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

Proceeding	91159871
Party	Defendant Servicios de Franquicia Pardo's S. A. C. Servicios de Franquicia Pardo's S. A. C. Avenida Dos de Mayo 1002 PEX Lima 27,
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Signature	/jpw/
Date	02/13/2006
Attachments	91159871.pdf ( 31 pages )



Further, the authorities referenced in Opposer's brief are distinguishable from the facts of this case (both involved the embargo provisions with regard to Cuba) and neither overruled or rendered inapplicable this Board's holding in British-American Tobacco Co. v. Philip Morris, Inc., 55 USPQ 2d 1585 (TTAB 2000), aff'd British-American Tobacco Co. v. Philip Morris, Inc., 2001 TTAB LEXIS 167 (TTAB February 27, 2001), where the Board's authority to act under the General Inter-American Convention for Trademark and Commercial Protection ("IAC") was acknowledged.

### **Applicant's Bona Fide Intent to Use PARDO'S CHICKEN**

First, as Opposer has failed to recognize or acknowledge, Applicant's application to register PARDO'S CHICKEN (Application Ser. No. 76/467,468) is part of the evidentiary record for purposes of the Motion for Summary Judgment per Trademark Rule 2.122(b). See also TBMP Section 528.05(a). The application makes the necessary claim of a bona fide intent to use the mark.

Second, Opposer's brief, in attempting to establish that there is a genuine issue of material fact on the bona fide intent of Applicant to make use of the PARDO'S CHICKEN mark in the United States, focuses only on certain things that Applicant has not yet done. It does not acknowledge or address the steps that Applicant has taken and which are supportive of Applicant's bona fide intent. To this end, Applicant is attaching a further affidavit from Arnold H. Wu Wong, which has as its Exhibit 1 a complete copy of the transcript of the deposition of Mr. Wu as taken by Opposer on December 28, 2005, pursuant to Opposer's Rule 56(f) request.

This is not a case where an applicant has just a "hope" or an "interest" of getting into the restaurant business. Applicant operates and controls an established restaurant business with multiple (15, in fact) restaurant sites in Peru and Chile. Wu Affidavit, paragraph 8. Applicant's

restaurant business is continuing to expand as noted in the attached affidavit. Wu Affidavit, paragraph 9. This circumstance alone distinguishes the present case from other prior cases before the Board where a party successfully challenged the bona fide intent of an applicant.

More importantly, as set out in Mr. Wu's affidavit and as reflected in the full transcript of the deposition of Mr. Wu, Applicant has taken numerous steps in preparation for the eventual opening of one or more restaurants in the United States. However, as is reasonable and legitimate, since the filing of the opposition by Opposer in March of 2004, Applicant has not invested in quite as much activity in terms of the development of restaurants in the United States, preferring to wait on the outcome of the present proceeding. Wu Affidavit, paragraph 12.

Nevertheless, Applicant has been sending its business executives to the United States on at least an annual basis since the year 2000 to make contacts with realtors, to make site visits, to visit restaurant equipment vendors and food vendors and to obtain quotations from such vendors. Wu Affidavit, paragraph 11. At the request of Opposer following the taking of the deposition of Mr. Wu, multiple documents supporting these activities and steps were provided to Opposer.

Applicant has maintained a website under the PARDO'S CHICKEN mark since at least as early as 1999 and, for a period of time, this website was displayed in English (between 1999 and 2002). Wu Affidavit, paragraph 15. Since that time, the site has continued to be active, although in the Spanish language. Applicant has also periodically advertised its PARDO'S CHICKEN restaurants in newspapers with distribution in the United States in at least the years 2003 and 2004. These have been Spanish language newspapers, but this is consistent with the initial target market in the U.S. for PARDO'S CHICKEN restaurants – which is communities with Latin/Spanish speaking populations. Wu Affidavit, paragraphs 13 and 14.

Further, in 2003, Applicant set up a corporation in Florida under the name First Florida Chicken, Inc., for the purpose of being able to operate and/or manage U.S. restaurants under the PARDO'S CHICKEN mark. Wu Affidavit, paragraph 16. While this corporation does not currently have any U.S. employees, nor does it yet own property or licenses for the operation of restaurants, it is a concrete step in furtherance of the plan to open PARDO'S CHICKEN restaurants in the United States.

Under the circumstances, it is not believed that Opposer has raised a genuine issue of material fact as to Applicant's bona fide intent to use the mark PARDO'S CHICKEN in the U.S.

**Opposer's Awareness of Applicant's PARDO'S CHICKEN Restaurants in Peru**

Opposer makes a somewhat feeble and unsubstantiated argument that a genuine issue of material fact exists as to when Opposer became aware of Applicant's PARDO'S CHICKEN restaurants in Peru.

As the Board will note, Applicant supported its Motion for Summary Judgment with Opposer's responses to interrogatories and requests for admissions – which responses and admissions clearly acknowledged Opposer's awareness of PARDO'S CHICKEN restaurants in Peru prior to Opposer's activities in the U.S. (with respect to Opposer's own PARDO'S CHICKEN restaurant or with respect to Opposer's filing of an application to register PARDO'S CHICKEN). Per the Wu Affidavit, paragraph 8, the only known PARDO'S CHICKEN restaurants in Peru are those of Applicant. It should also be noted that the address given for Mr. Diaz, the Opposer, while he lived in Lima, Peru between 1968 and 1993, is less than 10 blocks from one of Applicant's PARDO'S CHICKEN restaurants, which restaurant was operating under the PARDO'S CHICKEN brand well before 1993. Wu Affidavit, paragraph 17. Opposer did deny other discovery requests of Applicant relating to this "knowledge," but these denials appear

based on the allegation that Opposer was not aware that Applicant was the owner of the PARDO'S CHICKEN restaurants in Peru. However, Opposer never denied in any way his knowledge of the PARDO'S CHICKEN restaurants in Peru.

Under Rule 56(e) of the Federal Rules of Civil Procedure, "...When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

Not only has Opposer not put in any affidavit evidence concerning what he knew about the PARDO'S CHICKEN restaurants in Peru or when he knew it, Opposer has not even denied this knowledge in the Opposer's responsive brief. Under the circumstances, Opposer has not raised any genuine issue of material fact concerning when Opposer became aware of Applicant's PARDO'S CHICKEN restaurants in Peru.

It should also be remembered that not only did Opposer adopt the PARDO'S CHICKEN mark for use in the U.S., the initial signage that Opposer used for his restaurant site and the original drawing to his application were for the identical stylized presentation of the PARDO'S CHICKEN mark as is used by Applicant in Peru. This is also the stylized presentation reflected in Applicant's application now being opposed. This, too, constitutes clear evidence that Opposer was fully aware of Applicant's PARDO'S CHICKEN mark and restaurants in Peru prior to Opposer's activities here in the U.S.

**Applicability of the Inter-American Convention  
for Trademark and Commercial Protection**

In the case of British-American Tobacco Co. v. Philip Morris, Inc., 55 USPQ 2d 1855 (TTAB 2000), aff'd British-American Tobacco Co. v. Philip Morris, Inc., 2001 TTAB LEXIS 167 (TTAB February 27, 2001), this Board found that because the IAC was self-executing, as the Supreme Court had held back in 1940, claims under Article 8 of the IAC related to subject matter within the Board's authority (namely, cancellation claims) and the Board had jurisdiction to consider such a claim. There was nothing in the Board's analysis in the British-American Tobacco case in regard to Article 8 of the IAC that would negate the Board having the same authority under Article 7 (dealing, among other things, with the question of priority for an opposition).

For reasons that are not clearly articulated for or understood by Applicant, Opposer seems to take the position that a Second Circuit decision, Havana Club Holding, S.A. v. Galleon, S.A., 203 F. 3d 116 (2d Cir. 2000) (which case was decided prior to the Board's decision in British-American Tobacco and was, in fact, cited in the Board's decision) and a subsequent district court case out of New York, Empresa Cubana Del Tabaco v. Culbro Corporation, 213 F. Supp. 2d 247 (S.D.N.Y. 2002) overrule or override the Board's position in British-American Tobacco Co. In Applicant's view, this is not correct.

The Havana Club Holding case really only decided that any trade name rights afforded by Chapter III, Section 11 of the IAC were abrogated by the Cuban embargo as implemented by the Cuban Assets Control Regulations.

It appears that the court in the Empresa Cubana Del Tabaco case may have accorded an unwarranted and unsubstantiated breadth to the Second Circuit language in Havana Club Holding in evaluating the unfair competition claims being made under Articles 7 and 8 of the

IAC. Further, this was also a case involving a Cuban entity and where the Cuban embargo had application. Additionally, that case was concerned with a situation where the foreign mark being asserted under the IAC had not been subject to an application or registration in the U.S. for many years. This is not the circumstance here, where Applicant had originally filed to register the PARDO'S CHICKEN mark in 1999 (which application went abandoned) and then refiled in 2002 – prior to the filing by Opposer.

Neither the district court in the Empresa Cubana Del Tobacco case nor the Second Circuit in the Havana Club Holdings case identified any specific language or precedent directly indicating that the Lanham Act, through Section 44, or any other section, was intended to limit the terms of the IAC. Those courts made suppositions based on a pre-1962 reference in Section 44(b) to the IAC. In particular, neither of these courts addressed, or apparently considered the language of Section 45 of the Lanham Act which sets out the intent of the Lanham Act, which includes “to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations.”

