Well, to be honest, I don't know if he was
2 ever an owner, but Jeff Noggle, the nephew.

3 Q And have you ever spoken with any other
4 Noggles owners or managers?

5 A Negative.

6 Q All right. Going back to your affidavit, you
7 say here that you are a partner with Mr. Ziebarth and
8 a gentleman named Josh Maxwell in a business venture to
9 use the trademark Noggles in connection with restaurant
10 and cafeteria services; is that correct?

11 A Yes.

12 Q And when did you enter into this partnership?

13 A I believe it was 2011.

14 Q And do you have a formal partnership agreement
15 with Mr. Ziebarth?

16 A Yes.

17 Q It's a signed document between you and he and
18 just Josh Maxwell?

19 A Yes.

20 Q And that was entered into in 2011?

21 A I'm not sure of the year. It might be 2011,
22 2012, possibly.

23 Q So it would be sometime after the year 2010?

24 A Yes.

25 Q Taking a step back here, did you write your

1 affidavit fully?

2 MS. PFEIFFER: Go ahead. You can answer.

3 THE WITNESS: Yes. I wrote an affidavit
4 and -- with the help of Kelly, it is fine-tuned to what
5 you have in front of you.

6 BY MS. BESL:

7 Q So you actually wrote the document, and some
8 edits may have been made?

9 A Yes.

10 Q But you reviewed this and confirmed that these
11 were all your own words; correct?

12 A Yes.

13 Q Now, going to paragraph 2 of your affidavit,
14 still on page 1, it says, in or about February of 2010,
15 Mr. Ziebarth first shared with you his idea to use the
16 Noggles trademark in association with restaurant and
17 cafeteria services; is that correct?

18 A Yes.

19 Q And when -- where was this?

20 A It was at my home.

21 Q And that was orally, not in writing?

22 A Repeat that.

23 Q That was verbally? It wasn't in writing?

24 A Yes.

25 Q Have you had any written communications with

1 Mr. Ziebarth regarding his Noggles venture?

2 A Yes.

3 Q And were these in 2010?

4 A I believe so.

5 Q And were these e-mails or letters?

6 A E-mail.

7 Q And these were discussing his ideas for the
8 Noggles venture?

9 A Should I clarify?

10 Q These were discussing his idea of wanting to
11 open a Noggles restaurant?

12 MS. PFEIFFER: Go ahead. It's okay.

13 THE WITNESS: Well, there was a majority of
14 discussion. I only have on record one e-mail that
15 expressed any intent by Christian Ziebarth.

16 BY MS. BESL:

17 Q I'm sorry. Can you say that last part?

18 A The majority was all by verbal discussion at
19 my home, and I only have one e-mail that actually
20 indicates his intention.

21 Q Have you had any other e-mail correspondence
22 in 2011 regarding the Noggles venture with Christian
23 Ziebarth?

24 A I think at the end of 2011, yes.

25 Q And were these discussing specifics about the

1 venture?

2 A I believe at the end of 2011 is when I joined,
3 so that's when -- my record of all e-mail discussions
4 that I've saved.

5 Q And these would include details as to
6 potential locations?

7 A Yes.

8 Q And financial support?

9 A Yes.

10 Q Potential investors?

11 A Yes.

12 Q And this would be from 2011 to today?

13 A Yes.

14 Q But in 2010, for example, you only have one
15 e-mail; is that correct?

16 A Yes.

17 Q Now, you said Mr. Ziebarth shared his idea
18 with you at your home; is that right?

19 A Yes.

20 Q And at this time did you enter into the
21 partnership with Mr. Ziebarth?

22 A Negative.

23 Q Did you discuss any potential locations with
24 Mr. Ziebarth?

25 A Not as a business venture, no.

1 Q What was the extent of the discussion?

2 A These discussions, as stated in my affidavit,
3 is just his progress in dealing with Del Taco and what
4 his intentions were. I had -- I discussed no actual
5 business as far as I'm concerned during that time.

6 Q So you mentioned his dealings with Del Taco.
7 Was this contacting Del Taco to work with them to open
8 a Noggles restaurant? Or what was your understanding
9 there in that communication?

10 A The start of any conversation with Christian
11 Ziebarth was his intent, but he gave me the backstory
12 of him contacting Del Taco and trying to do something
13 with them, from my understanding.

14 Q Going forward in your affidavit, it says here
15 that during these months you and Mr. Ziebarth were
16 collaborating on two unrelated business projects and
17 had occasion to meet regularly; is that correct?

18 A Yes.

19 Q And these unrelated business projects -- these
20 were related to maybe your design consulting business;
21 would that be fair?

22 A Yes.

23 Q This has nothing to do with the Noggles
24 venture?

25 A Affirmative.

1 Q And any discussions, then, that were between
2 you and Mr. Ziebarth regarding the venture were -- went
3 into specific details, not just his general intention;
4 would that be fair?

5 A I don't know how to answer that. Vague in his
6 intentions? No.

7 Q Well, in terms of the specific details of the
8 venture at this time, were there specific
9 characteristics of the business -- location, channels
10 of trade?

