

ESTTA Tracking number: **ESTTA669293**

Filing date: **04/28/2015**

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

|                        |   |
|------------------------|---|
| Proceeding             | 92057023  |
| Party                  | Plaintiff<br>LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck   |
| Correspondence Address | JENNIFER FRASER<br>NOVAK DRUCE CONNOLLY BOVE + QUIGG LLP<br>1875 EYE STREET NW, ELEVENTH FLOOR<br>WASHINGTON, DC 20006<br>UNITED STATES<br>trademark@novakdruce.com, jennifer.fraser@novakdruce.com,<br>daniel.mullarkey@novakdruce.com, breanne.staley-ashe@novakdruce.com, tm-docket@novakdruce.com |
| Submission             | Other Motions/Papers  |
| Filer's Name           | Jennifer Fraser   |
| Filer's e-mail         | jennifer.fraser@novakdruce.com, daniel.mullarkey@novakdruce.com, trademarks@novakdruce.com  |
| Signature              | /Jennifer Fraser/   |
| Date                   | 04/28/2015  |
| Attachments            | Final Request To Order Filing of Brief Or End Briefing Period.pdf(284993 bytes )  |

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

In the matter of Trademark Trial and Appeal Board

Cancellation No. 92057023

Registration Nos:     4,220,686 - GIOVANNI'S ALOHA FOODS  
                          4,224,400 - GIOVANNI'S SCAMPI MARINADE  
                          4,232,469 - GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK  
                          4,248,595 - GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE

|  |   |                           |
|--|---|---------------------------|
| LuckyU Enterprises, Inc., dba Giovanni's | : |                           |
| Original White Shrimp Truck              | : |                           |
|  | : |                           |
| Petitioner,                              | : |                           |
|  | : |                           |
| v.                                       | : | Cancellation No. 92057023 |
|  | : |                           |
| John "Giovanni" Aragona                  | : |                           |
|  | : |                           |
| Respondent.                              | : |                           |

**PETITIONER'S REQUEST TO ORDER THE IMMEDIATE FILING OF  
REGISTRANT'S LATE-FILED BRIEF OR END THE BRIEFING PERIOD**

Petitioner hereby files a Response to Registrant's Motion to Extend Time and to clarify the nature of the extension of time Petitioner consented to for Registrant to file his Trial Brief. After being contacted at 11:46 pm on April 21 with a story of a lightning strike, and further to a phone conversation with counsel for Registrant, Jamie Pitts, counsel for Petitioner agreed to extend the time to file Registrant's Trial Brief to yesterday, April 27, 2015. Ms. Pitts advised this would allow time to go to the Apple ® Store which she indicated she would do the following day, April 22. The April 27 deadline has now passed and Petitioner is prejudiced by the continued delay by Registrant and has further concerns about missing further deadlines. Petitioner respectfully requests the Trademark Trial and Appeal Board (TTAB) Order the

immediate filing of Registrant's late filed brief, or by April 30<sup>th</sup>, 2015, or otherwise end the briefing period and decide the case on the Petitioner's Trial Brief which was timely filed on March 16.

Petitioner has continued to accommodate Registrant, who is unfamiliar with Board practice throughout this proceeding, and the numerous unorthodox extension requests based on a litany of bizarre excuses, discovery accommodations, deposition accommodations, and general delay caused by Registrant has severely prejudiced Petitioner. The delay first began in response to the initial discovery requests from Petitioner and continued throughout discovery. See Exhibit A-D; see also TTAB Document #13 (Order granting extension of time due to delay by respondent, p.2). Registrant sent new discovery responses and documents on the eve of Mr. Aragona's discovery deposition, well after discovery closed and more than four months since requested by Petitioner and prejudicing Petitioner. See Exhibit E. Registrant even failed to label these documents and requested that Petitioner label the documents for her. See Exhibit F. Petitioner even consented to the unorthodox and potentially prejudicial deposition by telephone at the request of Registrant, over Petitioner's own protests to the same. See TTAB Document #19. At these phone depositions noticed by Registrant, Counsel for Petitioner was unable to set up a conference call with her own court reporter and was unable to conference in Petitioner's counsel and Registrant's counsel even asked to make certain accommodations relating to the conference line. Finally, Registrant was responsible for filing an incorrect extension of time (TTAB Document #37) and Registrant failed to correct the schedule, despite Petitioner's pleas to correct the error. See Exhibit G. Now, on the day the original Registrant's Trial Brief was due, at 11:46 pm, Registrant's counsel emailed Petitioner's counsel that lightning hit the roof of her building and that her computer would not work afterwards. Counsel requested 3-5 days to file the

response and Petitioner provided a 6-day reprieve, the date which has now passed. See Exhibit H.