In the present case, Applicant has followed the requirements of the Lanham Act and is legitimately seeking the benefit of the “priority” terms of Article 7 of the IAC to deal with an Opposer who was clearly aware of Applicant’s PARDO’S CHICKEN restaurants in Peru before Opposer commenced his activities in the United States.

Opposer has failed to articulate any clear reason why either the Havana Club Holding or Empresa Cubana Del Tobacco cases preclude the application of the priority terms of Article 7 of the IAC in this present case.

\* \* \*

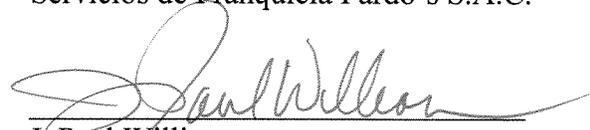
Therefore, Applicant respectfully requests that the Board grant Applicant's Motion for Summary Judgment on the issue of priority.

Respectfully submitted,

Servicios de Franquicia Pardo's S.A.C.

Date: February 13, 2006

By:



J. Paul Williamson

FULBRIGHT & JAWORSKI L.L.P.

801 Pennsylvania Avenue, NW

Washington, DC 20004

(202) 662-4545

pwilliamson@fulbright.com

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing "Applicant's Reply to Opposer's Response to Motion for Summary Judgment" was served upon Opposer's counsel by first class mail, postage prepaid, and by facsimile on this 13 day of February 2006, as follows:

Edward M. Joffe, Esq.  
Sandler, Travis & Rosenberg, P.A.  
5200 Blue Lagoon Drive, Suite 600  
Miami, FL 33126

  
\_\_\_\_\_



6. Serfransac's initial U.S. application to register PARDO'S CHICKEN was abandoned on January 20, 2001 for failure to respond to a pending Office Action.

7. In light of Serfransac's continuing bona fide intent to open a restaurant in commerce in the United States under the mark PARDO'S CHICKEN, a new application was filed with the United States Patent and Trademark Office on November 14, 2002.

8. Serfransac owns or controls multiple PARDO'S CHICKEN restaurants (fifteen (15) in number) currently operating in Peru and Chile. The only PARDO'S CHICKEN restaurants in Peru and Chile, to the knowledge of Serfransac, are those of Serfransac.

9. Serfransac has been continuing to expand the number of its restaurants under the PARDO'S CHICKEN mark in Peru and Chile, with a new restaurant having been opened in Peru as recently as December of 2005.

10. Serfransac has historically conducted the necessary market research in connection with the opening of new restaurants on an internal basis, by its own business executives.

11. Serfransac has been investigating U.S. markets for the opening of a PARDO'S CHICKEN restaurant since at least as early as 2000 and has sponsored numerous trips by its business executives for the purpose of visiting with realtors, visiting potential restaurant sites, visiting with restaurant equipment vendors and food vendors and for obtaining quotations for such products from vendors.

12. Serfransac has limited its activity related to a restaurant development in the U.S. since the filing of this opposition proceeding by Mario Diaz in March of 2004, but has not deviated from its intent to open a restaurant in the U.S. under the PARDO'S CHICKEN mark, presuming that the opposition is resolved favorably for Serfransac.

13. Serfransac's initial target market in the U.S. for a PARDO'S CHICKEN restaurant has been and continues to be communities with Latin/Spanish speaking populations, which are communities most likely to have knowledge of or information about the PARDO'S CHICKEN restaurants in Peru and Chile.

14. Serfransac has advertised its PARDO'S CHICKEN restaurants in newspapers with a United States distribution in at least the years 2003 and 2004.

15. Serfransac has maintained a website under its PARDO'S CHICKEN mark and relating to its PARDO'S CHICKEN restaurants since at least as early as 1999, with that site having been presented in English between 1999 and 2002. The site is currently presented only in Spanish.

16. Serfransac has formed a corporation in the United States for the purpose of being able to operate and/or manage U.S. restaurants under the PARDO'S CHICKEN mark. This corporation, First Florida Chicken, Inc., was incorporated in Florida on February 25, 2003.

17. The address given for Mr. Diaz while he lived in Peru was less than twenty (20) blocks away from one of Applicant's PARDO'S CHICKEN restaurants.

18. Attached to this Affidavit, as Exhibit 1, is a true and correct copy of the complete transcript of my deposition taken on December 28, 2005, along with a copy of the execution page and errata sheet.

19. The foregoing information has been derived from my personal knowledge or from the business records of Serfransac.

Respectfully submitted,

Date: February 9, 2006

By:



Name: Arnold H. Wu Wong  
Title: General Manager  
Servicios de Franquicia Pardo's S.A.C.

**INDIVIDUAL ACKNOWLEDGEMENT CERTIFICATE**

Republic of Peru

§

SS:

Province and City of Lima

§

§

Embassy of the United States of America

§

§

§

I, \_\_\_\_\_, consul of the United States of America at Lima, Peru, duly commissioned and qualified, do hereby certify that on this day the individual named below appeared before me and acknowledged to me that the attached Affidavit was executed freely and voluntarily:

Arnold Henry Wu Wong

This embassy assumes no responsibility for the contents of the document.

\_\_\_\_\_  
My commissions expires: \_\_\_\_\_

# **EXHIBIT 1**

1

1 IN THE UNITED PATENT AND TRADEMARK OFFICE  
 2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
 3  
 4 In the Matter of Opposition No. 91159871  
 5 -----:  
 6 MARIO DIAZ, :  
 7 Opposer, :  
 8 vs. :  
 9 SERVICIOS DE FRAQUICIA PARDOS, :  
 10 Applicant. :  
 11 -----:  
 12  
 13 Sandler, Travis & Rosenberg, P.A.  
 14 5200 Blue Lagoon Drive  
 15 Miami, Florida  
 16 Wednesday, December 28, 2005  
 17 10:00 a.m. - 12:30 p.m.  
 18  
 19 DEPOSITION OF ARNOLD HENRY WU WONG  
 20  
 21 Taken before Kelly Ellis, Registered  
 22 Professional Reporter, and Notary Public for the  
 23 State of Florida at Large, pursuant to Notice of  
 24 Taking Deposition filed in the above cause.  
 25

3

1 (Thereupon--  
 2 Karen Borgenheimer was sworn to act as  
 3 interpreter during the taking of the deposition.)  
 4 (Thereupon--  
 5 ARNOLD HENRY WU WONG  
 6 was called as a witness by the Opposer and, having  
 7 been first duly sworn, testified as follows:  
 8 MR. BECERRA: Mr. Williamson, was there  
 9 somebody in the law office in Lima who was able to  
 10 administer the oath under that relevant law down  
 11 there as well?  
 12 MR. WILLIAMSON: Yes, there is.  
 13 MR. BECERRA: Perhaps we could have that  
 14 person do that as well.  
 15 MR. BARREDA: Mr. Becerra, this is Mr.  
 16 Barreda interpreting for Mr. Wu. The Spanish notary  
 17 was supposed to be in our offices at 10:00 a.m.  
 18 caught having a problem, and he has just told us he  
 19 will not be able to come in.  
 20 MR. BERRECA: All right, then, just for  
 21 these purposes, can we all agree that the oath just  
 22 administered to Mr. Wu is an oath to tell the truth  
 23 under the penalties of perjury?  
 24 MR. BARREDA: I communicated with the  
 25 witness and he has sworn according to our practice.

2

1 APPEARANCES  
 2  
 3 ROBERT J. BECERRA, ESQ., of the firm of  
 4 SANDLER, TRAVIS & ROSENBERG, P.A., The  
 5 Waterford, Suite 600, 5200 Blue Lagoon  
 6 Drive, Miami, Florida 33126 on behalf of  
 7 the Opposer  
 8 (Telephonically.) PAUL WILLIAMSON, ESQ.,  
 9 and KATE DUBRAY, ESQ., of the firm of  
 10 FULBRIGHT & JAWORSKI, L.L.P., 801  
 11 Pennsylvania Avenue, NW, Washington, D.C.  
 12 20004 on behalf of the Applicant  
 13 (Telephonically.) JOSE BARREDA, ESQ., of  
 14 the firm of BARREDA & MOLLER, avenida  
 15 angamos oeste 1200, Lima 18, Peru on  
 16 behalf of Mr. Wu.  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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4

1 MR. WILLIAMSON: That's fine.  
 2 BY MR. BECERRA:  
 3 Q. Mr. Wu, please state your full name for  
 4 the record.  
 5 MR. BARREDA: Mr. Wu tells me that he will  
 6 respond in Spanish only in the cases that he feels  
 7 that it is more comfortable to respond in that  
 8 language, otherwise he will use English.  
 9 MR. BECERRA: The court reporter indicates  
 10 that would be extremely difficult to transcribe in  
 11 that manner. The court reporter indicates that she  
 12 would prefer that Mr. Wu simply answer in Spanish and  
 13 then the interpreter here can translate it for her in  
 14 English.  
 15 MR. BARREDA: We were trying to save  
 16 time, but if that is your preference--  
 17 MR. BECERRA: Yes, that is the way the  
 18 court reporter would prefer in that fashion.  
 19 Why don't you introduce yourself to the  
 20 court reporter, Mr. Barreda?  
 21 MR. BARREDA: I am Jose Barreda, I am a  
 22 partner to the law firm Barreda and Moller in Lima,  
 23 Peru. I have expertise in intellectual (Phonetic.)  
 24 property excavation, commercial law and arbitration  
 25 law.