11 A Locations, yes; potential investors, yes;
12 anything else -- that was fairly general.

13 Q Okay. What were the specific locations
14 mentioned in February or March of 2010?

15 A In one of his e-mails he had visited the
16 original site in Riverside, which I think is 14th and
17 Brockton; and he had sent me photographs of potential
18 locations in that area.

19 Q So there were e-mails going back and forth
20 between you in February and March of 2010 about the
21 Noggles venture?

22 A I believe at the end of 2010 was -- that one
23 e-mail that I discussed earlier is the only record that
24 I have.

25 Q But you said that in February and March of

1 2010 he sent you photographs of visiting original sites
2 of Noggles; is that right?

3 A I don't know if it was in February. The
4 e-mail I have -- I'd have to look at the date.

5 Q Okay. Okay. So in February and March of
6 2010, when you were meeting with him on those unrelated
7 business projects, what specific details did he share
8 with you about the Noggles venture?

9 A Meeting with, I believe, Jeff at that time,
10 Jeff Noggle. He had met with him. I know he had
11 mentioned other people that were interested and had
12 expressed investing in it, depending on how this plays
13 out. And then talking about how -- the menu and what
14 he would like to see -- bring back from the Noggles.

15 Q Kind of breaking it down -- so he told you he
16 had met with Jeff Noggle. At this point in time had
17 you met with Jeff Noggle personally?

18 A Negative.

19 Q And was Jeff Noggle a partner of Mr. Ziebarth
20 at this time, to your knowledge?

21 A Negative.

22 Q Okay. You said Mr. Ziebarth mentioned other
23 potential investors; is that right?

24 A Yes.

25 Q And who were these other potential investors?

1 Do you know?

2 MS. PFEIFFER: Objection to the extent that
3 this gets into confidential information. I don't want
4 names of investors public record, and I don't think
5 it's relevant.

6 MS. NOWELS: To the extent you can understand,
7 though, you can still answer.

8 THE WITNESS: Well, at that time I know no
9 one. I know no names.

10 BY MS. BESL:

11 Q He didn't give you any names in that
12 conversation?

13 A Correct.

14 Q And you also mentioned that -- you made a
15 comment that the investors were dependent on this
16 playing out. What did you mean by "this"? This
17 proceeding?

18 A The ownership for Christian Ziebarth to
19 operate under the Noggles trademark.

20 Q And this was in February and March of 2010; is
21 that right?

22 A It was during that time. I don't know a
23 specific date.

24 Q Okay. And to your knowledge, had Mr. Ziebarth
25 filed a trademark application in February or March of

1 2010?

2 A I believe it was in May, but it was in that
3 time frame.

4 Q And to your knowledge, had he filed this
5 cancellation proceeding at this time, February or March
6 of 2010?

7 A I know nothing of the process.

8 Q You mentioned Noggles food items that he
9 wanted to potentially bring back on the menu; is that
10 correct?

11 A Yes.

12 Q Are these specific items that were sold
13 previously by Noggles, to your knowledge?

14 A From my understanding, yes.

15 Q Are these items -- are you aware if they are
16 currently being sold by Del Taco?

17 A I don't know.

18 Q Have you done any examination of current food
19 items that are being sold by Del Taco that may have
20 been Noggles's previous items?

21 A I have not.

22 Q Have you done any review of potential food
23 items for the Noggles venture?

24 A Since my joining, yes.

25 Q So that would be since 2011?

1 A I believe so, yes.

2 Q Going on to the next page of your affidavit,
3 paragraph 3, if you don't mind: Since approximately
4 February 2010 to December 2010, you met regularly with
5 Mr. Ziebarth; is that correct?

6 A Yes.

7 Q And were these meetings specifically to
8 discuss the Noggles venture, or were they in connection
9 with your unrelated business product or --

10 A Yeah. It was unrelated business.

11 Q So during that he would give you an update;
12 would that be fair to say?

13 A Yes.

14 Q And during this time what did he share with
15 you?

16 A Pretty much the same that we've already
17 discussed.

18 Q So the same potential location?

19 A Pretty much.

20 Q And during this time are you aware -- did
21 Mr. Ziebarth form a corporation?

22 A Negative.

23 MS. PFEIFFER: If you know.

24 THE WITNESS: I know nothing of that.

25

1 BY MS. BESL:

2 Q Excuse me?

3 A I know nothing of that.

4 Q And so you wouldn't be aware if he had formed
5 any kind of partnership?

6 A To my knowledge, he has not formed any
7 partnership at this time.

8 Q Now, you say in that same paragraph, "I was
9 informed and believed that prior to May of 2010,
10 Mr. Ziebarth was actively seeking financial backing for
11 his Noggles venture, as well as scouting locations for
12 potential Noggles restaurants"; is that correct?

13 A Yes.

14 Q Who informed you of that?

15 A Repeat that.

16 Q Who informed you of that?

17 A Christian.

18 Q Okay. Did he show you anything in writing, or
19 did he just tell you orally?

20 A I have one e-mail specifically stating that,
21 but that time frame I'm not positive on. But most of
22 this was all verbal.