Petitioner is prejudiced by the continued delay by Registrant and accompanying costs due to Registrant's inability to follow the Federal Rules of Civil Procedure and the rules set by the Board. This proceeding was filed April 8, 2013 and it has not been resolved more than two years later. Petitioner requests that the TTAB Order the immediate filing of Registrant's late-filed brief, or by April 30<sup>th</sup>, or otherwise end the briefing period and decide the case on Petitioner's Trial Brief.

Respectfully submitted,

Date: April 28, 2015

/s/ Daniel P. Mullarkey  
Jennifer Fraser  
Daniel P. Mullarkey  
Novak Druce Connolly Bove + Quigg, LLP  
1875 Eye Street, NW  
Eleventh Floor  
Washington, DC 20006  
Jennifer.fraser@novakdruce.com  
Daniel.mullarkey@novakdruce.com  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of April 2015 a true and correct copy of the foregoing

**PETITIONER’S REQUEST TO ORDER THE IMMEDIATE FILING OF  
REGISTRANT’S LATE-FILED BRIEF OR END THE BRIEFING PERIOD**

on Respondent’s Counsel, Jamie N. Pitts, The Law Office of Jamie N. Pitts, Esq., 887 W.  
Marietta Street, NW, Ste. M-105, Atlanta, GA 30318, via First Class Mail, with a courtesy copy  
serviced via e-mail to [Jamienpitts@jpnlawfirm.com](mailto:Jamienpitts@jpnlawfirm.com).

\_\_\_\_\_  
s/Daniel Mullarkey/  
Daniel Mullarkey

# **EXHIBIT A**

## Daniel Mullarkey

---

**From:** jamienpitts@gmail.com on behalf of Jamie Pitts <jamienpitts@jnplawfirm.com>  
**Sent:** Friday, September 27, 2013 12:48 PM  
**To:** Daniel Mullarkey; Jennifer Fraser  
**Subject:** Production Deadline

Dan,

The Aragona's have been out of town the majority of this month and they are behind in getting your discovery requests back to me. Can we please get a two week extension on our deadline to return the requests for admission and production? It would be greatly appreciated.

Thank you,

Jamie

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# **EXHIBIT B**

## Daniel Mullarkey

---

**From:** jamienpitts@gmail.com on behalf of Jamie Pitts <jamienpitts@jnplawfirm.com>  
**Sent:** Wednesday, November 06, 2013 4:24 PM  
**To:** Daniel Mullarkey  
**Cc:** Jennifer Fraser  
**Subject:** Re: Lucky U v. Aragona,  
**Attachments:** Cruise 001.jpg

Daniel,

The Aragona's are currently out of the country on a cruise and unable to communicate, work on supplementation of our discovery responses is awaiting their return which is scheduled to be by next week (their boarding pass is attached). I will try to have an answer to the issues outlined in the October 28 letter within 7 days of their return.

Thank you for your patience,

Jamie

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On Wed, Nov 6, 2013 at 4:05 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Jamie,

Attached is Petitioner's First Request for Admissions and a link to an FTP site for you to download the exhibits cited within.

<https://novakdruce.sharefile.com/d/s246b57ec5cd42359>

Additionally, further to our October 28 letter (attached), we have also not received any supplementation of Registrant's discovery responses or even heard from you as to when we can expect supplementation. Considering the discovery deadline is approaching, please provide such supplementation immediately. Please contact us if you would like to discuss.