<p>5</p> <p>1 MR. BECERRA: Thank you, sir.  2 DIRECT EXAMINATION  3 BY MR. BECERRA:  4 Q. I will now start asking questions through  5 the interpreter.  6 Mr. Wu, would you state your full name for  7 the record?  8 A. Arnold Henry Wu Wong.  9 Q. How are you currently employed, sir?  10 A. I am the general manager.  11 Q. Exactly what company are you the general  12 manager for?  13 A. Servicios De Fraquicia Pardo's SAC.  14 Q. Is that the same company that owns a  15 number of restaurants in the the country of Peru  16 known as Pardo's Chicken?  17 A. Yes. It is the company that owns the  18 trademark, Pardo's Chicken.  19 Q. Are the restaurants in Peru owned by your  20 company or are they franchises?  21 A. They are franchises, and the franchises  22 belong to us.  23 Q. When you say, the franchises belong to  24 you, your company has an ownership interest in the  25 franchises or are they owned by third parties?</p>	<p>7</p> <p>1 for the country of Chile?  2 A. The company executives, including myself,  3 we went to the city of Santiago, Chile on various  4 occasions.  5 We visited the offering companies.  6 We also visited the various providers of  7 all of the materials that we would need.  8 And we also visited lawyers' offices,  9 accounting offices.  10 We visited people who are involved in real  11 estate.  12 We did comparisons, benchmarks similar to  13 what we have in Peru so that we could have a  14 definitive global operation.  15 We also visited providers of different  16 shopping centers.  17 And also we checked into, we investigated,  18 studied all of the variables that have to do with  19 such a venture.  20 Q. When you made comparisons and benchmarks,  21 did you hire a marketing company to do that, or did  22 you do that yourself.  23 Mr. Wu, let the translator translate the  24 question for you, please.  25 A. Right. The company executives including</p>
<p>6</p> <p>1 A. They belong to the person, the natural  2 person. That is, people, relatives, my relatives.  3 Q. Does your company own a restaurant in  4 Santiago, Chile as well?  5 MR. BARREDA: Mr. Becerra, let me  6 interrupt. The translation into English is not  7 adequate. That was not the answer.  8 MR. BECERRA: In what way was it  9 different?  10 MR. BARREDA: The translation was the  11 franchises were, are you not owned by Servicios De  12 Fraquicia, and they are, most of them are owned by  13 individuals who belong to the family, relations of  14 Mr. Wu, who also owned different--(Inaudible.)  15 BY MR. BECERRA:  16 Q. So it would be my understanding that the  17 restaurants are owned by people as opposed to  18 companies; would that be correct?  19 A. Yes.  20 Q. Is that the same for the restaurant in  21 Santiago, Chile?  22 A. Yes.  23 Q. Prior to opening a franchise, and let's  24 use for example the restaurant in Chile, what type of  25 market research, if any, did your company engage in</p>	<p>8</p> <p>1 myself did it.  2 Q. When you investigated and studied the  3 variables that you mentioned, did you do that  4 yourself, along with people in your company, or did  5 you hire a separate company to do that for you?  6 A. The executives of the company did it based  7 on the experience and the information that we  8 obtained.  9 Q. When you mentioned that you visited  10 providers of shopping centers, did you hire a real  11 estate company to assist you with that task?  12 A. Due to the name of the Pardo's Chicken,  13 and the knowledge of these commercial centers,  14 shopping centers, we did it ourselves.  15 Q. Would I be correct in understanding that  16 in opening the restaurant in Chile, your company did  17 no marketing reports?  18 MR. BARREDA: The English question and the  19 Spanish question are contradictory.  20 MR. BECERRA: In what way, sir?  21 MR. BARREDA: The English question was,  22 are you correct in assuming that there was no  23 marketing report. And the Spanish version was, is it  24 true that Pardo's Chicken did its own marketing  25 reports, so I wish to know exactly what the question</p>

2 (Pages 5 to 8)

9

1 is.

2 MR. BECERRA: Okay, I'll repeat the

3 question then.

4 BY MR. BECERRA:

5 Q. Am I correct in assuming that your company

6 did no marketing reports in regards to opening a

7 restaurant in Chile?

8 A. That is not correct.

9 Q. Would it be correct to say that you did

10 perform these marketing reports yourselves?

11 A. Yes, that is correct.

12 Q. In Chile, did your company hire an

13 advertising firm to promote your restaurant?

14 MR. WILLIAMSON: Object to the form of the

15 question.

16 MR. BECERRA: You may answer.

17 MR. BARREDA: This is Mr. Barreda

18 speaking. Could you clarify your question whether it

19 is before an opening or after an opening.

20 MR. BECERRA: Sure.

21 BY MR. BECERRA:

22 Q. Let's start with the first way.

23 Did your company, Mr. Wu, hire an

24 advertising firm to promote your restaurant prior to

25 its opening in Chile?

10

1 A. No.

2 Q. Did your firm hire an advertising firm to

3 promote your restaurant in Chile after it was opened?

4 A. That is correct.

5 Q. Prior to you opening the restaurant, prior

6 to you opening your restaurant in Chile, what

7 promotional activities did your company undertake in

8 Chile?

9 A. Basically, we handed out flyers in the

10 area around the area where the restaurant is, and

11 where we were. And other--

12 INTERPRETER: The interpreter needs

13 clarification.

14 THE WITNESS: We did other activities as

15 well in the area such as putting up posters around

16 the main streets near the restaurant.

17 MR. WILLIAMSON: Excuse me, this Paul

18 Williamson. Could the translator, if she is going to

19 seek a clarification or add on after the witness has

20 started, if she can translate for me what it is that

21 she is saying at that point as well?

22 INTERPRETER: Yes, she certainly will as

23 well. The interpreter will just interrupt at this

24 moment.

25 She asked for clarification on what

11

1 exactly he meant by the word in Spanish, acciones,

2 which has several different definitions.

3 He was using that word synonymously with

4 activities.

5 MR. BARREDA: This is Mr. Barreda again,

6 translator. You have translated the answer from Mr.

7 Wu in that posters had been mostly placed near the

8 main streets in Santiago.

9 And Mr. Wu really answered saying that he

10 placed panels in the premises and outside of the

11 actual premises in the major avenues in Santiago

12 where the store is open.

13 BY MR. BECERRA:

14 Q. Were those activities performed before the

15 restaurant opening?

16 A. During the opening and after it was

17 opened.

18 Q. Prior to the opening of the restaurant,

19 did your company engage in any television or radio

20 advertising in Chile?

21 A. No.

22 Q. So am I correct in understanding your

23 testimony that your firm opened the restaurant in

24 Chile without any prior radio or television

25 advertising?

12

1 A. Correct.

2 Q. Turning your attention now to the country

3 of Peru, sir.

4 A. Yes.

5 Q. Would I be correct in assuming that the

6 way that your company has been expanding its business

7 is by opening franchises of the Pardo's Chicken

8 restaurant?

9 A. Yes, of which most of these franchises

10 mostly belong to the company itself or to family

11 members.

12 Q. Prior to opening a new franchise, did your

13 company engage in radio or television advertising to

14 announce the opening of the new franchise?

15 MR. BARREDA: Mr. Becerra, am I entitled

16 to request you to clarify the question? Can I

17 explain why?

18 MR. BECERRA: Sure, Go ahead.

19 MR. BARREDA: Did you make a difference in

20 the activities--there are special requisitions in

21 Peru that prohibit certain types of promotional

22 activities unless you have opened a restaurant, and

23 then there is ongoing advertisement for the

24 restaurant in general once you open the first, which

25 doesn't stop.

1 So what Mr. Wu wants to know is whether  
 2 your question was related to the first one, or once  
 3 you open each restaurant or not.  
 4 MR. BECERRA: Okay, I'll repeat the  
 5 question then.  
 6 BY MR. BECERRA:  
 7 Q. Let me get some background first.  
 8 What was the last time your company opened  
 9 a franchise in Peru?  
 10 A. Last week.  
 11 Q. Prior to opening that franchise last week,  
 12 were there any advertising announcing the upcoming  
 13 opening?  
 14 A. We always incorporate publicity for all of  
 15 the restaurants. We also announce the opening of the  
 16 restaurant in the area in which it is going to open.  
 17 Q. In what manner do you make that  
 18 announcement--  
 19 MR. BARREDA: She hasn't finished the  
 20 interpretation.  
 21 MR. BECERRA: Oh, I'm sorry.  
 22 THE WITNESS: In this instance, the  
 23 restaurant is located on one of the main boulevards,  
 24 that is one of the main shopping areas or shopping  
 25 centers.

1 For that reason, the shopping center does  
 2 publicity for it.  
 3 BY MR. BECERRA:  
 4 Q. Would I be correct in assuming then that  
 5 prior to the opening of this new franchise, that  
 6 there was some sort of promotional or advertising  
 7 activity for that franchise that occurred prior to  
 8 its opening?  
 9 MR. WILLIAMSON: Objection to the  
 10 continuation of this line of questioning.  
 11 I understand that you are trying to lay  
 12 some background, but the issue we need to get to is  
 13 bonafided intent, good faith to use the mark in the  
 14 United States, and I just want the objection on the  
 15 record that I think that this line of questioning  
 16 continuing in this kind of detail of what is going on  
 17 in Chile and Peru is not relevant.  
 18 MR. BECERRA: Your objection is noted, and  
 19 obviously my response to the objection is that the  
 20 background is necessary in order to contrast the  
 21 kinds of activities taken by the company to open or  
 22 use its trademarking commercial in Peru and Chile  
 23 compared to the activities that it has done already  
 24 in relation to its use of the trademark in the United  
 25 States.