23 Q Now, the "actively seeking financial
24 backing" -- is this from the same investors that you
25 discussed previously?

1 A I know nothing of the personal investors.

2 Q You just knew that he said he was actively
3 seeking investors; would that be fair to say?

4 A Yes.

5 Q And the scouting locations for potential
6 Noggles restaurants -- would that be the locations
7 we've already discussed?

8 A With my knowledge, yes.

9 Q And to your knowledge, Mr. Ziebarth had not
10 purchased a location for his Noggles venture; is that
11 correct?

12 A Correct.

13 Q It says -- going on to paragraph 4 of your
14 affidavit, it says in or about May of 2010, you offered
15 to handle the marketing for Mr. Ziebarth's Noggles
16 venture; correct?

17 A Yes.

18 Q When you made this offer, was it in writing?

19 A No.

20 Q It was in person?

21 A It was in person.

22 Q And did you give him any marketing materials?

23 A Negative.

24 Q And did you sign any kind of agreement for
25 your marketing services?

1 A Negative.

2 Q Did you offer any marketing services?

3 A I offered, yes.

4 Q By that, I mean were you performing any
5 marketing services for him in May of 2010?

6 A Negative.

7 Q For the rest of 2010 did you perform any
8 marketing services for Mr. Ziebarth?

9 A Negative.

10 Q 2011 did you perform any marketing services?

11 A Yes.

12 Q And what were those marketing services?

13 A I am the one that developed any new branding,
14 logos, concept of store looks, 3-D CAD versions of the
15 same, stores, and potentially how they could look at
16 various locations.

17 Q Okay. And have these items been provided to
18 Mr. Ziebarth?

19 A Yes.

20 Q And have these items been provided to any
21 third parties?

22 A Any third parties?

23 Q Yes.

24 A Negative.

25 Q And are these items still in existence today?

1 A Repeat that.

2 Q Are they still in existence today?

3 A Yes.

4 Q How about in 2012? Did you perform any
5 marketing services for Mr. Ziebarth?

6 A Pretty much the same, yes.

7 Q So the same logos, designs of stores? Is that
8 correct?

9 A Yes.

10 Q And these were provided to Mr. Ziebarth as
11 well?

12 A Yes.

13 Q And are these still in existence today?

14 A Yes.

15 Q And then in 2013 to date, are you still
16 performing the same marketing services?

17 A Yes.

18 Q Has your role expanded at all?

19 A Negative.

20 Q And these same services -- this has all been
21 provided to Mr. Ziebarth?

22 A Yes.

23 Q And all of the -- anything that you've
24 developed since 2011 is still in existence today?

25 A Yes.

1 Q Going back to your affidavit, it says in
2 paragraph 4 in or about August or September of 2010 you
3 reiterated your desire to Mr. Ziebarth to work with him
4 on his Noggles venture; is that correct?

5 A Yes.

6 Q And was this in writing?

7 A No.

8 Q So this was orally?

9 A Yes.

10 Q But at this time you had not entered into a
11 partnership with Mr. Ziebarth?

12 A Correct.

13 Q Okay. And you were not performing any
14 services for Mr. Ziebarth?

15 A At that time, no.

16 Q And at this time had you made any financial
17 contributions to Mr. Ziebarth?

18 A No.

19 Q I'm not sure if I have asked this before, but
20 prior to May 2010 had you made any financial
21 contributions to Mr. Ziebarth's Noggles venture?

22 A No.

23 Q Okay. In 2011 had you made any financial
24 contributions to Mr. Ziebarth's venture?

25 A Yes.

1 Q Okay. So I assume there is a paper trail of
2 this contribution; would that be accurate?

3 A Yes.

4 Q And were these funds delivered to Mr. Ziebarth
5 personally?

6 MS. NOWELS: Objection. This could be
7 encroaching on attorney-client privilege.

8 To the extent that you can answer the question
9 without violating your attorney client privilege, go
10 ahead.

11 MS. PFEIFFER: What are you trying to -- can
12 you repeat your question, please, April.

13 MS. BESL: Sure. I just had asked if this
14 financial contribution had been delivered personally to
15 Mr. Ziebarth.

16 MS. PFEIFFER: Yes or no?

17 THE WITNESS: No.

18 MS. PFEIFFER: Okay. That's fine.

19 BY MS. BESL:

20 Q Okay. Without going into any kind of
21 attorney-client communication, are these funds
22 currently being held by an attorney?

23 MS. NOWELS: Just for clarity, any payments
24 made to your own attorney are protected by your
25 attorney-client privilege.

1 THE WITNESS: So --

2 MS. NOWELS: So she's asking if they were --
3 if the funds are being held by anyone other than your
4 own attorney, I guess.

5 THE WITNESS: I don't know how to answer that.

6 MS. NOWELS: Can you ask your question one
7 more time, April? I'm sorry.

8 MS. BESL: Sure. Sure. I don't want to
9 encroach on any kind of attorney-client privilege here,
10 but I want to understand if the financial contribution
11 had been made. Are these funds -- so I can understand
12 why there is an attorney-client issue here, are they
13 being held by an attorney or in an escrow? How were
14 the funds invested in this venture?