Regards,

**Daniel P. Mullarkey**

**Associate | Novak Druce Connolly Bove + Quigg LLP**

1875 Eye Street, NW | Eleventh Floor | Washington, DC 20006

t: [202.380.1178](tel:202.380.1178) | f: [202.293.6229](tel:202.293.6229) | e: [daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com) | w: [www.novakdruce.com](http://www.novakdruce.com)

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# **EXHIBIT C**

## Daniel Mullarkey

---

**From:** jamienpitts@gmail.com on behalf of Jamie Pitts <jamienpitts@jnplawfirm.com>  
**Sent:** Friday, November 15, 2013 11:46 AM  
**To:** Jennifer Fraser; Daniel Mullarkey  
**Subject:** Fwd: Lucky U v. Aragona,

Jen,

I received word from my clients this morning, they should have the additional information you requested back to me by this Sunday night. Provided they do so, I will get the information/documents back to you Monday. We have no objection to an extension of 30 or 60 days. Please let me know if you have any additional questions.

Thank you,

Jamie

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----- Forwarded message -----

From: <[caroleann@tampabay.rr.com](mailto:caroleann@tampabay.rr.com)>  
Date: Fri, Nov 15, 2013 at 8:41 AM  
Subject: Re: Lucky U v. Aragona,  
To: Jamie Pitts <[jamienpitts@jnplawfirm.com](mailto:jamienpitts@jnplawfirm.com)>

W  
e  
can  
have  
them back to you  
Sunday night

Sent from my iPhone

On Nov 14, 2013, at 7:38 PM, Jamie Pitts <[jamienpitts@jnplawfirm.com](mailto:jamienpitts@jnplawfirm.com)> wrote:

Let me know when you'll be able to get the stuff in my last email back to me & I'll respond to them after

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----- Forwarded message -----

From: **Jennifer Fraser** <[Jennifer.Fraser@novakdruce.com](mailto:Jennifer.Fraser@novakdruce.com)>  
Date: Thu, Nov 14, 2013 at 5:36 PM  
Subject: RE: Lucky U v. Aragona,  
To: Jamie Pitts <[jamiempitts@jnplawfirm.com](mailto:jamiempitts@jnplawfirm.com)>, Daniel Mullarkey  
<[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)>

Dear Jamie,

We want to follow up again and inquire as to specifically when we can expect supplementation of the responses. It appears the Aragonas would have returned November 9 and considering the upcoming end of discovery, currently scheduled for December 15, we do not want to see further delays. It also appears that many of the deficient responses do not require further input from the clients: either the referenced documents exist or they do not (and we previously agreed to a two week extension to try to enable complete and proper responses). We trust that you will be in a position to promptly reply with supplemental responses in the coming days; otherwise, we will be forced to involve the Board.

In view of these delays, it also appears it will be necessary to extend the discovery deadline by 30 or 60 days. We trust Respondent will not object to this and we can attend to filing an appropriate extension depending on whether we receive the supplementation shortly, or if we have to involve the Board. Of course, we would prefer not to have to involve the Board to obtain complete responses and appreciate your cooperation moving this matter forward.

Please feel free to contact me or Dan if you would like to discuss.

Regards,

Jen

**Jennifer Fraser**

**Partner | Novak Druce Connolly Bove + Quigg LLP**

1875 Eye Street, N.W. | Eleventh Floor | Washington, D.C. 20006

t: [202.756.4356](tel:202.756.4356) | f: [202.293.6229](tel:202.293.6229) | e: [jennifer.fraser@novakdruce.com](mailto:jennifer.fraser@novakdruce.com) | w: [www.novakdruce.com](http://www.novakdruce.com)

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**From:** [jamiempitts@gmail.com](mailto:jamiempitts@gmail.com) [mailto:[jamiempitts@gmail.com](mailto:jamiempitts@gmail.com)] **On Behalf Of** Jamie Pitts

**Sent:** Wednesday, November 06, 2013 4:24 PM

**To:** Daniel Mullarkey

**Cc:** Jennifer Fraser

**Subject:** Re: Lucky U v. Aragona,

Daniel,

The Aragona's are currently out of the country on a cruise and unable to communicate, work on supplementation of our discovery responses is awaiting their return which is scheduled to be by next week (their boarding pass is attached). I will try to have an answer to the issues outlined in the October 28 letter within 7 days of their return.

Thank you for your patience,

Jamie

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On Wed, Nov 6, 2013 at 4:05 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Jamie,

Attached is Petitioner's First Request for Admissions and a link to an FTP site for you to download the exhibits cited within.

<https://novakdruce.sharefile.com/d/s246b57ec5cd42359>

Additionally, further to our October 28 letter (attached), we have also not received any supplementation of Registrant's discovery responses or even heard from you as to when we can expect supplementation. Considering the discovery deadline is approaching, please provide such supplementation immediately. Please contact us if you would like to discuss.