1 MR. WILLIAMSON: I understand your goal,  
 2 and my objections stands that what went on in Chile  
 3 or Peru is not relevant to the good faith intent to  
 4 use the mark in the United States.  
 5 MR. BECERRA: Your objection is noted, Mr.  
 6 Williamson.  
 7 MR. WILLIAMSON: Thank you.  
 8 MR. BARREDA: Repeat the question.  
 9 MR. BECERRA: I am having the court  
 10 reporter read back the question for me.  
 11 (The portion referred to was read by the  
 12 reporter as above recorded.)  
 13 THE WITNESS: Yes, in the area that we are  
 14 located.  
 15 BY MR. BECERRA:  
 16 Q. Mr. Wu, in the last--strike that. I will  
 17 repeat the question.  
 18 Has your company distributed any  
 19 promotional material regarding your restaurant in the  
 20 United States?  
 21 MR. WILLIAMSON: Object to the form of the  
 22 question. It assumes facts not in evidence.  
 23 MR. BECERRA: You may answer the question,  
 24 sir.  
 25 THE WITNESS: We have included

1 advertisements in newspapers.  
 2 BY MR. BECERRA:  
 3 Q. When was the last time your company  
 4 advertised in a newspaper in the United States?  
 5 MR. WILLIAMSON: You are talking about a  
 6 newspaper that is distributed in the United States?  
 7 MR. BECERRA: Yes.  
 8 MR. BARREDA: Could that be also in  
 9 Peruvian newspapers that are distributed in the  
 10 United States?  
 11 MR. BECERRA: I will repeat the question  
 12 and we'll narrow it.  
 13 BY MR. BECERRA:  
 14 Q. When was the last time your company, if it  
 15 has at all, advertised in a United States newspaper  
 16 distributed in the United States?  
 17 MR. WILLIAMSON: Object to the form of the  
 18 question.  
 19 MR. BECERRA: You may answer the question.  
 20 THE WITNESS: 2004, 2005.  
 21 BY MR. BECERRA:  
 22 Q. Which newspaper or which newspapers were  
 23 those advertisements contained in?  
 24 A. In the newspaper called  
 25 P-e-r-u-a-n-i-s-i-m-o and others that are distributed

17  
1 in the United States.  
2 Q. In those advertisements in those  
3 newspapers, did you indicate that you were opening a  
4 restaurant in the United States?  
5 A. We indicated that we would soon be in the  
6 United States.  
7 Q. Did the advertisement indicate in what  
8 cities you would be opening in the United States?  
9 A. No.  
10 Q. Did your advertisement indicate what year  
11 you would be opening restaurants in the United  
12 States?  
13 A. No.  
14 Q. Let me repeat my question.  
15 Just so I understand, the advertisements  
16 that you referred to in 2004, 2005, were these in  
17 newspapers based in the United States?  
18 MR. WILLIAMSON: Object to the form of the  
19 question.  
20 MR. BECERRA: You may answer the question,  
21 sir.  
22 THE WITNESS: Yes, they were newspapers  
23 distributed in the United States aimed at Latins in  
24 the United States.  
25 BY MR. BECERRA:

18  
1 Q. Were these advertisements in the English  
2 or Spanish language?  
3 A. In Spanish.  
4 Q. Prior to these advertisements in 2004 or  
5 2005, when was the last time prior to those  
6 advertisements--strike that.  
7 Prior to the year 2004, when was the last  
8 time that your company advertised in a United States  
9 newspaper?  
10 MR. WILLIAMSON: Objection to form of the  
11 question.  
12 THE WITNESS: It could have been 2003. I  
13 don't remember for sure.  
14 BY MR. BECERRA:  
15 Q. Would that advertisement in 2003, if that  
16 is when it was, would that have been in the same  
17 newspaper that you had previously testified about?  
18 A. Yes, probably.  
19 Q. Has your company ever advertised in the  
20 United States in the English language?  
21 A. Not in newspapers, but on web site, yes.  
22 Q. Which web site are you referring to, sir?  
23 A. Pardo's Chicken.com.  
24 Q. During what time period was your web site  
25 at that location in English?

19  
1 INTERPRETER: Interpreter doesn't  
2 understand that question, at what location.  
3 MR. BECERRA: I'll repeat the question.  
4 BY MR. BECERRA:  
5 Q. At what point in time did that web site  
6 contain material in the English language?  
7 A. That information was contained in the web  
8 site in both English and Spanish from approximately  
9 1999 to approximately 2002.  
10 Q. Isn't it a fact, Mr. Wu, that since that  
11 point in time, your web site for Pardo's Chicken has  
12 been exclusively in the Spanish language?  
13 A. That is correct.  
14 Q. For example, if I were to access your  
15 company's web site today, the web site would be in  
16 the Spanish language in its entirety?  
17 A. Yes, that is correct, for reasons--yes,  
18 that is correct.  
19 Q. Would I also be correct in saying that if  
20 I were to look at your company's web site today,  
21 there would be no mention whatsoever of your  
22 company's intent on opening a restaurant in the  
23 United States?  
24 MR. WILLIAMSON: Objection to the form of  
25 the question.

20  
1 THE WITNESS: On the web site, we have  
2 never announced openings in any country including in  
3 Peru or Chile.  
4 BY MR. BECERRA:  
5 Q. It would be a fact, though, wouldn't it,  
6 Mr. Wu, that your web site does of course indicate  
7 all of your present restaurant locations?  
8 A. Yes, that is correct, whenever it is  
9 updated.  
10 Q. And would I be correct in saying that if  
11 your company was about to open a restaurant in the  
12 United States, that you would want to promote that  
13 fact in your web site?  
14 MR. WILLIAMSON: Object to the form of the  
15 question.  
16 MR. BECERRA: You may answer, Mr. Wu.  
17 THE WITNESS: No, that is not correct,  
18 based on what I said previously as to the fact that  
19 we never announce openings on the web site.  
20 BY MR. BECERRA:  
21 Q. Would I be correct in understanding your  
22 testimony then that it would only be when you have,  
23 in fact, opened a restaurant is when you would have  
24 an announcement in your web site?  
25 A. No, that is not true. We don't announce.

21

1 We only incorporate the new information in the new  
2 restaurants.  
3 Q. In other words, would I be correct in  
4 understanding you, sir, that when you have a new  
5 restaurant, you would then place that location on  
6 your web site?  
7 A. Yes, that is correct, as soon as it has  
8 been completed, we do indicate the new restaurant.  
9 Q. However, I believe you also indicated that  
10 in newspapers distributed in the United States in the  
11 years 2004 or 2005, your company indicated that it  
12 was intending on opening a restaurant in the United  
13 States?  
14 A. That is correct.  
15 Q. Is there any particular reason why you  
16 would make such an announcement in a newspaper but  
17 not on your web site?  
18 A. Because that is the methodology that we  
19 use to receive applications for the franchises in  
20 different cities.  
21 Q. Mr. Wu, isn't it true that your current  
22 web site also has a section in it regarding how to  
23 obtain a Pardo's Chicken franchise?  
24 A. Yes, that is correct.  
25 Q. So I would be correct, wouldn't I, in

22

1 saying that your company does use its web site as a  
2 manner to attract people who may want to obtain  
3 Pardo's Chicken franchises?  
4 A. No, that is not correct. It only provides  
5 initial information.  
6 Q. That would be the initial information  
7 about obtaining a Pardo's Chicken franchise?  
8 A. Yes, that is correct, on initial  
9 information.  
10 Q. Nothing in that web site indicates that  
11 your company is currently looking for franchisees in  
12 the United States?  
13 A. It doesn't indicate that we are looking  
14 for franchises in any country including in Peru.  
15 That is to say, that it is general for all countries.  
16 Q. In regards to the United States market,  
17 has your firm hired any marketing research companies  
18 to assist you in investigating the United States  
19 market?  
20 A. No.  
21 Q. Has your firm hired any realtors to assist  
22 you in finding your company a location for a  
23 franchise in the United States?  
24 A. We have contacted and visited different  
25 offices and sites of real estate people.

23

1 Q. When was the last time that you visited a  
2 site in the United States?  
3 A. I think it was in 2004 or 2005.  
4 Q. In what city did you visit?  
5 A. Miami and New York.  
6 Q. What site in Miami did you visit?  
7 MR. WILLIAMSON: I will ask that this part  
8 of the answer has to be put under protective order.  
9 (Thereupon, the portion referred to shall  
10 be placed under protective order.)  
11 MR. BECERRA: I have no problem with that.  
12 MR. WILLIAMSON: Thank you.  
13 MR. BECERRA: You may answer, Mr. Wu.  
14 (The portion referred to was read by the  
15 reporter as above recorded.)  
16 MR. BARREDA: Mr. Wu is asking me whether  
17 you can ask, specify in your question in that if it  
18 is related to a specific site at this particular  
19 address or related to a general area in the Miami  
20 area in which he has visited?  
21 BY MR. BECERRA:  
22 Q. Mr. Wu, am I correct in understanding your  
23 testimony that in 2004 and/or 2005, you visited or  
24 people in your company visited Miami and New York for  
25 the purpose of looking at sites for restaurants?