15 MS. NOWELS: Sure. Well, I guess I can maybe
16 explain just a little bit, but our office also
17 represents --

18 MS. PFEIFFER: -- the partnership.

19 MS. NOWELS: -- the partnership as a whole, so
20 does that help?

21 MS. BESL: It does.

22 THE WITNESS: I don't know how to answer.

23 MS. NOWELS: It's okay. Don't answer. She'll
24 ask another question if she needs it.

25

1 BY MS. BESL:

2 Q Are these funds -- the funds that you gave in
3 2011 -- did Mr. Ziebarth have -- without going into
4 specific details with your attorney -- that you met
5 with your attorney, did Mr. Ziebarth have access to
6 these funds?

7 A Negative.

8 Q Did you have access to these funds?

9 A Yes.

10 Q Have you used these funds to further the
11 Noggles venture since 2011?

12 A Yes.

13 Q And what were those expenditures on?

14 A Everything from legal fees to other potential
15 prototyping.

16 Q What do you mean by "prototyping"?

17 A I've taken on the aspect of branding and doing
18 new types of display work or -- I don't know what
19 they're called -- the utensil, like cups, things like
20 that.

21 Q And were these prototypes provided to
22 Mr. Ziebarth?

23 A No.

24 Q You haven't shared these with other third
25 parties?

1 A Negative. Or -- I'm sorry -- that is correct.

2 Q Thank you. But they haven't been displayed to
3 the public, for example --

4 A Correct.

5 Q -- or to any investors?

6 A Correct.

7 Q In 2012 did you make a financial investment in
8 the Noggles venture?

9 A Yes.

10 Q And these are funds in addition to what you
11 contributed in 2011?

12 A Yes.

13 Q And does Mr. Ziebarth have access to these
14 funds?

15 A No.

16 Q Do you have access to these funds?

17 A Yes.

18 Q And have you used these funds in furtherance
19 of the Noggles venture?

20 A Yes.

21 Q And for what purpose?

22 A Same as before. Just more legal fees and
23 prototyping.

24 Q And these prototypes have not been shared with
25 Mr. Ziebarth --

1 A That is correct.

2 Q -- or any other third parties?

3 A Correct.

4 Q And in 2013 did you make a financial
5 contribution to this venture?

6 A Yes.

7 Q And, again, does Mr. Ziebarth have access to
8 these funds?

9 A No.

10 Q You have access to these funds?

11 A Yes.

12 Q And have you used these funds to further the
13 Noggles venture?

14 A Yes.

15 Q And is it the same legal fees and prototyping,
16 or is there something else?

17 A Yes, same.

18 Q And, again, the prototypes have not been
19 shared with Mr. Ziebarth --

20 A That is correct.

21 Q -- or any other third parties?

22 A Correct.

23 Q Now, you mentioned that there was a third
24 partner in this venture, Josh Maxwell; correct?

25 A Yes.

1 Q Does Josh Maxwell have access to the funds
2 that you have contributed in any of these three years?

3 A Negative.

4 Q And as of today, what is the total of all
5 financial contributions you have made to the venture?

6 MS. NOWELS: Objection, attorney-client
7 privilege.

8 To the extent that it encroaches on your
9 attorney-client privilege and amounts paid to
10 attorneys, you don't have to answer that.

11 MS. BESL: I'm sorry. I couldn't hear you,
12 Kelly.

13 MS. NOWELS: That was me, Sarah. I'm sorry.
14 I said that I made an objection based on
15 attorney-client privilege and told him -- I'm sorry.
16 I'm trying to remember what I told him. I told him
17 that to the extent that it encroaches on the amounts
18 paid to his attorneys, he doesn't need to give the
19 amounts, but that he can answer the question outside of
20 that.

21 MS. BESL: Okay. That's fine.

22 MS. PFEIFFER: Do you understand?

23 THE WITNESS: Should I still answer?

24 MS. PFEIFFER: Do you understand?

25 MS. NOWELS: If there was an amount not paid

1 to attorneys, say these --

2 THE WITNESS: Prototypes?

3 MS. NOWELS: Yeah.

4 THE WITNESS: The prototypes -- that's more of
5 an estimate.

6 MS. PFEIFFER: That's fine.

7 THE WITNESS: I would say only about \$5,000.

8 In regards to the prototypes, my estimate would be
9 about \$5,000.

10 BY MS. BESL:

11 Q And that's total cost?

12 A Yes.

13 Q And to your knowledge, has your partnership
14 received any other financial contributions to date?

15 A Repeat that.

16 Q To your knowledge, has the partnership for
17 this Noggles venture received any other financial
18 contributions to date?

19 A To my knowledge, no.

20 Q All right. Going back to your affidavit -- we
21 can turn now to paragraph 5 on page 2. It says on
22 December 8, 2010, Mr. Ziebarth shared with you pictures
23 of specific properties where he was considering opening
24 Noggles restaurants in the future; is that correct?