Regards,

**Daniel P. Mullarkey**

**Associate | Novak Druce Connolly Bove + Quigg LLP**

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# **EXHIBIT D**

## Daniel Mullarkey

---

**From:** jamienpitts@gmail.com on behalf of Jamie Pitts <jamienpitts@jnplawfirm.com>  
**Sent:** Monday, December 16, 2013 12:31 PM  
**To:** Daniel Mullarkey  
**Subject:** Re: Subpoena of Amy Hepler

Daniel,

I spoke to Amy Hepler regarding the Subpoena, she is going to be on vacation from this weekend until after Jan. 3. She said that she will try to get everything to me before she leaves, but she doesn't think that she will be able to get everything done before heading out on Friday. So, please let me know if we can push the Jan. 3 date back.

Amy is also concerned about the number of emails that she is going to have to produce. She started working for the Aragona's in 2010, so there's been hundreds of emails that have been sent between them. Can you narrow what it is that you want from her so the request is less burdensome.

Also, the title of the document you sent is "Subpoena to Produce Documents and Things", but on page 4 it is certified as a "Subpoena to Testify at a Deposition", so I just wanted to verify that this is a request for production of documents and things, not a subpoena to testify.

Thanks,

Jamie

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On Wed, Dec 11, 2013 at 6:00 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Jamie,

We received your updated finalized version and will rely on that response.

Attached is the courtesy copy of the subpoena we are in process of serving on Amy Hepler in this matter.

Regards,

**Daniel P. Mullarkey**

**Associate | Novak Druce Connolly Bove + Quigg LLP**

1875 Eye Street, NW | Eleventh Floor | Washington, DC 20006

t: [202.380.1178](tel:202.380.1178) | f: [202.293.6229](tel:202.293.6229) | e: [daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com) | w: [www.novakdruce.com](http://www.novakdruce.com)

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**From:** [jamienspitts@gmail.com](mailto:jamienspitts@gmail.com) [mailto:[jamienspitts@gmail.com](mailto:jamienspitts@gmail.com)] **On Behalf Of** Jamie Pitts  
**Sent:** Wednesday, December 11, 2013 5:53 PM  
**To:** Daniel Mullarkey; Jennifer Fraser  
**Subject:** Re: Registrant's Response to Admissions

Daniel,

My apologies, I attached a non-finalized version of the responses to my last email. Please find the correct version attached.

Best Regards,

Jamie

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On Wed, Dec 11, 2013 at 5:15 PM, Jamie Pitts <[jamienspitts@jnplawfirm.com](mailto:jamienspitts@jnplawfirm.com)> wrote:

Daniel,

Please find Registrant's Response to Petitioner's First Request for Admissions attached.

Regards,

Jamie

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IP, ENTERTAINMENT, & CORPORATE LAW  
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email immediately so that we can arrange for the retrieval of the original documents at no cost to you.

# **EXHIBIT E**

## Daniel Mullarkey

---

**From:** jamienpitts@gmail.com on behalf of Jamie Pitts <jamienpitts@jnplawfirm.com>  
**Sent:** Monday, June 16, 2014 12:34 PM  
**To:** Daniel Mullarkey  
**Subject:** Re: Deposition of Mr. Aragona

Daniel,

I put all the relevant emails that the Aragona's have access to together in an Outlook folder. I exported that folder and it is saved as an Outlook for Mac Archive file (a .olm file). I have been trying to covert the emails into PDF form with Bates stamps and "Trade Secret/Commercially Sensitive" watermarks since Friday, and every time I try it freezes my computer up and won't allow me to save the emails into any other form. Most likely because the emails total roughly 4050 pages. Please let me know if you have any solutions to this issue, or if your IT people can work with a .olm file.

Thanks,

Jamie

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On Fri, Jun 13, 2014 at 6:33 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Hi Jamie,

We really do need a copy of the Letters of Protest. Do you have any drafts that would suffice? These letters are highly relevant and we have no other way of getting the information. Please let us know as soon as possible. We may need to leave the deposition open if we are unable to obtain these letters prior to Mr. Aragona's deposition.

Regarding the emails, while we understand that this is a difficult task, we maintain that our requests are for relevant documents. If you want to propose a way to narrow our requests to facilitate your gathering of the documents, please provide us with your proposed solutions. We do not expect, nor do we want, documents that are not relevant and personal in nature.