24

1 A. Yes, that is correct, but we also visited  
2 sites in 2001, 2002, 2003, 2004 and 2005.  
3 Q. Despite those visits that you have made or  
4 people in your company have made to the United States  
5 looking for restaurant sites, your company has not  
6 opened a franchise in the United States; is that  
7 correct?  
8 A. Yes, due to the open situation from Mr.  
9 Diaz, we have had to extend our entering the United  
10 States.  
11 Q. Let me draw your attention now to the  
12 visit that you indicated that you or your company  
13 made to the United States in 2001. Do you recall  
14 what city you or your company visited in 2001 in the  
15 United States?  
16 A. Miami.  
17 Q. Did you look at a restaurant site during  
18 that visit?  
19 A. Basically, different areas in the City of  
20 Miami.  
21 Q. When you say, basically different areas,  
22 would I be correct in assuming that you did not visit  
23 a particular restaurant site?  
24 A. No, that is not correct. In visiting the  
25 different areas, we did visit particular sites.

6 (Pages 21 to 24)

3

25

1 Q. During that visit, did you or your company  
2 do any investigation of the Miami market to determine  
3 whether it would be a good idea to open a franchise  
4 here?  
5 MR. WILLIAMSON: Object to the form of the  
6 question.  
7 MR. BECERRA: You may answer the question,  
8 Mr. Wu.  
9 THE WITNESS: That is correct.  
10 BY MR. BECERRA:  
11 Q. Despite that, your company did not open a  
12 franchise in the United States in 2001; is that  
13 correct?  
14 A. That is correct. It is a process.  
15 Q. You are aware, are you not, that Mr. Diaz  
16 opened his Pardo's Chicken restaurant in the year  
17 2002; is that correct?  
18 A. It is my understanding that he opened in  
19 2003.  
20 Q. You are correct, sir. You are quite  
21 correct, sir.  
22 So it would not have been the fact that  
23 Mr. Diaz had a restaurant in the name of Pardo's  
24 Chicken that would have prevented you or delayed you  
25 from opening a restaurant in the United States in

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1 2001?  
2 A. In 2002 Mr. Diaz had lettering that said  
3 Pardo's Chicken.  
4 Q. So the fact that your company did not open  
5 a restaurant in 2001 would not have had anything to  
6 do with Mr. Diaz; is that correct?  
7 A. Yes, that is correct, we are in the  
8 investigation process.  
9 Q. I would be correct, would I not, Mr. Wu,  
10 then in saying that in 2001 your company did not  
11 enter into any leases for restaurant space in the  
12 United States?  
13 A. Correct.  
14 Q. Your company or any of your relatives did  
15 not start a new kind of franchise of the Pardo's  
16 Chicken restaurant in 2001?  
17 A. That is correct.  
18 Q. When you indicated that they did not start  
19 the franchise in the United States, they did not,  
20 even for instance, incorporate a United States  
21 corporation for those purposes; isn't that correct?  
22 INTERPRETER: Could you repeat that?  
23 MR. BECERRA: Yes.  
24 (The portion referred to was read by the  
25 reporter as above recorded.)

27

1 MR. WILLIAMSON: We are talking about  
2 2001?  
3 MR. BECERRA: Yes.  
4 THE WITNESS: In relation to 2001; is that  
5 correct?  
6 BY MR. BECERRA:  
7 Q. In 2001, did you or your company visit any  
8 other U.S. cities besides Miami in regards to looking  
9 for restaurant sites?  
10 A. Basically, South Florida cities.  
11 Q. In 2001, did you visit any locations  
12 outside of Miami-Dade County?  
13 MR. WILLIAMSON: Object to the form of the  
14 question.  
15 MR. BECERRA: You may answer the question.  
16 THE WITNESS: Yes, that is correct.  
17 BY MR. BECERRA:  
18 Q. Now, I would like to turn your attention  
19 to the year 2002, you previously stated that during  
20 that year, you or people in your company made visits  
21 to the United States regarding looking for restaurant  
22 sites; is that correct?  
23 A. (No response.)  
24 MR. BARREDA: Are you going to make the  
25 question again?

28

1 MR. BECERRA: I will repeat it again.  
2 BY MR. BECERRA:  
3 Q. In the year 2002, am I correct in  
4 understanding your testimony, Mr. Wu, that you or  
5 people in your company made visits to the United  
6 States to look for restaurant sites?  
7 A. Yes, that is correct that we visited the  
8 United States to look for other contacts that would  
9 be necessary or to establish a restaurant in the  
10 United States.  
11 Q. What cities did you visit that year for  
12 that purposes, sir?  
13 A. Cities located in South Florida.  
14 Q. What companies or what--strike that.  
15 Who did you visit in 2002 in South Florida  
16 to assist you in the purpose of opening a restaurant  
17 in the United States?  
18 A. My executives and I visited places  
19 including Chile to talk to equipment providers,  
20 accounting specialists, legal specialists,  
21 construction people, anything that was necessary to  
22 implement to opening of a restaurant.  
23 Q. You indicated, sir, that you visited Chile  
24 in 2002; is that correct?  
25 A. No, just as in Chile, we visited equipment

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1 providers, construction and others.  
 2 Q. Did you enter into any contracts with any  
 3 construction companies in the United States in the  
 4 year 2002?  
 5 A. We didn't sign any contracts. We just  
 6 received information for the project.  
 7 Q. Did you enter into any contract or  
 8 agreement for providers of restaurant equipment in  
 9 the United States for the year 2002?  
 10 A. We didn't sign any contract. We did the  
 11 necessary work for the project.  
 12 Q. Did you enter into any arrangement with  
 13 either shopping centers or owners of restaurant sites  
 14 in 2002 in the United States?  
 15 MR. WILLIAMSON: Object to the form of the  
 16 question.  
 17 MR. BECERRA: You may answer the question,  
 18 sir.  
 19 THE WITNESS: We have signed no contract.  
 20 BY MR. BECERRA:  
 21 Q. In 2002, for the purpose of opening a  
 22 restaurant--strike that.  
 23 In the year 2002, for the purposes of  
 24 investigating whether you would open a restaurant in  
 25 the United States, did you visit any other cities

30

1 besides South Florida in the United States?  
 2 A. No.  
 3 Q. Would I be correct in stating that despite  
 4 you or your executives visiting in the United States  
 5 in 2002, your company did not open any restaurant or  
 6 franchises in the United States in 2002?  
 7 A. That is correct.  
 8 Q. As you previously stated, Mr. Diaz had not  
 9 opened his Pardo's Chicken restaurant until 2003?  
 10 MR. WILLIAMSON: Object to the form of the  
 11 question.  
 12 MR. BECERRA: You may answer, sir.  
 13 THE WITNESS: Repeat the question.  
 14 INTERPRETER: I'll do that.  
 15 (The portion referred to was read by the  
 16 reporter as above recorded.)  
 17 THE WITNESS: That is correct.  
 18 BY MR. BECERRA:  
 19 Q. Am I correct in understanding your  
 20 previous testimony that in the year 2003, you or your  
 21 executives visited the United States for the purpose  
 22 of investigating the opening of a restaurant?  
 23 A. That is correct.  
 24 Q. What cities did you or your executives  
 25 visit in 2003 for the purpose of investigating, for

31

1 the purpose of opening a restaurant?  
 2 A. Cities in South Florida.  
 3 Q. What restaurant sites did you visit in  
 4 South Florida in 2003?  
 5 A. An area that currently has a large Latino  
 6 population.  
 7 Q. What area? What area was that, Mr. Wu?  
 8 A. In different areas, in the Doral and  
 9 Kendall areas.  
 10 Q. Did you personally make that trip here in  
 11 2002?  
 12 A. As far as I remember, that is affirmative.  
 13 Q. Did you actually visit restaurant  
 14 locations to see if they are suitable for the opening  
 15 of a restaurant on that trip?  
 16 A. That is correct.  
 17 Q. Did you have a realtor show you these  
 18 locations?  
 19 A. That is correct that it was in 2003 or  
 20 2004.  
 21 Q. Did your company ever execute a lease in  
 22 the year 2003 for a restaurant site in South Florida?  
 23 A. No, we didn't sign any type of lease or  
 24 contract.  
 25 Q. Did you enter into any agreement or

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1 contract for any providers of restaurant equipment in  
 2 the year 2003 in the United States?  
 3 A. No.  
 4 Q. Did you form any U.S. corporations for the  
 5 purpose of opening a restaurant in 2003?  
 6 A. Yes.  
 7 Q. What corporation was that?  
 8 A. First Florida chicken.  
 9 Q. Is that a Florida corporation?  
 10 A. First Florida chicken?  
 11 Q. Yes.  
 12 A. Yes.  
 13 Q. Is that corporation to this day still  
 14 open?  
 15 MR. WILLIAMSON: Object to the form of the  
 16 question.  
 17 MR. BECERRA: You may answer, Mr. Wu.  
 18 THE WITNESS: Yes.  
 19 BY MR. BECERRA:  
 20 Q. Is that Florida corporation a corporation  
 21 still in good standing with the Florida secretary of  
 22 state?  
 23 A. As far as I know, yes.  
 24 Q. Who is the owner of that corporation?  
 25 A. The same franchise, shareholders as for

33

1 the Servicios De Fraquicia Pardo's SAC.  
2 MR. BARREDA: The word franchise was not  
3 included in Mr. Wu's response.  
4 He only said the shareholders and in  
5 Servicios De Fraquicia Pardo SAC.  
6 INTERPRETER: Just the name of the  
7 corporation.  
8 BY MR. BECERRA:  
9 Q. Would I be correct in understanding that  
10 your company itself does not own an ownership  
11 interest in First Florida Chicken Corporation?  
12 A. I don't know if the owner or owners are  
13 the shareholders themselves, or the officers of  
14 Servicios De Fraquicia.  
15 MR. BARREDA: He did not say, I don't  
16 know. He said that I don't remember exactly.  
17 INTERPRETER: Yes, correction.  
18 MR. BECERRA: Yes, we'll correct the  
19 record.  
20 We will all take a five-minute break.  
21 (Thereupon a recess was taken after which  
22 the following proceedings were had:)  
23 MR. BECERRA: Back on the record.  
24 Is everybody set?  
25 MR. WILLIAMSON: We are set.