25 A Yes.

1 Q And is this the e-mail we discussed earlier
2 where you said you had the pictures?

3 A That is correct.

4 Q And do you still have this e-mail today with
5 those pictures?

6 A Yes.

7 Q Okay. And these pictures of specific
8 properties -- are these properties that were for sale
9 or for rent at the time?

10 A To my knowledge, I do not know.

11 Q And are these properties that the partnership
12 is considering to date for your Noggles venture?

13 A Are they for sale?

14 Q Or are these ones you're considering for your
15 Noggles venture today?

16 A They are included in some of the new locations
17 that we have looked at since I've joined.

18 Q And do you remember the specific locations of
19 these properties you were shown in December 2010?

20 A Those are in Riverside. That's -- I don't
21 know the specific address.

22 Q It also says here in this paragraph
23 Mr. Ziebarth also shared with you the results of some
24 research he had conducted on vintage Noggles
25 memorabilia; is that correct?

1 A Yes.

2 Q And this was in an e-mail?

3 A Negative.

4 Q Okay. This was in person?

5 A This was in person.

6 Q And this Noggles memorabilia -- what kind of
7 items were they?

8 A Just Internet searches of the original Noggles
9 branding.

10 Q So it was branding; it wasn't necessarily
11 products?

12 A I can't recall that.

13 Q Do you remember if it was any specific images
14 or what it was about -- any specifics about the
15 memorabilia?

16 A There were images of the restaurants, the --
17 basically, the 1970s look, the logos, a couple menus.
18 Pretty much, just images of what it was back in the
19 '70s.

20 Q And were these designs that Mr. Ziebarth had
21 selected for the Noggles venture?

22 A Repeat that.

23 Q The '70s vintage designs -- were these things
24 he had selected for his Noggles venture?

25 A That was not discussed.

1 Q Okay. Are these designs that you have used in
2 your marketing services --

3 A No.

4 Q -- for the Noggles venture? No?

5 A No.

6 Q So you're going with a different look for your
7 Noggles venture?

8 A Different, yes. Much so, yes.

9 Q All right. Moving on to paragraph 6, it says,
10 subsequent to Mr. Ziebarth filing his Intent to Use
11 application for the mark "Noggles" with the USPTO, he
12 took you on as a partner in his Noggles venture, along
13 with Josh Maxwell; is that correct?

14 A Yes.

15 Q And this was in 2011?

16 A Yes.

17 Q And at the time was Mr. Maxwell already a
18 partner; or did he come on at the same time, to your
19 knowledge?

20 A He came on at the same time.

21 Q It says, "We have served and obtained
22 investors, created detailed business plans, scoped out
23 locations, and much more"; is that correct?

24 A Yes.

25 Q And how many investors on your team to date?

1 A To date?

2 MS. PFEIFFER: A number?

3 THE WITNESS: Do you want a number?

4 BY MS. BESL:

5 Q Just numbers, yes.

6 MS. PFEIFFER: If it's an approximation,
7 that's fine. Tell her that it's an approximation. Do
8 you know exactly how many investors you have?

9 THE WITNESS: I know of the one I have, but we
10 have --

11 MS. PFEIFFER: A number.

12 THE WITNESS: Okay. There is approximately
13 five.

14 BY MS. BESL:

15 Q There are approximately five investors?

16 A Yes.

17 Q And have these investors signed agreements to
18 provide funding?

19 A Not at the moment.

20 Q And as of 2010 have any of these investors
21 agreed to invest in the Noggles venture, to your
22 knowledge?

23 A At this time, I know nothing.

24 Q Okay. In 2011, when you signed onto the
25 partnership, had any of the investors -- these five

1 investors agreed to invest funds?

2 MS. PFEIFFER: Objection, irrelevant.

3 Go ahead.

4 THE WITNESS: Agreed, yes.

5 BY MS. BESL:

6 Q All five?

7 A Repeat that.

8 Q You said -- I said, did any of these
9 investors -- you said, "Agreed, yes." All five have
10 agreed at that point?

11 A Yes. All agreed.

12 Q But did they not invest any funds?

13 A To my knowledge, at this point they have not
14 invested.

15 Q And they have not signed any formal documents
16 binding them to invest?

17 A Correct.

18 Q And there's no e-mail or written communication
19 stating they will invest; is that correct?

20 A To my knowledge, no.

21 Q So it's all verbal?

22 A That's an assumption.

23 Q Would that be correct?

24 A I know nothing of the conversations with Josh
25 or Christian regarding their discussions with any

1 potential investors. I was not in those meetings.

2 Q Okay. So you personally -- have you received
3 any affirmations from any investors of a contribution?

4 MS. PFEIFFER: Did you say "affirmations"?
5 I'm sorry. I can't hear.

6 MS. BESL: Yes.

7 MS. PFEIFFER: Can you rephrase your question,
8 please.

9 MS. BESL: Sure.

10 BY MS. BESL:

11 Q Have you personally spoken with any of these
12 five investors about investing?

13 A Yes.

14 Q And was that conversation oral or in writing?

15 A It is an oral.

16 Q And this was an investor who had made an
17 agreement to conditionally invest in 2011; would that
18 be fair to state?