Best regards,

Dan

**Daniel P. Mullarkey**

**Senior Associate | Novak Druce Connolly Bove + Quigg LLP**

1875 Eye Street, NW | Eleventh Floor | Washington, DC 20006

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**From:** [jamienspitts@gmail.com](mailto:jamienspitts@gmail.com) [mailto:[jamienspitts@gmail.com](mailto:jamienspitts@gmail.com)] **On Behalf Of** Jamie Pitts

**Sent:** Friday, June 13, 2014 4:05 PM

**To:** Daniel Mullarkey

**Subject:** Re: Deposition of Mr. Aragona

Daniel,

In terms of the Letters of Protest, I did not include them because I do not have the final version that I submitted with the evidence. I filed the 4 letters online @ <http://teas.uspto.gov>, which requires you to state the grounds for the letter using a fill-in text box and then only the evidence is uploaded separately.

I am in the process of assembling documents and emails from the 5 accounts that you requested. There are literally THOUSANDS of emails, most of which are not relevant and are personal in nature. Please let me know if you're willing to narrow your request to make the production feasible.

Thanks,

Jamie

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On Thu, Jun 12, 2014 at 12:56 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Hi Jamie,

We are in the process of preparing for Mr. Aragona's deposition and I would like to follow up again regarding our deficiency letter and if you have any plan to supplement Mr. Aragona's responses before the deposition next week. One thing we have noticed that is missing from your entire production is the Letter of Protest you and Mr. Aragona submitted to the PTO during the pendency of Lucky U's first applications. This is a relevant document and should have been bates labeled and produced with your earlier production. At a minimum we expect you to produce this document before the deposition and preferably before the close of business tomorrow.

Please let us know.

Best regards,

Dan

**Daniel P. Mullarkey**

**Senior Associate | Novak Druce Connolly Bove + Quigg LLP**

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**From:** [jamienspitts@gmail.com](mailto:jamienspitts@gmail.com) [mailto:[jamienspitts@gmail.com](mailto:jamienspitts@gmail.com)] **On Behalf Of** Jamie Pitts  
**Sent:** Friday, June 06, 2014 4:04 PM  
**To:** Daniel Mullarkey  
**Subject:** Re: Deposition of Mr. Aragona

You too Daniel!

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On Fri, Jun 6, 2014 at 3:55 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Thank you Jamie. Have a good weekend!

**From:** [jamienspitts@gmail.com](mailto:jamienspitts@gmail.com) [mailto:[jamienspitts@gmail.com](mailto:jamienspitts@gmail.com)] **On Behalf Of** Jamie Pitts  
**Sent:** Friday, June 06, 2014 3:54 PM  
**To:** Daniel Mullarkey  
**Subject:** Re: Deposition of Mr. Aragona

Daniel,

I just heard back from John, he confirmed his availability for the date/time in your Amended Notice. I will review the discovery requests again and let you know whether or not we will be providing supplementary responses prior to the deposition next week.

Thank you,

Jamie

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On Fri, Jun 6, 2014 at 1:23 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Jamie,

Attached is the courtesy copy of the Amended Notice of Deposition. We are also serving by First Class Mail.

Please let us know if you have any issues with the date/time as soon as possible as we plan on finalizing our travel arrangements shortly.

Please also let us know if you will be providing supplementary discovery responses prior to the deposition.

Best regards,

**Daniel P. Mullarkey**

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**From:** [jamienspitts@gmail.com](mailto:jamienspitts@gmail.com) [mailto:[jamienspitts@gmail.com](mailto:jamienspitts@gmail.com)] **On Behalf Of** Jamie Pitts  
**Sent:** Thursday, June 05, 2014 10:25 AM  
**To:** Daniel Mullarkey  
**Subject:** Re: Deposition of Mr. Aragona

Daniel,

Thank you for checking on the dates. June 18th works for both John and I, but we will both be coming from roughly 115 miles south of Tampa. That being the case, we request that the deposition be held in Sarasota instead of Tampa. Sarasota is half way between where we will be coming from and

Tampa, Sarasota also has an airport that you can fly directly into. Please let me know if that works for you guys and if you would like suggestions on conference room accommodations.