34

1 BY MR. BECERRA:  
2 Q. Mr. Wu, before the break, we were talking  
3 about First Florida Chicken Corporation. Do you  
4 recall when that company was incorporated?  
5 A. I don't remember the exact date.  
6 Q. Does First Florida Chicken Corporation  
7 have an office?  
8 A. We are using an attorney's office.  
9 Q. Which attorney is that?  
10 A. Alberto Amoros.  
11 Q. Spell that, please.  
12 A. A-m-o-r-o-s.  
13 Q. Does First Florida Chicken Corporation  
14 have any employees?  
15 A. Not in this year.  
16 MR. BARREDA: The response was, not when  
17 it was organized.  
18 INTERPRETER: The interpreter is going to  
19 stand by her translation. He said, not in this  
20 year.  
21 MR. BECERRA: Either way, let me clarify  
22 with some other question.  
23 BY MR. BECERRA:  
24 Q. When this company was organized, did it  
25 have any employees?

35

1 A. Not in First Florida Chicken. The  
2 executives in Peru were doing the operations.  
3 Q. Does First Florida Chicken Corporation  
4 have any employees now?  
5 A. No.  
6 Q. Did First Florida Chicken Corporation have  
7 any employees last year, 2004?  
8 A. No.  
9 Q. Does First Florida Chicken Corporation own  
10 any property?  
11 A. No.  
12 Q. Has First Florida Chicken Corporation  
13 entered into any contracts or agreements?  
14 A. No.  
15 Q. I believe that you indicated that as well  
16 in the year 2004, you or your executives traveled to  
17 South Florida to investigate the opening of a  
18 restaurant; is that correct?  
19 MR. WILLIAMSON: Object to the form of the  
20 question.  
21 MR. BECERRA: You may answer, sir.  
22 THE WITNESS: Yes, we visited South  
23 Florida.  
24 BY MR. BECERRA:  
25 Q. During that visit, did you visit any

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1 restaurant sites?  
2 A. Yes.  
3 Q. Where?  
4 A. In the Kendall and Doral areas.  
5 Q. When you visited those sites, did you meet  
6 with the landlords of--let me rephrase the question.  
7 Were those sites located in shopping  
8 centers?  
9 A. Some.  
10 Q. In the ones that were located in shopping  
11 centers, did you meet with the landlord of the  
12 shopping centers to discuss entering into a lease?  
13 A. My executives helped me with that.  
14 Q. Do you remember which executive that was?  
15 A. Probably, Kenny Wong.  
16 Q. As a result of Mr. Wong's meeting with  
17 landlords at shopping centers, did you, your company,  
18 or the First Florida Chicken Corporation enter into  
19 any leases?  
20 INTERPRETER: Could you repeat the  
21 question, please?  
22 (The portion referred to was read by the  
23 reporter as above recorded.)  
24 THE WITNESS: No.  
25 BY MR. BECERRA:

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1 Q. Did Mr. Wong inform you why no leases were  
2 entered into?  
3 A. I informed Mr. Wong that we were in the  
4 process with Mr. Diaz, and because of this, we didn't  
5 rent anything under contract to open Pardo's Chicken.  
6 Q. Did you open any other restaurants as a  
7 result of Mr. Wong's meetings?  
8 A. No.  
9 MR. WILLIAMSON: I assume that was in the  
10 United States, counsel?  
11 MR. BECERRA: Yes, my questions are  
12 pertaining to the United States.  
13 BY MR. BECERRA:  
14 Q. You indicated that some of the sites that  
15 Mr. Wong visited were in shopping centers, and others  
16 were not; is that correct?  
17 MR. BARREDA: Mr. Becerra, this is Mr.  
18 Barreda again. What is the meaning of shopping  
19 centers for you? Is that malls, or is that open  
20 outlets, is this malls; what is it?  
21 MR. BECERRA: It can be either one.  
22 Let me ask the question again and I'll  
23 break it up.  
24 BY MR. BECERRA:  
25 Q. Did Mr. Wong visit open shopping centers

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1 in South Florida?  
2 INTERPRETER: The interpreter is asking  
3 for clarification.  
4 THE WITNESS: That is my understanding,  
5 yes.  
6 BY MR. BECERRA:  
7 Q. Did he also visit shopping malls?  
8 A. Probably.  
9 Q. Do you know for a fact or are you  
10 guessing?  
11 MR. WILLIAMSON: Objection to the form of  
12 the question.  
13 MR. BECERRA: You may answer.  
14 THE WITNESS: That is the information that  
15 I was given.  
16 BY MR. BECERRA:  
17 Q. Did he visit restaurant sites that were  
18 stand alones, by themselves?  
19 A. Yes.  
20 Q. Were any leases entered into with any  
21 restaurant owners or restaurant sites that were just  
22 in their own building?  
23 MR. WILLIAMSON: Objection to the form of  
24 the question, asked and answered.  
25 MR. BECERRA: You may answer, Mr. Wu.

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1 THE WITNESS: We didn't sign any lease due  
2 to the order that we had showing that we were in a  
3 procedure with Mr. Diaz.  
4 BY MR. BECERRA:  
5 Q. Did you or anyone in your company visit  
6 the United States this year, 2005, for the purpose of  
7 investigating restaurant sites?  
8 A. Yes.  
9 Q. Isn't it a fact that people from your  
10 company are making these visits even though you have  
11 directed that they not enter into any contracts  
12 because of the proceedings with Mr. Diaz?  
13 INTERPRETER: The interpreter is asking  
14 for repetition.  
15 THE WITNESS: The one who traveled, I was  
16 the one who traveled, not my executives, and we went  
17 to New York.  
18 BY MR. BECERRA:  
19 Q. Where did you visit in New York?  
20 A. Manhattan, Queens, Brooklyn, and some  
21 others.  
22 Q. Did you visit actual restaurant sites on  
23 that trip?  
24 A. We visited areas.  
25 Q. Did you actually enter a restaurant site

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1 during your visit to New York?  
2 MR. WILLIAMSON: Object to the form of the  
3 question.  
4 THE WITNESS: I physically entered many  
5 kinds of restaurants.  
6 BY MR. BECERRA:  
7 Q. Did you or your company enter into any  
8 leases as a result of that trip?  
9 A. No.  
10 Q. Did you enter into any contracts or  
11 agreements with any suppliers of restaurant equipment  
12 during that trip?  
13 A. No.  
14 Q. Did you interview any perspective  
15 employees of any restaurant that you might open in  
16 New York during that trip?  
17 A. Yes, my partner in New York.  
18 Q. Who is that?  
19 A. A cousin who lives there in New York.  
20 Q. Would he be an employee of the restaurant,  
21 or would he be an owner of the franchise?  
22 A. He would be an employee and a  
23 shareholder. Employee.  
24 Q. Employee and a shareholder?  
25 INTERPRETER: That is what the interpreter