19 MS. NOWELS: Objection, that misstates the
20 witness's testimony as to the word "conditionally."

21 BY MS. BESL:

22 Q Okay. They had agreed to invest -- would that
23 be fair to state -- in 2011?

24 A Well, the time line, no.

25 MS. PFEIFFER: Go ahead and tell her.

1 THE WITNESS: So the time line, no. In 2011 I
2 had no discussion with any potential investors.

3 BY MS. BESL:

4 Q When did you have a discussion with potential
5 investors?

6 A For me, this year.

7 Q 2013?

8 A Yes.

9 Q Why have there been no formal contributions,
10 to your knowledge, to the Noggles venture since 2010?

11 MS. NOWELS: Objection, calls for speculation.

12 MS. PFEIFFER: Outside the scope of direct,
13 irrelevant.

14 MS. NOWELS: To the extent you know an answer,
15 you can answer.

16 THE WITNESS: Anything prior to 2013, I know
17 nothing of any discussion with investors personally.

18 BY MS. BESL:

19 Q Okay. And personally in 2013, based on your
20 discussion, why has there been no formal investment?

21 MS. PFEIFFER: Objection, calls for
22 speculation.

23 To the extent you can get in the heads of
24 potential investors and surmise why --

25 MS. BESL: I only want --

1 THE WITNESS: Well, I can be straight with
2 that. I was never part of the investment plan. That
3 is Josh and Christian. So those meetings I was never a
4 part of. Yes, I have been informed and updated on the
5 potential aspect of those investors at that time.

6 BY MS. BESL:

7 Q Okay. So I guess, to your knowledge, have you
8 been informed by any of these potential investors as to
9 why they have not yet invested?

10 A I know nothing of any conversation.

11 Q Okay. Thank you.

12 MS. BESL: Before I go on, Kelly, the next
13 part of his affidavit goes into Exhibit R. I want to
14 talk about this since he says he helped to create it.
15 I know this is confidential, so did you want to go
16 ahead and deem this part of the discussion of
17 confidential?

18 MS. PFEIFFER: Yes, please, from this point
19 forward, please mark the transcript confidential.

20

21 (Whereupon, a portion of the transcript
22 was sealed and bound separately upon
23 request of counsel.)

24

25

1 (Whereupon, the nonconfidential portion of
2 the transcript resumed as follows.)

3

4

CONTINUED EXAMINATION

5

BY MS. PFEIFFER:

6

Q Okay, Dan. April asked you some questions

7

about some work you had done with logos or CAD designs

8

or graphics. I believe that such work -- you testified

9

that you began doing such work with regard to the

10

trademark "Noggles" beginning in 2011; is that correct?

11

A Yes.

12

Q You also testified that you, quote/unquote,

13

gave Christian, Mr. Ziebarth, the petitioner in this

14

proceeding, those logos, CAD designs, graphics, et

15

cetera; is that correct?

16

A Yes.

17

Q Did you physically give them to Christian, or

18

would it be more accurate to say that you showed them

19

to him?

20

A It would be more accurate to say that I showed

21

Christian.

22

Q Do you maintain in your own possession those

23

logos, CAD designs, graphics, et cetera?

24

A Yes.

25

Q Does Christian maintain in his possession

1 those logos, CAD designs, graphics, et cetera?

2 A No.

3 MS. PFEIFFER: Those are all my questions.

4 MS. BESL: I'm sorry. I couldn't hear that
5 last one. Could you just repeat that question and
6 answer? Could I have the court reporter read it?

7 (Whereupon, the testimony was read by the
8 court reporter as follows:

9 "Q Does Christian maintain in his
10 possession those logos, CAD designs,
11 graphics, et cetera?

12 "A No.")

13 MS. BESL: Okay. Thank you.

14 MS. PFEIFFER: Those are all the questions I
15 have. I'm finished, April.

16 MS. BESL: Oh. Okay. Thank you. I just have
17 one quick follow-up question.

18

19 FURTHER EXAMINATION

20 BY MS. BESL:

21 Q Regarding the logos and CAD designs that
22 Ms. Pfeiffer just asked you about, you mentioned that
23 you showed them to Christian. At any time did you
24 provide him with copies or send them by e-mail?

25 A I sent them by e-mail, yes.

1 Q Okay. And that was to Mr. Ziebarth?

2 A Yes.

3 Q And was that in 2011?

4 A Yes.

5 Q And 2012?

6 A Yes.

7 Q And 2013?

8 A Yes.

9 MS. BESL: That's all I have.

10 MS. PFEIFFER: Okay.

11

12

FURTHER EXAMINATION

13

BY MS. PFEIFFER:

14

Q Do you have any personal knowledge whether or
15 not Mr. Ziebarth has maintained those e-mails?

16

A Maintained? I have no knowledge of that.

17

MS. PFEIFFER: Thank you. That's it.

18

MS. BESL: Okay. Same stipulation, Kelly?