Thank you again,

Jamie

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On Wed, Jun 4, 2014 at 8:34 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Dear Jamie,

We are preparing the notice of deposition for Mr. Aragona and we plan on setting the deposition date for either June 17 or 18. Please let us know which day is more suitable for your schedules.

We also hope it will not be necessary to take your deposition; however, depending on the extent of Mr. Aragona's knowledge we can assess whether it will be necessary at that time. However, in the event your deposition is necessary, we will plan to take it on June 30<sup>th</sup> and will issue a subpoena at the appropriate time.

Best regards,

**Daniel P. Mullarkey**

**Senior Associate | Novak Druce Connolly Bove + Quigg LLP**

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# **EXHIBIT F**

## Daniel Mullarkey

---

**From:** jamienpitts@gmail.com on behalf of Jamie Pitts <jamienpitts@jnplawfirm.com>  
**Sent:** Thursday, June 26, 2014 5:33 PM  
**To:** Daniel Mullarkey  
**Subject:** Re: Aragona Documents

Thanks so much Dan. Have a great evening! Jamie

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On Thu, Jun 26, 2014 at 5:23 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Hi Jamie,

We bates labeled the documents you sent to us late last week using your label convention. We have placed them in the folder on the ftp site below. Please let me know if you have any questions.

<ftp://ftp.novakdruce.com>

Username: LuckyU

Password: 606882@2014!

**Daniel P. Mullarkey**

**Senior Associate | Novak Druce Connolly Bove + Quigg LLP**

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# **EXHIBIT G**

## Daniel Mullarkey

---

**From:** jamienpitts@gmail.com on behalf of Jamie Pitts <jamienpitts@jnplawfirm.com>  
**Sent:** Tuesday, February 03, 2015 3:21 PM  
**To:** Daniel Mullarkey  
**Subject:** Re: LuckyU v. Aragona, Schedule Clarification

**Follow Up Flag:** Follow up  
**Due By:** Wednesday, February 04, 2015 4:00 PM  
**Flag Status:** Completed

Dan,

I will do so today. Do you know which form would apply to correct the dates? I called the paralegal assigned to our case several weeks ago to find out what I needed to, but I never heard back from him.

I have spoken to my client several times regarding our discussion last week, and he is interested in further exploring settlement options. However, he feels that he needs an offer from your client before he can make any decisions. Please feel free to call me if you would like to discuss.

Best Regards,

Jamie

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On Mon, Feb 2, 2015 at 5:27 PM, Daniel Mullarkey <[daniel.mullarkey@novakdruce.com](mailto:daniel.mullarkey@novakdruce.com)> wrote:

Jamie,

We discussed earlier that you would clarify with the TTAB the schedule for the LuckyU case after the TTAB issued the attached Order. We note that the TTAB issued a subsequent order, but it is without much substance and is unclear which schedule the TTAB is operating under.

Can you please clarify and submit an updated schedule to us to ensure that we are all operating off of the same schedule and also ensure that the TTAB has the pertinent dates for the schedule moving forward.

Best regards,

**Daniel P. Mullarkey**

**Senior Associate | Novak Druce Connolly Bove + Quigg LLP**

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# **EXHIBIT H**

## Daniel Mullarkey

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**From:** Jamie Pitts <jamienpitts@gmail.com>  
**Sent:** Tuesday, April 21, 2015 11:46 PM  
**To:** Daniel Mullarkey; jennifer.fraser@novackdruce.com  
**Subject:** Emergency request to extend

Dan,

I was just about to file my brief online and lightening hit the roof of my building. Everything blew completely out immediately, so I drove to the nearest public WiFi Spot with power that I could find and I have not been able to get my computer to boot up for over 2 hours now. I'm sure (or at least seriously praying) that I can get it resolved with a mac store appointment tomorrow and then submit the brief to you & the board immediately after I have access to it again. May I please have your consent to a brief extension to file the trial brief- 3-5 days is the a maximum I would think will be involved. I'm sure its too late to get a response tonight, but if you could let me know as soon as you can so I can update what I file with the board tonight. I'm not sure if its even necessary, as the due date that is currently set isn't here yet & the last time I spoke to someone to correct the calendar the clerk told be that it couldn't be reset for an earlier date at this point. I'm sorry about the request, especially one so late, & I'd really appreciate any mercy you'd be willing to show!

Sent from my iPhone