<p style="text-align: right;">41</p> <p>1 said.  2 BY MR. BECERRA:  3 Q. Strike that.  4 During you or your company's trip to the  5 United States in 2001, did you or your company  6 interview any employees--strike that.  7 Let me draw your attention to your trip in  8 2001, you or your employees in 2001.  9 Were any U.S. persons interviewed for  10 positions as employees at any of your restaurants?  11 A. No.  12 Q. Did you even obtain quotations or bids  13 from restaurant suppliers for equipment for a  14 restaurant in the United States?  15 MR. WILLIAMSON: Ever or in 2001?  16 MR. BECERRA: 2001.  17 MR. BARREDA: One question, Mr. Becerra.  18 My understanding of the word quotation is different  19 than your understanding in the United States. When  20 you enter into a bid, when you are really entitled to  21 open and you are going to chose the best supplier.  22 Quotations--  23 MR. BECERRA: Yes, I will rephrase the  24 question. Good point, Mr. Barreda.  25 BY MR. BECERRA:</p>	<p style="text-align: right;">43</p> <p>1 THE WITNESS: (No response.)  2 MR. BECERRA: Mr. Williamson, when we say  3 that, what we are talking about is that this  4 information will only be used in this proceeding; is  5 that agreed?  6 MR. WILLIAMSON: Yes, and not shared  7 outside of the needs of this proceeding.  8 MR. BECERRA: Right, agreed.  9 Answer the question, Mr. Wu.  10 THE WITNESS: I don't remember the names.  11 My executives collected that information.  12 I don't know. I don't remember the names of the  13 providers.  14 BY MR. BECERRA:  15 Q. Did your company receive that information  16 in writing?  17 A. Probably. Very probably.  18 Q. Do you recall yourself ever seeing it?  19 A. No, I receive writing about it.  20 MR. BARREDA: It would be, I received  21 summaries about it.  22 INTERPRETER: Yes, correct the record.  23 BY MR. BECERRA:  24 Q. You would have received summaries of the  25 pricing from restaurant suppliers from other</p>
<p style="text-align: right;">42</p> <p>1 Q. Mr. Wu, during your trip to the United  2 States in 2001, did you ever obtain pricing from any  3 suppliers of restaurant equipment in the United  4 States?  5 A. In 2001, no.  6 Q. Did you obtain any kind of pricing from  7 companies that do advertising in the United States  8 during your trip in 2001?  9 A. I don't remember.  10 Q. Turning your attention to the year 2002,  11 did you interview any U.S. persons to be employees of  12 your company or a franchise in the United States?  13 A. No, because we were thinking of sending  14 executives from Peru.  15 Q. Did you obtain pricing from any suppliers  16 of restaurant equipment in the United States in the  17 year 2004?  18 A. Yes.  19 Q. Which companies did you obtain pricing  20 from?  21 MR. WILLIAMSON: I would like this to be  22 under a protective order of protection.  23 MR. BECERRA: Fine.  24 (Thereupon, the portion referred to shall  25 be placed under protective order.)</p>	<p style="text-align: right;">44</p> <p>1 executives in your company?  2 A. I received it through the facilitation  3 project.  4 MR. BARREDA: It would be activity project  5 or report of fact or document.  6 MR. BECERRA: Activity? Is that what you  7 said, Mr. Barreda?  8 MR. BARREDA: No, it is report of fact.  9 It is a summary of report of facts and evaluation of  10 the convenience of doing the, developing the  11 project.  12 I don't know the English word, activity,  13 feasibility study.  14 Is that a correct English word?  15 MR. BECERRA: There we go.  16 BY MR. BECERRA:  17 Q. Did that feasibility study, Mr. Wu,  18 contain the conclusion about whether or not your  19 company should open restaurants in the United  20 States?  21 INTERPRETER: Would you repeat the  22 question, please.  23 (The portion referred to was read by the  24 reporter as above recorded.)  25 THE WITNESS: Yes. The conclusion was</p>

<p style="text-align: right;">45</p> <p>1 that, yes.  2 BY MR. BECERRA:  3 Q. Do you recall was that report received by  4 you in 2002?  5 A. I believe it was 2003.  6 Q. I would be correct, of course, in stating  7 that in 2003 your company did not open a restaurant  8 in the United States; is that correct?  9 A. That is correct, we didn't open it due to  10 the problems in the procedure with Mr. Diaz.  11 Q. Mr. Diaz has one restaurant in Miami; is  12 that correct?  13 A. It is my understanding that it is or was  14 two.  15 Q. And did the report that you got from your  16 executives in 2003 regarding the feasibility, did it  17 indicate which cities your firm should open  18 restaurants in?  19 MR. WILLIAMSON: Object to the form of the  20 question.  21 MR. BECERRA: You may answer it, Mr. Wu.  22 INTERPRETER: The interpreter is asking  23 for repetition.  24 THE WITNESS: There are different cities.  25 Among them, it was based on priority scale, and it</p>	<p style="text-align: right;">47</p> <p>1 Corporation ever obtained any licenses from any  2 governmental body to permit you to operate a  3 restaurant?  4 A. No.  5 Q. Has your company even applied for any such  6 licenses?  7 A. No.  8 Q. Would I be correct in stating that your  9 company currently has no authorized distributors or  10 licensee in the United States?  11 MR. WILLIAMSON: Object to the form of the  12 question.  13 THE WITNESS: That is correct. That is  14 correct. There is no one in the United States  15 licensed under the name of Pardo's Chicken.  16 BY MR. BECERRA:  17 Q. During the last four years, has your  18 company issued any reports to its executives  19 describing or explaining the market for chicken  20 restaurants in the United States?  21 A. In the chicken business, we are always  22 having internal reports to and from the executives.  23 MR. BARREDA: The chicken business is too  24 broad. He used the words--  25 INTERPRETER: I'm sorry the interpreter</p>
<p style="text-align: right;">46</p> <p>1 was first Kendall and Doral.  2 BY MR. BECERRA:  3 Q. Did the report indicate that the company  4 should open any restaurants outside of Florida?  5 MR. WILLIAMSON: Object to the form of the  6 question.  7 THE WITNESS: That report didn't have to  8 do with outside of South Florida.  9 BY MR. BECERRA:  10 Q. Was an additional report ever generated  11 with recommendations regarding whether or not your  12 company should open restaurants outside of Florida?  13 A. We had some information regarding the  14 possibilities outside of South Florida.  15 Q. Did that information indicate whether or  16 not your company should, in fact, open a restaurant  17 outside of Florida?  18 A. Initially, yes.  19 Q. You indicated initially. Subsequently,  20 did the report change its conclusions and say that  21 you should not open a restaurant outside of Florida?  22 A. I said initially because the process  23 lacked complete information that we needed to open in  24 all cities.  25 Q. Has your company or First Florida Chicken</p>	<p style="text-align: right;">48</p> <p>1 did not hear that.  2 Ah, roasted chicken, please correct the  3 record. Instead of chicken companies, roasted  4 chicken.  5 BY MR. BECERRA:  6 Q. Mr. Wu, please let me draw your attention  7 to this. You had indicated that about a week or so  8 ago your company opened up a new franchise; is that  9 correct?  10 A. Yes, we opened a store.  11 Q. Is that an restaurant or a store?  12 A. It is a store, we opened a restaurant.  13 Q. Approximately, how long did it take for  14 your company to prepare--strike that.  15 Approximately, how long did it take for  16 your company to open that restaurant?  17 MR. WILLIAMSON: Objection to the form of  18 the question.  19 MR. BECERRA: You may answer, Mr. Wu.  20 THE WITNESS: Including the licenses in  21 Peru, it took from six to eight months in Peru.  22 BY MR. BECERRA:  23 Q. Would I be correct in saying that from the  24 time that your company decided to open the  25 restaurant, and the time that that restaurant</p>

12 (Pages 45 to 48)

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1 actually opened was approximately six to eight  
2 months?  
3 A. No, that is not correct.  
4 Q. Approximately, how long did it take from  
5 the time the decision to open the restaurant was  
6 made, and its actual opening?  
7 A. It could take as long as a year and a half  
8 sometimes.  
9 Q. That is in Peru?  
10 A. Yes.  
11 Q. How about in Chile, did it take  
12 approximately the same amount of time?  
13 A. No, it took longer, more than two  
14 years.  
15 Q. Have you investigated approximately how  
16 long it will take you in the United States from the  
17 time--  
18 MR. BECERRA: Did we lose somebody?  
19 MR. WILLIAMSON: Not in Washington.  
20 MR. BECERRA: The witness is still on the  
21 line?  
22 THE WITNESS: Yes.  
23 BY MR. BECERRA:  
24 Q. Have you investigated or has your company  
25 investigated approximately how long it would take for

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1 you to open a restaurant in the United States from  
2 the time the decision is made to open it, and its  
3 actual opening?  
4 MR. WILLIAMSON: Objection to the form of  
5 the question.  
6 MR. BECERRA: You may answer, Mr. Wu.  
7 THE WITNESS: We are estimating that  
8 starting from zero, that it would take two to three  
9 years.  
10 BY MR. BECERRA:  
11 Q. Has anyone explained to you why it would  
12 take so long for you to open a restaurant in the  
13 United States?  
14 MR. WILLIAMSON: Objection to the form of  
15 the question.  
16 THE WITNESS: It is information that we  
17 have and priorities that we have and it also has to  
18 do with opening in Santiago, Chile.  
19 BY MR. BECERRA:  
20 Q. So would I be correct in stating that  
21 opening a restaurant in the United States is a lower  
22 priority for your company?  
23 MR. WILLIAMSON: Objection to the form of  
24 the question.  
25 THE WITNESS: No, just the opposite. It

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1 is a high priority.  
2 BY MR. BECERRA:  
3 Q. You mentioned in your previous answer  
4 about for some reason, and correct me if I am wrong,  
5 that for some reason the opening of the restaurant in  
6 Santiago had something to do with your plans to open  
7 a restaurant in the United States; was I incorrect?  
8 A. No, that is not correct. I mentioned that  
9 it took two years to open in Santiago, Chile.  
10 For that reason, to open in the United  
11 States starting from zero, it would take from two to  
12 three years.  
13 Q. Has anybody in the United States actually  
14 advised you that it would take two to three years to  
15 open in the United States?  
16 MR. WILLIAMSON: Objection to the form of  
17 the question, and if the question calls for  
18 disclosure of any attorney/client privileged  
19 information, then I will instruct the witness not to  
20 answer with respect to that kind of information.  
21 MR. BECERRA: That is fine.  
22 BY MR. BECERRA:  
23 Q. Mr. Wu, has anybody besides a lawyer  
24 advised you that it will take two to three years to  
25 open a restaurant in the United States?