19

MS. PFEIFFER: Yes, please.

20

21

(Whereupon, the stipulation from the

22

deposition of CHRISTIAN M. ZIEBARTH was

23

entered into as follows:

24

"MS. NOWELS: Back on the record. So

25

we've agreed off record to a stipulation

1 that the court reporter will be relieved
2 of her duties under the Code. The
3 transcript will be released to the offices
4 of Amezcua-Moll & Associates at 1122 East
5 Lincoln Avenue, Suite 203, in Orange,
6 California 92865, for purposes of review
7 by the witness; and Amezcua-Moll &
8 Associates will agree to maintain the copy
9 of the original and produce it if it's
10 ever needed for any future proceedings.
11 We'll also agree that a certified copy or
12 copies of the transcript may be used in
13 proceedings, so long as they're redacted
14 to the extent that they're confidential.
15 And we're also stipulating that the
16 transcript will be produced and reviewed
17 along normal time frames so the witness
18 will review it within 30 days of receipt.
19 So stipulated?

20 "MS. BESL: Agreed.")

21
22 (Whereupon, the deposition was concluded at 12:10 p.m.)
23
24
25

PENALTY OF PERJURY

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I, _____, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____, 20____,
at _____, _____.
(City) (State)

DANIEL RAYMOND DVORAK

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CERTIFICATE
OF
CERTIFIED SHORTHAND REPORTER

* * * *

The undersigned Certified Shorthand Reporter
of the State of California does hereby certify:

That the foregoing Proceeding was taken before
me at the time and place therein set forth.

That the testimony and all objections made at
the time of the Proceeding were recorded
stenographically by me and were thereafter transcribed,
said transcript being a true and correct copy of the
proceedings thereof.

In witness whereof, I have subscribed my name,
this date: DECEMBER 2, 2013.




STEPHANIE LESLIE, CSR No. 12893

A	amounts 34:9,17 34:19	attorney 3:11 6:21 29:9,22 29:24 30:4,13 31:4,5	30:8,21 31:1 34:11,21 35:10 39:4,14 40:5 41:6,9,10,21 42:3,18,25 43:6,12 62:4 62:13,16,20 63:9,18 64:20	66:7 certify 66:8 cetera 61:15,23 62:1,11 channels 19:9 characteristics 19:9 Charles 2:15 Christian 1:6 2:5 8:4 10:11 11:2 16:15,22 18:10 21:18 24:17 40:25 43:3 61:13,17 61:21,25 62:9 62:23 63:22 Christian's 11:17 Cincinnati 3:12 City 65:11 clarify 11:11 16:9 clarity 29:23 client 29:9 close 5:13 Code 64:2 collaborating 18:16 come 38:18 coming 9:6,8 commencing 2:18 comment 21:15 communication 18:9 29:21 40:18 communications 15:25 concept 26:14 concerned 18:5 concluded 64:22 conditionally 41:17,20 conducted 36:24 conference 3:9 confidential 21:3 43:15,17
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PENALTY OF PERJURY

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I, Dan Dvorak, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 20 day of December, 2013,
at Huntington Beach, California.
(City) (State)

Daniel Raymond Dvorak
DANIEL RAYMOND DVORAK

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

CHRISTIAN M. ZIEBARTH,

Petitioner,

vs.

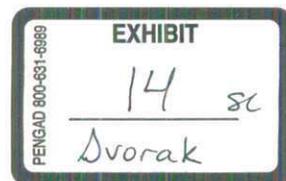
DEL TACO LLC

Respondent.

Reg. No. 1,043,729
Cancellation No. 92053501

**AMENDED NOTICE OF CROSS-EXAMINATION DEPOSITION
OF DANIEL DVORAK**

Pursuant to the Stipulation Entered into by the Parties and Filed with the Board on October 4, 2013 (Doc No. 56) (hereinafter "Stipulation"), Respondent Del Taco LLC ("Del Taco"), by its counsel, hereby gives Notice that it will take live cross-examination of Daniel Dvorak for use as authorized by the Federal Rules of Civil Procedure and the Trademark Rules of Practice in response to his affidavit filed with the Board on October 17, 2013 (Doc No. 60). Such live cross-examination shall be conducted via video before a Notary Public or some other officer authorized by law to administer an oath at a date and time as mutually agreed upon by the parties within ten (10) days of this Notice of Cross-Examination Deposition pursuant to the Stipulation.



Dated: **November 1, 2013**

/ April L Besl /

April L. Besl
Joshua A. Lorentz
DINSMORE & SHOHL LLP
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8527-direct
(513) 977-8141-fax
april.besl@dinslaw.com

*Attorneys for Respondent
Del Taco LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by certified first-class mail, with courtesy copy via email, on this 1st day of November, 2013, to Kelly K. Pfeiffer, Amezcua-Moll Associations PC, Lincoln Professional Center, 1122 E. Lincoln Ave. Suite 203, Orange, CA 92865.

/ April L Besl /

April L Besl

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

In the Matter of Registration No. 1043729
Date of Registration: July 13, 1976

CHRISTIAN M. ZIEBARTH
Petitioner,

Cancellation No.: 92053501

v.