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1 A. No.  
2 MR. BECERRA: Let's just take a two-minute  
3 break.  
4 Off the record.  
5 (Thereupon a recess was taken after which  
6 the following proceedings were had:)  
7 MR. BECERRA: Back on the record.  
8 BY MR. BECERRA:  
9 Q. In your previous testimony, Mr. Wu, you  
10 had indicated that executives of your company had  
11 received pricing from restaurant supply companies; is  
12 that correct?  
13 A. Yes, that is correct.  
14 Q. Am I also correct in that no purchase  
15 orders whatsoever were issued by your company to  
16 order any restaurant supplied products in the United  
17 States?  
18 A. That is correct.  
19 Q. Have you received pricing from any other  
20 restaurant equipment or--strike that.  
21 Have you received pricing from any other  
22 potential providers of restaurant services in the  
23 United States during the past four years?  
24 MR. WILLIAMSON: Object to the form of the  
25 question.

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1 THE WITNESS: Yes, that is correct.  
2 BY MR. BECERRA:  
3 Q. Mr. Wu, who else have you received pricing  
4 from?  
5 A. Raw materials.  
6 MR. BARREDA: The question relates to the  
7 name of the suppliers, or was it related to the type  
8 of suppliers?  
9 MR. BECERRA: The question related as to  
10 whether or not he had received any other pricing at  
11 all.  
12 THE WITNESS: Yes, that is correct.  
13 BY MR. BECERRA:  
14 Q. Did you receive pricing from suppliers of  
15 chicken?  
16 A. Yes, that is correct.  
17 Q. Which suppliers in the United States were  
18 those?  
19 MR. WILLIAMSON: Once again, any response  
20 should be kept under protective order?  
21 (Thereupon, the portion referred to shall  
22 be placed under protective order.)  
23 MR. BECERRA: Agreed.  
24 THE WITNESS: They are providers such as  
25 SYSCO and U.S. Foods.

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1 BY MR. BECERRA:  
2 Q. And these prices were obtained for the use  
3 in a U.S. restaurant?  
4 A. Yes, that is correct.  
5 Q. Were these prices provided to your company  
6 in writing?  
7 A. Probably.  
8 Q. Have you ever seen this writing?  
9 A. I received summaries.  
10 Q. Do you remember from who?  
11 A. From the executives, the executives in  
12 charge of the project.  
13 Q. Do you remember which executive was that?  
14 A. Probably, Kenny Wong.  
15 Q. As a result of receiving that pricing, did  
16 you enter into any purchase orders with either SYSCO  
17 or U.S. Foods?  
18 A. No.  
19 Q. What other pricing did you receive from  
20 U.S. suppliers?  
21 A. Those that are important for doing a  
22 feasibility study.  
23 Q. Like what?  
24 A. A square meter renovation.  
25 Q. What company did you receive pricing for

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1 such a renovation?  
2 A. I don't remember.  
3 Q. And for what restaurant site did you  
4 receive that pricing for?  
5 MR. WILLIAMSON: Objection to the form of  
6 the question.  
7 THE WITNESS: (No response.)  
8 MR. BECERRA: I'm sorry, did you answer  
9 the question?  
10 THE WITNESS: For future Pardo's Chicken,  
11 but all I do is I receive the summaries.  
12 BY MR. BECERRA:  
13 Q. Do you recall if that particular summary  
14 indicated for what location this renovation would be  
15 performed?  
16 MR. WILLIAMSON: Object to the form of the  
17 question.  
18 MR. BECERRA: You may answer, Mr. Wu.  
19 THE WITNESS: It is not for any particular  
20 site. They are for the market rates and indexes.  
21 BY MR. BECERRA:  
22 Q. What other pricing, if any, did you  
23 receive from U.S. suppliers?  
24 A. I don't remember exactly which ones I  
25 received. I received the final projects and the

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1 summaries.  
2 Q. About how long ago did you receive these  
3 final projects and summaries?  
4 A. Approximately, 2003.  
5 Q. In the last, since 2003, your company has  
6 not taken any further action in regards to opening a  
7 restaurant in the United States; is that correct?  
8 MR. WILLIAMSON: Objection to the form of  
9 the question.  
10 MR. BECERRA: You may answer, Mr. Wu.  
11 THE WITNESS: Well, we have maintained  
12 some activity, but in regards to the information,  
13 about the feasibility reports, but we have not  
14 taken any further steps due to the procedure with Mr.  
15 Diaz.  
16 MR. BECERRA: I think I don't have any  
17 further questions for you, Mr. Wu.  
18 Do you have any questions, Mr. Williamson?  
19 MR. WILLIAMSON: No, thank you.  
20 COURT REPORTER: Do you want a copy of  
21 this if this is transcribed, Mr. Barreda?  
22 MR. BARREDA: Yes, please.  
23 MR. WILLIAMSON: We will want one, too,  
24 and one that we can send to the witness to review  
25 before signature.

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1 MR. BECERRA: Yes, we are ordering this.  
 2 (Thereupon, the taking of deposition was  
 3 concluded at 12:30 p.m.)  
 4 EXCEPT FOR ANY CORRECTIONS  
 5 MADE ON THE ERRATA SHEET BY  
 6 ME, I CERTIFY THIS IS A TRUE  
 7 AND ACCURATE TRANSCRIPT.  
 8 FURTHER DEPONENT SAYETH NOT.  
 9  
 10  
 11 \_\_\_\_\_  
 WITNESS' NAME  
 12  
 13  
 14 STATE OF FLORIDA )  
 15 ) SS:  
 16 COUNTY OF MIAMI-DADE)  
 17  
 18 Sworn and subscribed to before me  
 this \_\_\_\_ day of \_\_\_\_\_ 2005.  
 19  
 PERSONALLY KNOWN \_\_\_\_\_ OR I.D. \_\_\_\_\_  
 20  
 21 \_\_\_\_\_  
 22 Notary Public in and for the  
 State of Florida at Large.  
 23  
 My commission expires:  
 24  
 25

58

1 CERTIFICATE OF OATH  
 2  
 STATE OF FLORIDA  
 3 COUNTY OF MIAMI-DADE  
 4  
 5  
 6 I the undersigned authority, certify that  
 7 ARNOLD HENRY WU WONG personally appeared before me  
 8 and was duly sworn.  
 9 Witness my hand and official seal this 28th  
 10 day of December, 2005.  
 11  
 12  
 13  
 14 \_\_\_\_\_  
 15 KELLY ELLIS  
 16 Notary Public - State of Florida  
 17 My Commission #DD272154  
 18 Expires: December 3, 2007  
 19  
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1  
 2 REPORTER'S DEPOSITION CERTIFICATE  
 3  
 4 STATE OF FLORIDA  
 5 COUNTY OF MIAMI-DADE  
 6  
 7 I, KELLY ELLIS, Registered  
 8 Professional Reporter, certify that I was authorized  
 9 to and did stenographically report the deposition of  
 10 ARNOLD HENRY WU WONG; that a review of the transcript  
 11 was requested; and that the transcript is a true and  
 12 complete record of my stenographic notes.  
 13  
 14 I further certify that I am not a relative,  
 15 employee, attorney, or counsel of any of the parties,  
 16 parties' attorney or counsel connected with the  
 17 action, nor am I financially interested in the  
 18 action.  
 19  
 20  
 21 DATED this 28th day of December, 2005.  
 22  
 23  
 24 \_\_\_\_\_  
 25 KELLY ELLIS, R.P.R.

60

1 ERRATA SHEET  
 2  
 3 RE : Diaz vs Servicios De Fraquicia Pardo's  
 4 DEPO OF: Arnold Henry Wu Wong  
 5 TAKEN : Wednesday, December 28, 2005  
 6  
 7 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE  
 8  
 9 Page # | Line # | Change | Reason  
 10  
 11 \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_  
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 18 \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_ | \_\_\_\_\_  
 State of Florida)  
 19 County of Miami-Dade)  
 20 Under penalties of perjury, I declare that I have  
 read my deposition transcript, and it is true and  
 21 correct subject to any changes in form or substance  
 entered here.  
 22  
 23 \_\_\_\_\_  
 Date Signature  
 24  
 25



**ERRATA SHEET**

RE: DIAZ vs. SERVICIOS DE FRANQUICIA PARDO'S S.A.C.  
DEPO OF: Arnold Henry Wu Wong  
TAKEN: Wednesday, December 28, 2005

Page #	Line #	Change	Reason
2	12	BARREDA & MOLLER	The firm name is BARREDA MOLLER
4	22	Barreda and Moller	The firm name is Barreda Moller
4	24	Substitute "excavation" with "corporate law"	Translation error
6	10 to 14	The intervention was: "The franchises are not directly owned by Servicios de Franquicia Pardo's S.A.C. They are owned mostly by individuals who belong to the family owning Servicios de Franquicia Pardo's S.A.C., relatives of Mr. Wu, who also owns different companies".	Translation error
24	8	Substitute "open situation" with "opposition"	Mistranscription
26	7	Substitute "are" with "were"	Mistranscription
28	19	Strike out "including Chile" and substitute with "just as in Chile"	Mistranscription
33	4	Substitute "and" by "as"	Mistranscription

Lima, Peru

Under penalties of perjury, I declare that I have read my deposition transcript, and it is true and correct subject to any changes in form or substance entered here.

January 26, 2006

  
\_\_\_\_\_