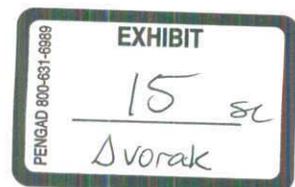
DEL TACO, LLC
Registrant.

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

PETITIONER'S TESTIMONY AFFIDAVIT OF DANIEL DVORAK

I, Daniel Dvorak, swear as follows:

1. My name is Daniel Dvorak. I am the Lead Industrial Designer/Product Designer for Alco Designs, located at 407 East Redondo Beach Blvd., Gardena, CA 90248. I also own Protodraft Designs, my own design consulting business. In addition, I am a partner with Petitioner CHRISTIAN M. ZIEBARTH ("Mr. Ziebarth") and Josh Maxwell in a business venture to use the trademark NAUGLES in connection with restaurant and cafeteria services. I have personal knowledge of the facts stated herein.
2. In or about February or March of 2010, Mr. Ziebarth first shared with me his idea to use the NAUGLES trademark in association with restaurant and cafeteria services. During these months, Mr. Ziebarth and I were collaborating on two, unrelated business projects and, as such, we had occasion to meet regularly. During those meetings, Mr. Ziebarth shared with me the



backstory on how this idea of his came to fruition, namely, his initial attempts to bring the idea to Del Taco and, when he was met with no interest, his decision to pursue a venture using the mark NAUGLES on his own.

3. From approximately February 2010 through September 2010, I met regularly with Mr. Ziebarth. Each time we would meet, he would update me on his progress in establishing restaurant and cafeteria services under the NAUGLES mark. I was informed and believe that, beginning prior to May of 2010, Mr. Ziebarth was actively seeking financial backing for his NAUGLES venture, as well as scouting locations for potential NAUGLES restaurants.

4. In or about May of 2010, I offered to handle the marketing for Mr. Ziebarth's NAUGLES venture, as my professional background is primarily in marketing. In or about August or September of 2010, I reiterated to Mr. Ziebarth my desire to work with him on his NAUGLES venture.

5. On December 8, 2010, Mr. Ziebarth shared with me pictures of specific properties where he was considering opening NAUGLES restaurants in the future. Mr. Ziebarth also shared with me the results of some research he had conducted on vintage NAUGLES memorabilia.

6. Subsequent to Mr. Ziebarth filing his intent to use application for the mark NAUGLES with the USPTO, he took me on as a partner in his NAUGLES venture, along with Josh Maxwell. We have sought and obtained investors, created detailed business plans, scoped out locations, and much more. I helped to create the document previously submitted as Petitioner's Exhibit R (filed as CONFIDENTIAL), which is a detailed summary of our intended operations. As can be seen from the contents of this document, Mr. Maxwell, Mr. Ziebarth and I have scoped out and have already planned for at least 5 initial locations in Southern California, as

page 1 of this document illustrates. We have spoken with investors at length about their willingness to hit the ground running on this venture as soon as this proceeding is concluded.

I, Daniel Dvorak, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 35 U.S.C. 25 and 18 U.S.C. 1001 of the United States Code, and that such willful false statements may jeopardize the validity of the foregoing statements, declare that all statements are made of my own knowledge and are true, and all statements made on information and belief are believed to be true.

Executed on October 17, 2013 in Orange County, California

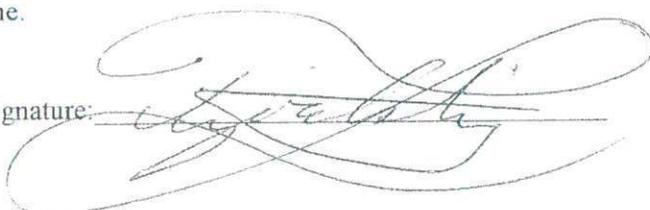


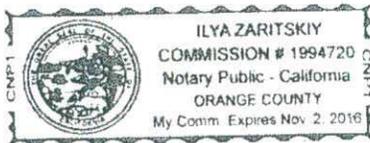
Daniel Dvorak

State of California
County of Orange

Subscribed and sworn to (or affirmed) before me on this 17th day of October, 2013, by Daniel Dvorak, who provided to me on the basis of satisfactory evidence to be the person who appeared before me.

(seal)

Signature: 



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **PETITIONER'S TESTIMONY AFFIDAVIT OF DANIEL DVORAK** was served upon April L. Besl, DINSMORE & SHOHL, LLP, attorney of record for the Registrant in this action by depositing one copy thereof in the United States mail, first-class postage prepaid on October 17, 2013 and addressed as follows:

April L. Besl, Esq.
DINSMORE & SHOHL, LLP
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202

/Kelly K. Pfeiffer/
Kelly K. Pfeiffer
AMEZCUA-MOLL & ASSOCIATES, P.C.
Lincoln Professional Center
1122 E. Lincoln Ave., Suite 203
Orange, CA 92865
Attorney for Petitioner CHRISTIAN M. ZIEBARTH